



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

(ANDORRA, ARMENIA, AUSTRIA, AZERBAIJAN, BELGIUM, BOSNIA and HERZEGOVINA, BULGARIA, CYPRUS, ESTONIA, FINLAND, FRANCE, GEORGIA, HUNGARY, LATVIA, LITHUANIA, MALTA, REPUBLIC OF MOLDOVA, MONTENEGRO, THE NETHERLANDS, NORWAY, PORTUGAL, ROMANIA, RUSSIAN FEDERATION, SERBIA, SLOVAK REPUBLIC, SLOVENIA, SWEDEN, “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”, TURKEY, UKRAINE)

Articles 7, 8, 16, 17, 19, 27 and 31  
of the Charter



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General Introduction

*This text may be subject to editorial revision.*



## GENERAL INTRODUCTION

1. The European Committee of Social Rights, established by Article 25 of the European Social Charter, composed of:

Giuseppe PALMISANO (Italian)  
President

Professor of International Law and EU Law  
Director of the Institute for International Legal Studies  
National Research Council of Italy, Rome (Italy)

Monika SCHLACHTER (German)  
Vice-President

Professor of Civil, Labour and International Law  
Director of Legal Studies Institute for Labour Law and Industrial Relations in the European Community  
University of Trier (Germany)

Petros STANGOS (Greek)

Vice-President Professor of European Union law,  
Holder of the Jean Monnet Chair "European human rights law"  
School of Law, Department of International studies  
Aristotle University, Thessaloniki (Greece)

Lauri LEPPIK (Estonian)

General Rapporteur  
Senior Researcher  
School of Governance, Law and Society  
Tallinn University (Estonia)

Colm O'CONNOR (Irish)

Professor of Law  
Faculty of Laws, University College  
London (United Kingdom)

Birgitta NYSTRÖM (Swedish)

Professor of Private Law  
Faculty of Law  
University of Lund (Sweden)

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Lomonosov State University, Moscow (Russian Federation)

Karin LUKAS (Austrian)

Senior Legal Researcher and Head of Team  
Ludwig Boltzmann Institute of Human Rights, Vienna (Austria)

Eliane CHEMLA

Conseillère d'Etat  
Conseil d'Etat, Paris (France)

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Dean for International Affairs and Science  
University of Szeged (Hungary)

Marcin WUJCZYK (Polish)

Lecturer in Labour Law and Social Policy  
Jagiellonian University, Cracow (Poland)

Krassimira SREDKOVA (Bulgarian)

Professor of Labour Law and Social Security  
University of Sofia (Bulgaria)

Raúl CANOSA USERA (Spanish)  
Professor of Constitutional Law  
University Complutense, Madrid (Spain)

Marit FROGNER  
Judge  
Labour Court of Norway, Oslo (Norway)

François VANDAMME (Belgian)<sup>1</sup>  
Former Director International Affairs, Federal Public Service Employment, Labour and Social Dialogue, Brussels (Belgium)  
Former visiting professor, College of Europe (Bruges, 1998-2012, "*Enjeux sociaux et gouvernance de l'Europe*")  
Former invited "*Maître de conférences*" (2008-2014) in Labour Law, Catholique University of Louvain, Louvain-la-Neuve, (Belgium)

assisted by Régis BRILLAT, Executive Secretary,

between January 2015 and December 2015 examined the reports of the States Parties on the application of the Revised European Social Charter.

2. The role of the European Committee of Social Rights is to rule on the conformity of the situations in States with the European Social Charter (revised), the 1988 Additional Protocol and the 1961 European Social Charter.

3. Following the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014 the system henceforth comprises three types of reports. Firstly, the ordinary reports on a thematic group of Charter provisions, secondly simplified reports every two years on follow-up to collective complaints for States bound by the collective complaints procedure and, thirdly, reports on conclusions of non-conformity for lack of information adopted by the Committee the preceding year.

4. Thus, the conclusions adopted by the Committee in December 2015 concern firstly the accepted provisions of the following articles of the Revised European Social Charter ("the Charter") belonging to the thematic group "Children, families and migrants" on which the States Parties had been invited to report by 31 October 2014:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (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).

5. The following States Parties submitted a report: Andorra, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Hungary, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, the Netherlands, Norway, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Sweden, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine.

6. Albania did not submit a report and therefore the Committee was unable to reach any conclusions on its conformity with the relevant provisions for this cycle. The Committee notes the failure of Albania to respect its obligation, under the Charter, to report on the

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<sup>1</sup> As from 1 May 2015.

implementation of this treaty. Under the circumstances the Committee considers that there is nothing to demonstrate that the situation in Albania as regards the provisions concerned is in conformity with the Revised Charter. As this is the second successive year that Albania does not submit a report, the Committee invites the Committee of Ministers to take any appropriate measures to ensure that Albania fulfills its reporting obligation.

7. As noted above, States which have accepted the collective complaints procedure shall henceforth submit a simplified report every two years. In order to avoid excessive fluctuations in the workload of the Committee from year to year, the 15 States which have accepted the complaints procedure were divided into two groups as follows:

- Group A, made up of eight States: France, Portugal, Italy, Belgium, Bulgaria, Ireland which are bound by the Charter and Finland as well as Greece which is bound by the 1961 Charter.
- Group B, made up of seven States: the Netherlands, Sweden, Norway, Slovenia, Cyprus which are bound by the Charter as well as Croatia and the Czech Republic which are bound by the 1961 Charter.

On this basis, the States belonging to Group A were invited to submit reports on follow-up to collective complaints by 31 October 2014. The Committee's findings in this respect appear in a separate document.

8. Finally, certain States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013. The conclusions in this respect may concern both States reporting on the thematic group of provisions and those reporting on follow-up to complaints.

The States concerned in 2015 are: Andorra, Armenia, Belgium, Bulgaria, Finland, France, Georgia, Hungary, Ireland, Italy, Lithuania, Malta, the Republic of Moldova, Montenegro, the Netherlands, Portugal, Romania, the Slovak Republic, Slovenia, Sweden, Turkey and Ukraine. Albania was also concerned but did not submit a report. The Committee refers to its remarks on Albania above.

9. In addition to the state reports, the Committee had at its disposal comments on the reports submitted by different trade unions and non-governmental organisations (see introduction to the individual country chapters). The Committee wishes to acknowledge the importance of these various comments, which were often crucial in gaining a proper understanding of the national situations concerned.

10. The Committee's conclusions as outlined above are published in documents by State. They are available on the Council of Europe website ([www.coe.int/...](http://www.coe.int/...)) in the case law database. A summary table of the Committee's Conclusions 2015 as well as the state of signature and ratification of the Charter and the 1961 Charter appear below. In addition, each country document highlights selected positive developments concerning the implementation of the Charter at national level identified by the Committee in its conclusions.

### **Statements of Interpretation**

11. The Committee makes the statements of interpretation which follow below. It notes in this respect that the statement on the rights of refugees was published in October 2015. The other statements are made public here for the first time:

#### **12. Article 7§1 and 7§3 – permitted duration of light work**

The Committee recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work.

The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education.

In addition, the Committee recalls that, in any case, children should be guaranteed at least two consecutive weeks of rest during summer holiday.

### **13. Article 8§1 – maternity benefits**

Under Article 8§1 of the Charter the States Parties shall ensure that employed women are adequately compensated for their loss of earnings during the period of maternity leave (which shall be not less than 14 weeks under the Revised Charter and 12 weeks under the 1961 Charter).

The modality of compensation is within the margin of appreciation of the States Parties and may be either a paid leave (continued payment of wages by the employer), social security maternity benefit, any alternative benefit from public funds or a combination of such compensations. Regardless of the modality of payment, the level shall be adequate. In case of continued payment of wages or earnings-related benefits, these shall be equal to the previous salary or close to its value, and not be less than 70% of the previous wage. A ceiling on the amount of compensation for high salary earners is not, in itself, contrary to Article 8§1.

Minimum rate of compensation shall not fall below the poverty threshold defined as 50% of median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

The right to compensation may be subject to entitlement conditions such as a minimum period of employment or contribution. However, such conditions shall not be excessive; in particular, qualifying periods should allow for some interruptions in the employment record.

### **14. Article 19§4 – rights of posted workers**

The Committee recalls that in its decision in *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v Sweden*, Complaint No. 85/2012, decision on the merits of 3 July 2013 at para. 134, it stated as follows:

“[T]he Committee recalls that posted workers are workers who, for a limited period, carry out their work in the territory of a State other than the State in which they usually work, which is often their national State. The Committee is aware that, in terms of length and stability of presence in the territory of the so called “host State”, as well as of their relationship with such State, the situation of posted workers is different from that of other category of migrants workers, and in particular from the situation of those foreign workers who go to another State to seek work and to be permanently embedded there. Nonetheless, the Committee considers that, for the period of stay and work in the territory of the host State, posted workers are workers coming from another State and lawfully within the territory of the host State. In this sense, they fall within the scope of application of Article 19 of the Charter and they have the right, for the period of their stay and work in the host State to receive treatment not less favourable than that of the national workers of the host State in respect of remuneration, other employment and working conditions, and enjoyment of the benefits of collective bargaining (Article 19§4, a and b).”

The Committee therefore asks for information concerning the legal status of posted workers and what legal and practical measures are taken to ensure their equal treatment in matters of employment, trade union membership and collective bargaining.

The Committee notes that States are responsible for the regulation in national law of the conditions and rights of workers in cross-border postings. It notes that the situations of posted workers are often distinct from that of other migrant workers; however it is also clear

that in some circumstances they share many of the same characteristics. The Committee recalls that states must respect the principles of non-discrimination laid down by the Charter in respect of all persons subject to their jurisdiction. It thus considers that in order to conform with the requirements of the Charter, any restrictions on the right to equal treatment for posted workers, which are imposed due to the nature of their sojourn, must be objectively justified by reference to the specific situations and status of posted workers, having regard to the principles of Article G of the Revised Charter (Article 31 of the 1961 Charter).

#### **15. Article 19§6 – language and integration tests**

The Committee acknowledges that States may take measures to encourage the integration of migrant workers and their family members. It notes the importance of such measures in promoting economic and social cohesion.

However, the Committee considers that requirements that family members pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may impede rather than facilitate family reunion and therefore are contrary to Article 19§6 of the Charter where they:

- a) have the potential effect of denying entry or the right to remain to family members of a migrant worker, or
- b) otherwise deprive the right guaranteed under Article 19§6 of its substance, for example by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments.

#### **16. Article 19§6 – housing requirements**

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee considers 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.

#### **17. Article 19§6 and 19§8 – the right of families to remain**

The Committee considers that upon a proper construction of the text of the Charter, the possibility of the expulsion of the family members of a migrant worker is more properly dealt with under Article 19§6 on the facilitation of family reunion, rather than under Article 19§8 which concerns only the expulsion of a migrant worker. It therefore decides henceforth to assess whether the expulsion of family members of a migrant worker is in conformity with the Charter under Article 19§6.

#### **18. Article 19§8 – expulsions in case of threat to national security, or offence against public interest or morality**

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, Cyprus, p. 126.)

Such expulsions can only be in conformity with the Charter if they are ordered 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. Expulsion orders must be proportionate, taking into account all aspects of the non-nationals' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate.

All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body.

#### **19. Article 27§2 – compensation during parental leave**

Under Article 27§2 of the Charter the States Parties are under a positive obligation to encourage the use of parental leave by either parent. States shall ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave.

The modalities of compensation is within the margin of appreciation of the States Parties and may be either paid leave (continued payment of wages by the employer), a social security benefit, any alternative benefit from public funds or a combination of such compensations. Regardless of the modalities of payment, the level shall be adequate.

#### **20. Article 31§2 – eviction from shelters**

The Committee considers that eviction from shelters without the provision of alternative accommodation must be prohibited.

#### **21. The rights of refugees under the Charter**

The Committee emphasises the urgent and unconditional need to treat with solidarity and dignity the men, women and children who arrive on European territory, and who have a right under international law and the relevant national and European laws to the protection of European States as refugees, as described by the 1951 Convention on the Status of Refugees. It is even more important in light of the current humanitarian crisis resulting from the exodus of such people from their homes. Those people are driven by circumstances which prevail in their homelands to seek refuge from war, terror, torture or persecution, and to build a safer and better life for themselves outside the borders of their country of origin. Their proper integration into the European societies which welcome them is the best way to ensure their safety and well-being.

The Committee considers that the obligations undertaken by the States Parties by virtue of the European Social Charter are appropriate to promote and to firmly establish the prompt social integration of refugees in the host societies. It recalls that these obligations require a response to the specific needs of refugees and asylum seekers, such as courses for learning the language of the host state; the recognition of their qualifications; the liberal administration of the right to family reunion; and the right to undertake gainful employment and thus contribute to the economy.

The Committee underlines that States Parties must ensure that everyone within their territory is treated with dignity and without discrimination. This means not only to ensure respect for their civil rights, but also to support their physical and mental integrity, and to recognise their fundamental human needs of community and belonging. The fundamental rights of every human being which bind the international community are universal, indivisible and interdependent. The social and economic integration of every individual is an essential part of their right to lead a dignified life.

In recognition of this, the Committee reiterates that the rights guaranteed by the Charter are to be enjoyed to the fullest extent possible by refugees (cf. Conclusions XVII-1 (2004),

Statement of Interpretation on the personal scope of the Charter). It recalls that it has held that certain rights afforded by the Charter apply to refugees and other vulnerable groups, for example Article 17 (Conclusions 2003, Bulgaria), Article 13 (Conclusions 2013, Bosnia and Herzegovina) and Article 31 (FEANTSA v. the Netherlands, Complaint No. 86/2012, Decision on the Merits of 2 July 2014). It recalls that it has previously outlined the protection of stateless persons under the Charter (Conclusions 2013, Statement of Interpretation on the rights of stateless persons). The Committee adds to that reasoning the following observations.

The Appendix forms an integral part of the Charter, and the interpretation thereof, in the light of its object and purpose, is thus entrusted to the European Committee of Social Rights. The Appendix to the Charter reads:

*“2. Each Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 [and in the Protocol of 31 January 1967]<sup>2</sup> and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Party under the said convention and under any other existing international instruments applicable to those refugees.”*

Article 1A of the 1951 Convention relating to the Status of Refugees (CSR), read in conjunction with Article 1 paragraph 2 of the 1967<sup>3</sup> Protocol, defines a refugee as follows:

*“For the purposes of the present Convention, the term “refugee” shall apply to any person who:*

*(2) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.”*

A refugee as contemplated by the CSR and its 1967 Protocol is thus anyone who has fled the country of his nationality or habitual residence, and is unwilling, through well-founded fear of being persecuted, to return to it. Having regard to the above definition, the Committee underlines that the protection of a refugee under the CSR, and his or her resultant protection under the Charter, does not depend on the administrative recognition of refugee status by a State, which is done by the granting of asylum.

The Committee recalls that the Charter is a living instrument dedicated to the values which inspired it, namely dignity, autonomy, equality and solidarity. It must be interpreted so as to give life and meaning to fundamental social rights (FIDH v. France, Complaint No. 14/2003, Decision on the Merits of 8 September 2004, §29). The Charter should also so far as possible be interpreted in harmony with other rules of international law (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, Decision on the Merits of 20 October 2009, §35).

In this respect, the Committee points out that Article 25 paragraph 1 of the United Nations Universal Declaration of Human Rights sets out the following with regard to the universal right to an adequate standard of living:

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<sup>2</sup> The 1967 Protocol does not appear in the Appendix to the 1961 Charter, however, all of the States bound by the 1961 Charter as of 7 September 2015 have also ratified the 1967 Protocol.

<sup>3</sup> In respect of Turkey, the instrument of accession stipulates that "the Government of Turkey maintains the provisions of the declaration made under section B of article 1 of the Convention relating to the Status of Refugees, done at Geneva on 28 July 1951, according to which it applies the Convention only to persons who have become refugees as a result of events occurring in Europe, and also the reservation clause made upon ratification of the Convention to the effect that no provision of this Convention may be interpreted as granting to refugees greater rights than those accorded to Turkish citizens in Turkey".

*“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”*

The Committee further notes that the Committee of Ministers of the Council of Europe in its Recommendation No. R(2000)3 (Adopted on 19 January 2000 at the 694th meeting of the Ministers’ Deputies), has recommended that Member States:

*“[...] recognise, at national level, an individual universal and enforceable right to the satisfaction of basic material needs (as a minimum: food, clothing, shelter and basic medical care) for persons in situations of extreme hardship.”*

*“The exercise of this right should be open to all citizens and foreigners, whatever the latter’s position under national rules on the status of foreigners, and in the manner determined by national authorities.”*

Having in mind the same concerns, the Committee recalls that in *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands*, Complaint No. 86/2012, Decision on the Merits of 2 July 2014, it held that the right to emergency shelter and to other emergency social assistance is not limited to those belonging to certain vulnerable groups, but extends to all individuals in a precarious situation, pursuant to the principle of upholding their human dignity and the protection of their fundamental rights.

The Committee considers that certain social rights directly related to the right to life and human dignity are part of a “non-derogable core” of rights which protect the dignity of all people. Those rights therefore must be guaranteed to refugees, and should be assured for all displaced persons.

The wording of the Appendix to the Charter demonstrates the express undertaking to provide “treatment as favourable as possible” to the persons it covers. The Committee thus considers that the rights contained in the Charter should as far as possible be guaranteed to refugees on an equal footing with other persons subject to the jurisdiction of the host State. It is therefore incumbent upon them to take meaningful steps towards the achievement of equality for refugees under each article of the Charter by which they are bound. In any case, as is expressly stated in the Appendix to the Charter, the treatment of refugees must not be less favourable than that guaranteed by the CSR. When the achievement of a right in question is exceptionally complex and particularly expensive to resolve, States Parties must attempt to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources (cf. *Autism-Europe v. France*, Complaint No. 13/2002, Decision on the Merits of 4 November 2003, §53).

The CSR grants social and economic rights to refugees with reference to three levels of protection. Article 7 paragraph 1 CSR provides that “[e]xcept where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally”. Other provisions of the Convention guarantee that States Parties afford refugees treatment equal to that of nationals, while some provide for “the most favourable treatment accorded to nationals of a foreign country”, and others “treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances”.

The CSR coincides with the Charter in guaranteeing many social and economic rights to refugees.

Refugees must be accorded treatment equal to nationals in respect of elementary education (Article 22 CSR), which is guaranteed by Article 17§1 of the Charter; and public relief and assistance (Article 23 CSR), which is accorded under Article 13 of the Charter (social and

medical assistance) and implied by Article 30 of the Charter (the right to protection against poverty and social exclusion).

Labour legislation and social security (Article 24 CSR) are the areas of greatest correspondence between the two instruments. The following Articles of the Charter all cover rights for which the CSR guarantees the same treatment as nationals: Article 2 (working hours, holidays with pay, overtime arrangements); Article 4 (remuneration); Article 6 (the enjoyment of the benefits of collective bargaining); Article 7 (a minimum age of employment, young persons' employment rights and apprenticeships); Article 8 (rights of women in the workplace); Article 10 (training opportunities); Article 11 (healthcare); Article 12§§1, 2, 3 (the right to social security covering healthcare, sickness, unemployment, old age, employment injury or disease, family benefits and maternity benefits); Article 16 (family benefits); 19§7 (access to courts); and Article 23 (rights of the elderly).

The CSR guarantees the right to the most favourable treatment accorded to nationals of a foreign country in respect of the right to belong to trade unions (Article 15 CSR), which is guaranteed by Articles 5 and 19§4 of the Charter; and the right to engage in wage-earning employment (Article 17 CSR), which is guaranteed by Articles 1 and 18 of the Charter.

Finally, the CSR guarantees treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, in relation to the right to self-employment (Article 18 CSR), which is covered in Article 1 and 18 of the Charter; the right to access to housing (Article 21 CSR), which is dealt with under Articles 16 and 31 of the Charter; and the right to further education (Article 22 CSR), which is guaranteed by Article 10 (vocational education) and Article 17 (secondary education) of the Charter.

The rights contained within the CSR are to be guaranteed without discrimination (Article 3 CSR). Certain articles of the Charter explicitly prohibit discrimination in a number of circumstances (e.g. Article 1§2 (discrimination in employment); Article 15 (discrimination on the grounds of disability); Article 20 (discrimination on grounds of sex)). The application of the rights guaranteed by the Charter must also be secured without discrimination, pursuant to Article E of the Revised Charter, or must take account of the preamble of the 1961 Charter.

The CSR guarantees the right to free access to the courts of law, with refugees enjoying the same treatment as nationals in respect of legal assistance or court fees. Many of the Charter provisions require effective mechanisms for their exercise, including the right to appeal against decisions of the relevant authorities. The Committee considers that refugees must enjoy the same treatment in respect of juridical procedures involving their rights under the Charter.

Finally, Article 32 of the CSR stipulates that the Contracting States shall not expel a refugee lawfully on their territory save on grounds of national security or public order, in which case expulsion shall take place only in pursuance of a decision reached in accordance with due process of law. The Committee thus considers that refugees must be guaranteed the protection of the Charter in respect of expulsion (cf. Article 19§8) on an equal footing with nationals of other States Parties to the Charter.

The Committee therefore requests that all States Parties provide up-to-date and complete information relevant to the situation of refugees and displaced persons on their territory, in their reports concerning the rights identified in this Statement of Interpretation. Where specific measures apply to such persons these should be clearly described, and any difference of treatment in relation to the treatment of other persons subject to their jurisdiction should be justified with reference to the principles of Article 31 of the 1961 Charter and Article G of the Revised Charter.

### **General Questions from the Committee**

22. The Committee refers to the questions included in the above statements of interpretation on Article 19§4 and on the rights of refugees. These questions should be answered by all States Parties concerned.

### **Statement on information in national reports and information provided to the Governmental Committee**

23. The Committee draws the attention of the States Parties to the obligation to systematically include replies to information requests by the Committee in the national reports. Moreover, the Committee invites the States Parties to always include in the report any relevant information previously provided to the Governmental Committee, whether in writing or orally, or at least to refer to such information, and of course to indicate any developments or changes that may have intervened in the period since the information was provided to the Governmental Committee.

### **Next assessment**

24. The reports on the accepted provisions, which were due before 31 October 2015, concern the following Articles belonging to the thematic group "Employment, training and equal opportunities": 1, 9, 10, 15, 18, 20, 24 and 25. States having accepted the collective complaints procedure and belonging to Group B<sup>4</sup> were due to submit a simplified report on follow-up to complaints also before 31 October 2015. Finally, by the same date States concerned<sup>5</sup> are to report on any conclusions of non-conformity for lack of information adopted in Conclusions 2014.

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<sup>4</sup> Cyprus, the Netherlands, Norway, Slovenia, Sweden.

<sup>5</sup> States Parties where information is required on conclusions of non-conformity for lack of information in Conclusions 2014: Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Estonia, Finland, Georgia, Hungary, Ireland, Italy, Lithuania, Malta, Republic of Moldova, Norway, Portugal, "the Former Yugoslav Republic of Macedonia", the Netherlands, Turkey, Ukraine.

## CONCLUSIONS 2015

Article	ANDORRA	ARMENIA	AUSTRIA	AZERBAIJAN	BELGIUM	BOSNIA AND HERZEGOVINA	BULGARIA	CYPRUS	ESTONIA	FINLAND	FRANCE	GEORGIA	HUNGARY	IRELAND	ITALY	LATVIA	LITHUANIA	MALTA	REPUBLIC OF MOLDOVA	MONTENEGRO	THE NETHERLANDS	NORWAY	PORTUGAL	ROMANIA	RUSSIAN FEDERATION	SERBIA	SLOVAK REPUBLIC	SLOVENIA	SWEDEN	"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"	TURKEY	UKRAINE	
Article 3.1	-																	+															
Article 3.2																										+							
Article 3.4														-				+			+											-	-
Article 7.1	0	-	+	+	-		-	-			-	-	-			+	-	-	-	+	+	-		-	0	0	+	+	-	-	-	-	-
Article 7.2	+	+	+	+	-		+	+			-					+	+	+	+	+	+	+		+	+	+	+	+	+	+	0	+	
Article 7.3	+	-	+	-	-		-	-			-					+	-	0	-	+	-	-		-	0	0	+	-	-	-	-	-	-
Article 7.4	+	+	+	+	-		+	+			-					+	+	-	+	0	+			+	+	-	+	-	+	+	-	+	
Article 7.5	-	-	0	-	-						-					0	0	0		0	-	0		-	0	0	-	0				-	-
Article 7.6	+	+		+	-		+				-					+	+	+		+	-	+		-	0	0	+	+		+	-	+	
Article 7.7	+	0	+	-	+		+	+			+					+	+	+	+	+	+	+		-	+	+	+	+	+	+	+	+	+
Article 7.8	+	+	+	+	-		+	+			-					+	+	-	+	+	+	0		+	+	+	+	+	+	+	+	-	+
Article 7.9	+	+	+	+	-				-		-					+	+	+	+	0	-			+	+	0	+	+	-	-	-	+	+
Article 7.10	+	-	-	-	+		0	-			+					0	+	0	0		+	+		0	0	0	+	+	+	-	-	-	-
Article 8.1	+	+	+	-	-		+	+					0			+	+	+	-	+	+	+		0	+	0	-	+	+	0	-	-	
Article 8.2	+	+		0	-		+	+					+			-	-	+	0	+	+			-	+	+	-	+		-	-	+	
Article 8.3	+	+	+	+	+		+	+			+	+				+	+		0	+	+	+		+	+	0	+	-	+	+	+	+	+
Article 8.4	+	-	+	+	-			+			+	+				+	+	+	0	+	+			+	+	+	+	+		+	+	+	+
Article 8.5	+	+	+	-	-		+	+			-	+				+	+	+	0	+	+			+	+	0	+	+		+	-	-	
Article 11.1											-																						

Article	ANDORRA	ARMENIA	AUSTRIA	AZERBAIJAN	BELGIUM	BOSNIA AND HERZEGOVINA	BULGARIA	CYPRUS	ESTONIA	FINLAND	FRANCE	GEORGIA	HUNGARY	IRELAND	ITALY	LATVIA	LITHUANIA	MALTA	REPUBLIC OF MOLDOVA	MONTENEGRO	THE NETHERLANDS	NORWAY	PORTUGAL	ROMANIA	RUSSIAN FEDERATION	SERBIA	SLOVAK REPUBLIC	SLOVENIA	SWEDEN	"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"	TURKEY	UKRAINE		
Article 11.2												-				+							+	-							0	-		
Article 11.3	0						+					-		-																				
Article 12.1															-						+								-					
Article 12.2																																		
Article 12.3															-																			
Article 12.4										+																	-	-						
Article 13.1		-									-		+	+	-			+																
Article 13.3																		+								+								
Article 13.4	-													+				-																
Article 14.1						0							-	-																				-
Article 14.2					+							+	+																					0
Article 16			-	-		-			-				-			-	-	-	-	-	-	-		-	-	-	-	-	+	+		-	-	-
Article 17.1	-	-	-			-			+			-	-			+	-	-	-	-	0		+	-	-	-	-	-	+	+		0	-	0
Article 17.2	+	-	+			0			+			-				+	+	+	-	+	+	+		+	0	0	-	+	+		0	-	+	
Article 19.1	-	+	+					0	+			-				+	+				+	+			+	+	+	+		0	-			
Article 19.2		-	+					0	+			0									+	0			+			-	+			0		
Article 19.3	+	0	+					+	+			-					+				0	+			0		+	+				+		
Article 19.4		-						-	+			-				+					-	-			0	+		-	-				-	
Article 19.5	+	-	+					+	+			+				+	+				+	+		+	+	+	+	+	+		+	+		
Article 19.6		-	-					-	-			-				-					-	+			-	0	+	+			-	-		
Article 19.7	-	-	+					+	+			+				+	+		+	+	+	+		+	0	+	+	+					-	

Article	ANDORRA	ARMENIA	AUSTRIA	AZERBAIJAN	BELGIUM	BOSNIA AND HERZEGOVINA	BULGARIA	CYPRUS	ESTONIA	FINLAND	FRANCE	GEORGIA	HUNGARY	IRELAND	ITALY	LATVIA	LITHUANIA	MALTA	REPUBLIC OF MOLDOVA	MONTENEGRO	THE NETHERLANDS	NORWAY	PORTUGAL	ROMANIA	RUSSIAN FEDERATION	SERBIA	SLOVAK REPUBLIC	SLOVENIA	SWEDEN	"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"	TURKEY	UKRAINE
Article 19.8	-						0	+				+				+			-					0	-		-	+	0	-		
Article 19.9	+	+	+				+	+				+				+	+				+	+		+	0	+	+	+			+	
Article 19.10		-					-	-				-				-	+				-	-			-		-	+			-	
Article 19.11	+	-					+	+				-				+	+			+	-	+				+	+	+			-	
Article 19.12	+	0	+				0	+				0				0				0		+					+	+			-	
Article 23										+					-																-	
Article 27.1		-	+	-				+				-				+	+			0	+	+			+		+	+			-	+
Article 27.2		+	+	-			+	0				-				+	+	+	0	+	+	+		+	+	+	+	+			-	0
Article 27.3		-		+			-	+				+				+	+	+		0	+			0	0	0	+	+	0		-	+
Article 30															-																	-
Article 31.1	+															0	-				-	+					-	+			-	-
Article 31.2	-																-				-	0					-	-			-	-
Article 31.3																					+	+					-	+			-	



**MEMBER STATES OF THE COUNCIL OF EUROPE  
AND THE EUROPEAN SOCIAL CHARTER**

*Situation on 31 December 2015*

MEMBER STATES	SIGNATURES	RATIFICATIONS	Acceptance of the collective complaints procedure	
Albania	21/09/98	14/11/02		
Andorra	04/11/00	12/11/04		
Armenia	18/10/01	21/01/04		
Austria	07/05/99	20/05/11		
Azerbaijan	18/10/01	02/09/04		
Belgium	03/05/96	02/03/04	23/06/03	
Bosnia and Herzegovina	11/05/04	07/10/08		
Bulgaria	21/09/98	07/06/00	07/06/00	
Croatia	06/11/09	<b>26/02/03</b>	26/02/03	
Cyprus	03/05/96	27/09/00	06/08/96	
Czech Republic	04/11/00	<b>03/11/99</b>	04/04/12	
Denmark	*	<b>03/03/65</b>		
Estonia	04/05/98	11/09/00		
Finland	03/05/96	21/06/02	17/07/98 X	
France	03/05/96	07/05/99	07/05/99	
Georgia	30/06/00	22/08/05		
Germany	*	<b>27/01/65</b>		
Greece	03/05/96	<b>06/06/84</b>	18/06/98	
Hungary	07/10/04	20/04/09		
Iceland	04/11/98	<b>15/01/76</b>		
Ireland	04/11/00	04/11/00	04/11/00	
Italy	03/05/96	05/07/99	03/11/97	
Latvia	29/05/07	26/03/13		
Liechtenstein		<b>09/10/91</b>		
Lithuania	08/09/97	29/06/01		
Luxembourg	*	<b>10/10/91</b>		
Malta	27/07/05	27/07/05		
Moldova	03/11/98	08/11/01		
Monaco	05/10/04			
Montenegro	22/03/05	03/03/10		
Netherlands	23/01/04	03/05/06	03/05/06	
Norway	07/05/01	07/05/01	20/03/97	
Poland	25/10/05	<b>25/06/97</b>		
Portugal	03/05/96	30/05/02	20/03/98	
Romania	14/05/97	07/05/99		
Russian Federation	14/09/00	16/10/09		
San Marino	18/10/01			
Serbia	22/03/05	14/09/09		
Slovak Republic	18/11/99	23/04/09		
Slovenia	11/10/97	07/05/99	07/05/99	
Spain	23/10/00	<b>06/05/80</b>		
Sweden	03/05/96	29/05/98	29/05/98	
Switzerland		<b>06/05/76</b>		
«the former Yugoslav Republic of Macedonia»	27/05/09	06/01/12		
Turkey	06/10/04	27/06/07		
Ukraine	07/05/99	21/12/06		
United Kingdom	*	<b>11/07/62</b>		
Number of States	47	<b>2</b> + 45 = 47	<b>10</b> + 33 = 43	15

The **dates in bold** on a grey background correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 revised Charter.

\* States whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a decision taken by the Committee of Ministers, this Protocol is already applied.

X State having recognised the right of national NGOs to lodge collective complaints against it.



January 2016

# **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**ANDORRA**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Andorra which ratified the Charter on 12 December 2014. The deadline for submitting the 8th report was 31 October 2014 and Andorra submitted it on 31 October 2014.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report contains also information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information:

- Right to protection of health – Prevention of diseases and accidents (Article 11§3)
- Right to social and medical assistance – Specific emergency assistance for non-residents (Article 13§4)

Andorra has accepted all provisions from the above-mentioned group except Articles 16, 19§2, 19§4, 19§6, 19§8, 19§10 and 31§3.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Andorra concern 28 situations and are as follows:

– 20 conclusions of conformity: Articles 7§2, 7§3, 7§4, 7§6, 7§7, 7§8, 7§9, 7§10, 8§1, 8§2, 8§3, 8§4, 8§5, 17§2, 19§3, 19§5, 19§9, 19§11, 19§12 and 31§1;

– 6 conclusions of non-conformity: Articles 7§5, 13§4, 17§1, 19§1, 19§7 and 31§2.

In respect of the other 2 situations related to Articles 7§1 and 11§3, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Andorra under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 7§10**

Prohibition of simple possession of pornographic material was introduced by amendment to the Penal Code (Act 15/2008 of 3 October 2008, entered into force on 28 October 2008), whereby Article 155.3 provides that whoever possesses pornographic material in which the images of a minor appear (real minors or persons having the appearance of minors), shall be sentenced to a term of imprisonment.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

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

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 Andorra.

The Committee noted previously that the minimum age for employment is 16 which coincides with the end of compulsory education (Conclusions 2011). Children aged between 14 and 15 are not allowed to work during the school year, but they are allowed to work only for half of the school holidays, provided it is light work and that time limitations do not exceed 6 hours per day and 30 hours per week. The Committee asked whether types of work which might be considered light were defined in legislation or whether there existed a list of those that were not considered as such.

The report indicates that the Code of Labour Relations does not provide an exhaustive list of activities prohibited for young persons under 18. However, it establishes precise criteria to identify the activities that are not suited for children and therefore are forbidden to them. It is considered light work all the work which, due to the nature of the tasks to be performed and the particular conditions of their performance:

- may not affect the safety, health or development of children,
- do not affect school attendance, participation in programs of vocational guidance or training, or the ability to absorb the education received.

The report indicates that in the construction sector and related industries, the Labour Inspection Service does not authorise any employment contract for young persons under 18. The young persons under 18 may only work in this sector as apprentices, under the supervision of the company and with prior training on the risks and preventive measures related to the their tasks.

The report indicates that the Labour Inspection Service needs to authorise the contracts of employment and apprenticeship for young persons under 18 before they start working. The Labour Inspection Service performs inspections to monitor the working conditions of young workers. Inspections are conducted ex officio or at the request of a party. The Committee asked what are the applicable sanctions in cases of violation (Conclusions 2011).

The report indicates that during the reference period, 3,142 inspections were performed in 1,494 workplaces. From 533 sanctions imposed by the Labour Inspection, only 14 sanctions concerned violations of child labour. The report further indicates that during the reference period, the Labour Inspection Service refused to grant the authorisation for the employment contract of young persons under 18 in 10 cases due to the fact that it would have required work which was beyond the physical and psychological abilities of the young workers and risk of accidents which might be assumed that they would have not been identified or avoided by the young persons because of their lack of awareness, experience or training.

The report provides the thresholds of fines applicable in case of breach of obligations provided by the Code of Labour Relations, but no examples are provided from practice. The Committee recalls that the situation in practice should be regularly monitored. It requests examples of sanctions imposed on employers for breach of the prohibition of employment under the age of 15.

The Committee asked in its previous conclusion how work done at home by children was monitored in practice. The report indicates that work performed at home is excluded from the monitoring activities of the Labour Inspection Service. The Committee asks whether there exist other forms of monitoring of the work done at home by children.

### *Conclusion*

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

## **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 Andorra.

In its previous conclusion (Conclusions 2011), the Committee analysed the legal framework and found the situation to be in conformity with Article 7§2. It asked for information on the activity of the Labour Inspectorate and the applicable sanctions in cases of violation.

The report indicates that during the reference period, 3,142 inspections were performed in 1,494 workplaces. From 533 sanctions imposed by the Labour Inspection, only 14 sanctions referred to violations of child labour. The Committee notes from the report that in 4 cases, sanctions were imposed with regard to dangerous activities which were prohibited for young persons under 18 (as defined by Article 24 of the Code of Labour Relations).

The report indicates that since 2012, the Labour Inspection Service, in addition to its regular inspections, launched a special inspection campaign on safety and health at work in order to monitor compliance by the companies with their obligations under the Law No. 34/2008 on Safety and Health at Work. The report further provides the thresholds of fines for breach of obligations stipulated by the Code of Labour Relations and the Law on Safety and Health at Work, but no examples are provided from practice. The Committee recalls that the situation in practice should be regularly monitored. It requests examples of sanctions/fines imposed on the employers for breach of the prohibition of employment of young persons under 18 in dangerous or unhealthy activities.

### *Conclusion*

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

The Committee noted in its previous conclusion that the minimum age for employment is 16 which coincides with the end of compulsory education. The employment of children under 14 is strictly forbidden, without any exceptions (Conclusions 2011). The Committee referred to its Statement of Interpretation on Article 7§3. It asked information on the nature and duration of work that may be carried out during school holidays and whether children subject to compulsory education enjoy two consecutive weeks of rest during the summer holidays. It also asked information on the supervision by the Labour Inspectorate of work carried out by children during school holidays.

The report indicates that according to the Code of Labour Relations, children aged 14 and 15 are not allowed to work during the school year, but they are allowed to work during the school holidays, for maximum two months per year, provided that it is light work that does not harm their physical and moral development. The report indicates that during the summer holidays, they must have at least 15 consecutive days off and half the school holidays during other periods of leave.

The report further indicates that during school holidays, children aged 14 and 15 can only work 6 hours a day and 30 hours per week maximum, and are required to have at least two consecutive days off per week. They should also benefit from a minimum rest period of 12 hours between two consecutive working days. The Committee refers to its Statement of Interpretation on the permitted duration of light work (Conclusions 2015) and recalls that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education. It considers that the situation in Andorra is in conformity with Article 7§3 of the Charter on this point.

The report indicates that from 533 sanctions imposed on employers during the reference period, only 14 sanctions were related to illegal employment of children. The Committee requests information on the number and nature of violations detected as well as on sanctions imposed by the Labour Inspection Service for breach of the relevant provisions related to prohibition of employment of children subject to compulsory education.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 7§3 of the Charter.



## **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 Andorra.

The Committee analysed the legal framework in its previous conclusion and found the situation in Andorra to be in conformity with Article 7§4 of the Charter (Conclusions 2011). It noted that Article 22 of the Code of Labour Relations stipulates that working time limits for young people aged 16 and 17 are 8 hours per day and 40 hours per week. It is not allowed for persons under 18 years of age to work overtime (Articles 24§2 and 61). The required daily rest is 12 hours minimum and the weekly rest is at least 2 consecutive days. A break of at least 1 hour must be given to the young workers during the working day (Article 22).

The Committee previously asked information on the activity of the Labour Inspection and the applicable sanctions in cases of violations. From 533 sanctions imposed by the Labour Inspection during the reference period, only 14 sanctions concerned breaches of legal provisions in relation to employment of children. The Committee notes from the data provided in the report that in 2 cases, infringements concerned working time limits for young people (Article 22 of the Code of Labour Relations).

The Committee recalls that the situation in practice should be regularly monitored and asks the next report to provide information on the activity and findings of the Labour Inspection in relation to working time for young persons under 18.

### *Conclusion*

The Committee concludes that the situation in Andorra is in conformity with Article 7§4 of the Charter.

## **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 Andorra.

#### **Young workers**

In its previous conclusion (Conclusions 2011), the Committee noted that the legal framework establishes the obligation to guarantee a minimum wage which is determined by the Government at least once a year, and according to Article 79 of the Code of Labour Relations, the percentages of maximum reduction of the minimum wage for young workers are:

- 20% for 14 and 15 year olds;
- 15% for 16 year olds; and
- 10% for 17 year olds.

The Committee considered that the above mentioned proportions were in principle in conformity with the Charter, but it deferred its conclusion under this provision, pending receipt of information under Article 4§1 (Conclusions 2010 on Article 4§1 and Conclusions 2011 on Article 7§5).

The report does not indicate any changes with regard to the proportions between the young workers' remuneration and adult remuneration. The Committee assumes that the proportions remain the same as previously indicated.

With regard to the adult minimum wage, the Committee concluded that the situation in Andorra was not in conformity with Article 4§1 of the Charter on the ground that the minimum interprofessional wage does not ensure a decent standard of living (Conclusions 2014).

The Committee recalls that 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 the above-mentioned percentage differentials is not considered fair (Conclusions XII-2 (1992), Malta). Therefore, the Committee considers that the situation is not in conformity with Article 7§5 of the Charter on the ground that the minimum wage of young workers is not fair.

#### **Apprentices**

As regards apprentices, the Committee noted previously that the Code of Labour Relations stipulates the reductions applicable to minimum wage under an apprenticeship contract. According to Article 28 of the Code of Labour Relations, these reductions decrease gradually as the apprentice gains experience in his trade:

- 40% in the first semester;
- 30% in the second semester;
- 20% in the third semester; and
- 10% in the fourth semester.

The Committee considered previously that the above mentioned proportions were in principle in conformity with the Charter, however it deferred its conclusion under this provision, pending receipt of information under Article 4§1 (Conclusions 2010 and Conclusions 2011).

With regard to the adult minimum wage, the Committee concluded that the situation in Andorra was not in conformity with Article 4§1 of the Charter on the ground that the minimum interprofessional wage does not ensure a decent standard of living (Conclusions 2014).

The Committee recalls that the "appropriate" character of the allowance is assessed by comparing apprentices' remuneration with the starting wage or minimum wage paid to adults

(Conclusions XI-1 (1991), United Kingdom). However, the adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. Therefore, the Committee considers that the situation is not in conformity with Article 7§5 of the Charter on the ground that the apprentices' allowances are not fair since the reference wage itself is too low to secure a decent standard of living.

### *Conclusion*

The Committee concludes that the situation in Andorra is not in conformity with Article 7§5 of the Charter on the grounds that:

- the minimum wage of young workers is not fair;
- the apprentices' allowances are not adequate.

## **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 Andorra.

In its previous conclusion (Conclusions 2011), the Committee asked whether training related to young person's work, other than that on safety and health are provided to young persons and whether they are considered as part of working time. The report indicates that according to Article 25 of the Code of Labour Relations, young persons under 18 benefit of theoretical and technical training through apprenticeship. Therefore, the time devoted to theoretical and technical training of the apprentice is included in the normal working time. Moreover, the employer is obliged to grant the apprentice paid leaves of absence necessary for the theoretical training that complements the theoretical and technical training to which reference is made above.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provides information on how the Labour Inspectorate monitors that the time spent on vocational training is included in the normal working time.

### *Conclusion*

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

The Committee examined the situation and found it to be in conformity with Article 7§7 of the Charter in its previous conclusion (Conclusions 2011). It asked whether young persons have the possibility to take the leave lost due to illness or accident at some other time.

The report indicates that Article 10 of Code of Labour Relations provides the possibility for all employees, including the young workers, when the leave period coincides with sick or maternity leave, to take the leave at another time once their illness or maternity leave have ended.

The Committee previously asked information on the activity of the Labour Inspection Service. The report indicates that during the reference period there were 16 sanctions imposed in cases of breaches of the applicable legislation on paid leave, but none of these cases referred to young persons under 18. The Committee recalls that the situation in practice should be regularly monitored and it therefore asks that the next report provide information on the number and nature of violations detected as well as on sanctions imposed by the Labour Inspection Service for breach of the regulations regarding paid annual holidays for young workers under 18.

### *Conclusion*

The Committee concludes that the situation in Andorra 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 Andorra.

The Committee noted in its previous conclusion (Conclusions 2011) that the Code of Labour Relations prohibits night work for young persons under 18. Night work is considered any work performed between 10 pm and 8 am. However, the law provides an exception for some types of work which are usually performed at night (such as bakery) through an apprenticeship.

The report indicates that during the reference period 30 requests for authorising apprenticeship contracts were registered, but only two concerned night work. The Labour Inspection Service authorised the above mentioned apprenticeships which involved night work in a bakery, respectively a pastry.

The Committee previously asked information on the activity of the Labour Inspection Service. The report indicates that during the reference period there were sanctions imposed on employers for breaches related to employment of children in 14 cases, but none of them involved illegal night work.

### *Conclusion*

The Committee concludes that the situation in Andorra 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 Andorra.

The Committee noted previously that a medical examination is required by the Labour Inspection Service when authorising the employment contracts for young persons under 18 and at least once a year all workers under 18 must undergo a medical examination (Conclusions 2011).

The Committee asked for information on what the medical examination consisted of. In reply, the report indicates that health examinations include, among others, professional medical history consisting of: (i) data on history, clinical examination and complementary examinations inherent to the work; (ii) a detailed description of the workplace, time spent at the place of work, the risks identified in the analysis of working conditions and preventive measures adopted; (iii) a description of previous jobs, the risks they had and the time spent at each workplace.

The Committee asked for information on the activity of the Labour Inspection. The report indicates that during the reference period, no sanction was imposed with regard to infringements of the applicable rules to medical examination for young persons under 18.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

#### ***Protection against sexual exploitation***

In its previous conclusion (Conclusions 2011) the Committee asked whether simple possession of child pornography was a criminal offense. It notes from the report that the prohibition of simple possession of pornographic material was introduced by the amendment to the Penal Code (Act 15/2008 of 3 October 2008, entered into force on 28 October 2008), whereby Article 155.3 provides that whoever possesses pornographic material in which the images of a minor appear (real minors or persons having the appearance of minors), shall be sentenced to a term of imprisonment.

In its previous conclusion the Committee also asked whether child victims of sexual exploitation could be prosecuted for any act connected with this exploitation.

According to the Act 9/2005 of 21 February 2005 on the Penal Code (Sections 21, 23, 27) for a minor, victim of sexual exploitation or trafficking to be held criminally responsible for acts related to the operation, he/she should have acted entirely voluntarily and at all times have had control of the facts. Although the Penal Code provides for no specific case of non-accountability, the formal possibility to demand the criminal responsibility of minors who are victims of sexual exploitation and trafficking is fruitless. Minors, victims of sexual abuse are monitored by social services under a special protection measure established for them.

The Committee takes note of the measures taken in support of child victims of sexual exploitation, involving direct support of minors themselves, support of host families, schools, centres of extracurricular activities, speech therapists, psychologists and other professionals concerned.

#### ***Protection against the misuse of information technologies***

In 2013 amendments were made to the Penal Code at the initiative of the Ministry of Justice and the Interior to take account of other crimes such as cyber-harassment.

The Committee asks whether legislation or codes of conduct for internet services providers is foreseen in order to protect children.

#### ***Protection from other forms of exploitation***

As regards trafficking in human beings, according to the report in order for the domestic criminal standards to be in line with the terms established by the Council of Europe Convention on Action against Trafficking in Human Beings, the Ministry of Justice and the Interior is preparing a draft special Law to amend the Penal Code. The Committee asks to be informed, especially as regards the amendments to the legislation concerning trafficking of children.

According to the report, the Protocol for Action in Cases of Children in Danger (PACIP) aims to define unified criteria to guarantee to children the respect of all their rights, taking into account the best interest. The PACIP is built on the basis of general principles (shared responsibility, prevention, subsidiarity, participation, solidarity, coordination and optimisation of resources, self-monitoring and evaluation). When the situation of danger is notified, the level of danger is assessed and the adequate action is taken to protect the child in question.

In reply to the Committee's question, the report states that the legislation prohibits any form of begging and police services shall ensure that these acts do not take place. The Committee notes from the report that during the reference period no cases of children in the street have been identified.



*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 7§10 of the Charter.

## **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 Andorra.

### ***Right to maternity leave***

The Committee previously noted that Law No. 35/2008 of 18 December 2008 on the Code of Labour Relations guarantees employees maternity leave of sixteen weeks, which can be extended by two weeks in the event of a multiple birth. A mother must take six weeks of post-natal leave. The Committee asked whether the same applied to women employed in the public sector.

The report does not answer this question but refers to Law No. 17/2008 of 3 October relating to social security. The Committee therefore asks that the next report specify: a) which provisions apply to women employed in the public sector, including under fixed-term contracts; b) what is their maternity leave entitlement; c) what is the minimum duration of compulsory post-natal leave, if the law entitles public sector employees to such leave; d) whether maternity leave is paid. In the meantime, it reserves its position on this point.

### ***Right to maternity benefits***

During maternity leave a woman is entitled to receive social security benefits corresponding to her full salary. In reply to the Committee's question, the report specifies that employees must have been affiliated to the social security scheme for at least six months before the birth and must have paid contributions for at least three months during this period (Article 153 of the law relating to social security). According to the report the same provisions apply to public sector employees.

The Committee refers to its Statement of Interpretation on Article 8§1(Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Andorra is in conformity with Article 8§1 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

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

### ***Prohibition of dismissal***

The Committee previously noted that, according to Law No. 35/2008 of 18 December 2008 on the Code of Labour Relations, it is prohibited to dismiss a pregnant woman except for disciplinary reasons (Article 93) or serious misconduct (Article 104). In the case of dismissal for an objective cause (inability to meet the requirements of the post during the probationary period, inability to adapt to technical changes in the post, economic redundancy), as provided for in Article 91, the notice of dismissal is deemed invalid if the woman produces a medical certificate attesting to her pregnancy within fifteen days. The Committee asks whether the prohibition of dismissal in the event of pregnancy also applies to public sector employees and what exceptions exist, if any.

### ***Redress in case of unlawful dismissal***

In the event of unfair dismissal of a pregnant woman, Article 98(4) of Law No.35/2008 provides for compensation equivalent to no less than three months' salary per year of service. If the dismissal constitutes discrimination, the employee concerned is also entitled to reinstatement, with reparation for the discriminatory act and compensation for damage caused, determined by the competent court (Article 98(5) of the law). The Committee takes note of the case-law example provided in the report.

The report states that the public sector is governed by the law on social security. The Committee asks that the next report should specify whether this means that the rules on reinstatement and/or compensation in the event of unfair dismissal of a pregnant woman are the same as set out above in respect of Law No. 35/2008. If that is not the case it asks that the next report contain full information on the reparation provided for in the event of unfair dismissal of a pregnant woman employed in the public sector.

### ***Conclusion***

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

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

Under the law (Article 72 of Law No. 35/2008 on the Code of Labour Relations), employees are entitled to two hours' absence per day for the purpose of feeding their child during the nine months that follow the birth. These periods of time off are paid.

In the case of women employed in the public sector, Article 10 of the Regulations on Administrative Authorisations of 24 December 2012 provides that employees of the general state administration may be absent for two hours a day, which can be divided into two one-hour periods, so as to care for a child under nine months of age, during a period of not more than six months. These periods of time off may be accumulated in a single period of paid leave, equivalent to 40 days, from the end of the maternity leave.

### *Conclusion*

The Committee concludes that the situation in Andorra 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 Andorra.

In response to the Committee's question, the report confirms that the public and private sectors are subject to the same rules with regard to protection of pregnant women, women having recently given birth or nursing their child: according to Section 31 of the Act No. 34/2008 of 18 December 2008 on Occupational Health and Safety, the employer must evaluate the risks to which the aforementioned women can be exposed, including risks related to night work, and take all measures to avoid them. This will include assigning them to daytime work if they were previously assigned to night work. The Committee asks the next report to clarify what rules apply if such transfer is not possible.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

Section 75 of the Code of Labour Relations (Act No. 35/2008 of 18 December 2008) provides that pregnant or nursing women should not perform dangerous work, as defined by Section 24(3) of the same Act, in particular work involving harmful exposure to agents which are toxic, carcinogenic, likely to cause heritable genetic damage, or harm to the unborn child or which in any other way chronically affect human health; work involving harmful exposure to radiation; work in which there is a risk to health from extreme cold or heat, or from noise or vibration; work involving harmful exposure to the physical, biological and chemical agents (including lead). The Committee asks whether work in underground mining is prohibited, by this or another law, for pregnant women, women who have recently given birth or who are nursing their infants.

The Committee notes from the report that the prohibition set by Section 75 of the Code of Labour Relations does not explicitly concern women having recently given birth, who are not nursing their infant. However, it notes that if their condition requires a specific protection, they are entitled to it on a case by case basis, in conformity with Section 31 of Act No. 34/2008, on Occupational Health and Safety. According to this provision, which applies both to the public and private sectors, the employer must evaluate the risks to which pregnant women, women having recently given birth and nursing women can be exposed and take all measures to avoid them. This shall include accommodating their working conditions or hours, or transferring them to work compatible with their state of health. If reassignment is not possible, their employment contract will be suspended for as long as the special protection of their state of health requires it. They will be entitled to benefits corresponding to 100% of their salary, and have a right to return to their post afterwards.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Andorra is in conformity with Article 8§5 of the Charter.

## **Article 11 - Right to protection of health**

### *Paragraph 3 - Prevention of diseases and accidents*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Andorra in response to the conclusion that it had not been established that appropriate measures had been taken to prevent smoking and accidents (Conclusions 2013, Andorra).

With respect to smoking the Committee recalls that anti-smoking measures are particularly relevant for the compliance with Article 11 since smoking is a major cause of avoidable death in developed countries. To be effective, any prevention policy must restrict the supply of tobacco through controls on production, distribution, advertising and pricing (Conclusions XVII-2 (2005), Malta). In particular, the sale of tobacco to young persons must be banned (Conclusions XV-2 (2001), Portugal) as must smoking in public places (Conclusions 2013, Andorra) including transport, and advertising on posters and in the press (Conclusions XV-2 (2001), Greece). The Committee assesses the effectiveness of such policies on the basis of statistics on tobacco consumption.

The report firstly states that the Decree of 16 June 2004 governs certain aspects of the sale and consumption of tobacco. It notably prohibits the sale of tobacco to minors under 18 and also prohibits the sale of tobacco in health and education establishments as well as in other establishments attended by young persons under 18. Moreover, tobacco vending machines cannot be placed in public space and may not be used by persons under 18. Secondly, the Government mentions the adoption in 2012 of Act No. 7/2012 on protection against passive smoking. This act prohibits smoking in public and semi-public establishments as well as in private establishments and work areas. It also provides for the setting up of dedicated smoking zones/rooms in private establishments and work areas. The Committee notes this information, but reiterates its questions concerning regulations pertaining to health warnings, and tobacco advertising, promotion and sponsorship. Meanwhile it reserves its position on this point.

The Committee notes the statistical information on the prevalence of smoking provided by the Government. The percentage of smokers in the population declined over the period 1991-2011 and in particular for men: from 52% of all men in 1991 to 37% in 2011 and from 31% of all women in 1991 to 28% in 2011. Habitual smoking is most frequent in the 15-34 age group and decreases with age. The Committee asks to receive up-dated information in this respect in the next report.

As regards accidents the Committee recalls that States must take steps to prevent accidents. The main types of accidents covered are road accidents, domestic accidents, accidents at school, accidents during leisure time, including those caused by animals (Conclusions 2005, Republic of Moldova).

The Government indicates a variety of measures taken to prevent accidents, in particular through awareness-raising activities. In 2011 and 2012 campaigns were conducted in Andorran Radio and Television to prevent road accidents (vehicle safety, traffic rules, driving in winter, etc.) and road safety information was also provided to children and young people in schools. The Government points out in this respect that the road network in Andorra is quite small with an approximate total length of 250 kilometers. As regards other types of accidents the Government mentions a joint project between the Ministry of Education and the Ministry of Justice which over the past 5 years have provided information to school children aged 10-12 on natural risks.

The Committee takes note of the information on the number of beneficiaries of some of the above measures. It asks that the next report contain up-dated data on the number of

accidents and fatality rates, especially with respect to road accidents and domestic accidents. Meanwhile, it reserves its position on this point.

*Conclusion*

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



## **Article 13 - Right to social and medical assistance**

### *Paragraph 4 - Specific emergency assistance for non-residents*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Andorra in response to the conclusion that it had not been established that all foreign nationals could receive emergency social and medical assistance for as long as they might require it (Conclusions 2013, Andorra).

The Committee recalls that the beneficiaries of the right to emergency social and medical assistance under Article 13§4 are foreign nationals who are lawfully present in a particular country but do not have resident status (Statement of interpretation on Article 13§4, Conclusions XIV-1 (1998)). Moreover, the Committee has extended the scope of the right to emergency social and medical assistance to foreigners in an irregular situation (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §32). In its previous conclusion the Committee had notably asked for confirmation that emergency assistance also covers foreign nationals in irregular situation and to indicate whether foreigners can be repatriated on the sole ground that they are in need of social and medical assistance (Conclusions 2013, Andorra).

The report states that foreign nationals are not repatriated due to receiving social or medical assistance, but only in the circumstances established by the Act on Migration.

The report further explains that, under Section 18§5 of the Regulation on social assistance benefits of 18 September 2013, emergency medical and social assistance is provided to foreigners in an irregular situation for a maximum duration of seven days. Furthermore, Act No. 6/2014 on Social and Socio-sanitary Services of 24 April 2014 provides that emergency social assistance to foreigners in an irregular situation is provided for a duration that usually is of seven days, but that may be extended if necessary for ensuring their safe return to their countries. In this respect, the Committee takes note that Act No. 6/2014 only provides occasional financial aid for handling urgent situations of subsistence for foreigners in an irregular situation (Section 5§4 of Act No. 6/2014). The Committee further takes note that foreigners in an irregular situation are entitled to receive information and advice provided by primary care teams (*equips d'atenció primària*) (Section 28§1(d) of Act No. 6/2014), and asks for clarification on the meaning of this provision, and particularly on whether foreigners in an irregular situation are entitled to be diagnosed and treated by socio-sanitary primary care teams.

The Committee previously noted (Conclusions 2009, Andorra) that Section 8(c) of the General Law on Health as amended on 23 January 2009 provides for free emergency medical assistance to non-residents lacking medical coverage. In this regard, the Committee asks the next report to clarify whether this or other provisions provide free emergency medical assistance to non-resident foreign nationals in an irregular situation.

The Committee further asks clarification on whether the social and medical assistance is provided until the situation of urgent and serious state of need ends, or only until the foreign national in an irregular situation is in a fit state of health to be transported safely to his country.

In view of all the information outstanding, the Committee reiterates that it has not been established that the situation is in conformity with the Charter.

### *Conclusion*

The Committee concludes that the situation in Andorra is not in conformity with Article 13§4 of the Charter on the ground that it has not been established that all foreign nationals are entitled to emergency social and medical assistance.

## **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 Andorra.

### ***The legal status of the child***

In reply to the Committee's question (Conclusions 2011) the report states that an adopted child has a right to know his/her origins.

### ***Protection from ill-treatment and abuse***

In its previous conclusion the Committee found that corporal punishment of children was not explicitly prohibited in the home, in schools and in institutions.

According to the report, corporal punishment of minors is explicitly prohibited in the home, as provided in Article 114 of the Penal Code which concerns abuse in the home. The report states that the Penal Code in this respect is totally clear and prohibits all forms of physical or psychological violence against people in general, including child abuse and acts causing bodily harm.

However, the report further states that several international organisations have repeatedly reported that the legislation of Andorra does not expressly prohibit corporal punishment (especially of children), despite the efforts to explain that the conduct constituting a criminal offense under Andorran Penal Code which prohibits any kind of bad bodily treatment (in all environments, institutional, family, school, professional, etc.), includes corporal punishment.

The Committee notes from another source (Global Initiative to End Corporal Punishment of Children) that the law reform has been achieved. Corporal punishment is unlawful in all settings, including the home.

In December 2014, Article 476 of the Penal Code was amended to clarify that it applies to corporal punishment, so that it now states: "Whoever mistreats mildly or harms physically, a person, shall be punished by imprisonment or a fine. If the mistreatment consists of a corporal punishment, a sentence of imprisonment shall be imposed."

Corporal punishment is therefore now unlawful in all alternative care settings and in the home under Article 476 of the Penal Code 2005, as amended in 2014.

The Committee notes that with these legislative amendments the situation has been brought into conformity, but outside the reference period. Accordingly, the Committee considers that during the reference period the situation was not in conformity with the Charter as corporal punishment was not prohibited in the home in schools and in institutions.

### ***Rights of children in public care***

In its previous conclusion the Committee wished to be informed of the numbers of children placed in foster care and in institutions. In notes in reply that out of 238 children in care in 2013, 202 were in families, 16 in extended families, 5 in foster families and 8 in CAI (child institution).

According to the report, the suspension or disruption of parental rights is not a general measure and can only be imposed by the tribunal. Before such decision is taken, the social services draw up an intervention plan based on the risk indicators to which the child in question is exposed. The parents can contest the restriction of parental rights at the higher court instances.

### ***Right to education***

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

### ***Young offenders***

The Committee notes that the age of criminal responsibility is 18 years.

In reply to the Committee's question the report states that in police custody juvenile inmates are not in direct contact with adult detainees.

When a minor is incarcerated (remand detention imposed at the end of a criminal court proceedings as a disciplinary measure), he/she is placed in the Andorran Penitentiary, the only prison in the whole territory of the Principality of Andorra, in a section exclusively intended for minors. The section for minors is completely independent of other sections where adult prisoners are held, so that there can be no contact and no interaction between the juvenile prisoners and adult prisoners.

The Committee takes note of the statistics concerning internment of minors (16 and 17 year old) in closed and open regime institutions, under a special procedure. It notes that the maximum length of such internment was 81 days for closed and 175 for open institutions. The Committee asks whether minors in these institutions have access to education.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in an irregular situation to protect that against negligence, violence or exploitation.

### ***Conclusion***

The Committee concludes that during the reference period the situation in Andorra was not in conformity with Article 17§1 of the Charter on the ground that corporal punishment was not prohibited in the home in schools and in institutions.

## **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 Andorra.

According to the report, there were 66 cases of absenteeism in the 2012-2013 school year, out of a total of 10,730 pupils.

The Committee asks the next report to provide information regarding measures taken to reduce the number of absentees. It also asks for an updated information on the enrolment rate in primary and secondary education.

The Committee recalls that education provided by States must fulfil the criteria of availability, accessibility, acceptability and adaptability (*Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Collective Complaint No 41/2007, decision on the merits of 3 June 2008*). It asks what measures are taken to facilitate access to education for children from vulnerable families, including children of minorities.

The Committee refers to its Statement of Interpretation on Article 17§2 (Conclusions 2011), where it stated that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. The States are required to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child. The Committee asks whether irregularly present children have access to education.

### *Conclusion*

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

## **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 Andorra.

### ***Migration trends***

The majority of workers in the Principality are of foreign origin. Nationals of Andorra accounted for 45% of the national population according to national statistics collected in 2013. Other nationals resident in Andorra were Spanish (26%), Portuguese (15%), French (5%) and other states (9%).

### ***Change in policy and the legal framework***

The report does not contain any new information concerning the general policy towards immigration. The Committee notes, however, mention of the Qualified Law on Immigration 9/2012, and asks for specific details on the purpose of this legislation and the provisions contained therein.

### ***Free services and information for migrant workers***

The Committee notes that the Immigration Service website contains information regarding migration to Andorra. It asks for complete and up to date information on what other services and information are available to immigrants and emigrants. The website no longer appears to be available in other languages, and therefore the Committee asks whether such information is available in other languages through other formats.

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.

There is no information contained within the report on measures taken to provide information to emigrants. The Committee notes a recent marked decrease in the population of Andorra, from 85,015 in 2010 to 76,098 in 2013, which the government attributes in part to a revision of the statistics to take into account foreign nationals who leave without relinquishing their residence permits. The Committee recalls that the Charter imposes upon each Contracting Party obligations towards both nationals of other Contracting Parties wishing to enter its territory to take up work, and its own nationals wishing to go abroad (Statement of Interpretation on Article 19§1, Conclusions I (1969)). The Committee asks what information is provided to emigrants as well as immigrants. It considers that if the next report fails to furnish such information, there will be nothing to show that the situation is in conformity with the Charter in this regard.

### ***Measures against misleading propaganda relating to emigration and immigration***

The Committee notes from the 4<sup>th</sup> report of the European Committee on Racism and Intolerance (ECRI) (adopted 2012) that the criminal legislation in place relating to racism and intolerance is not exhaustive and does not include, inter alia, a provision prohibiting public incitement to violence, hatred and discrimination. It also notes that the application of the civil and administrative law provisions prohibiting discrimination is not monitored. No specific training on racism and racial discrimination is provided to judges, prosecutors and lawyers.

The report states that if anti-migrant propaganda was used, the police would act immediately. The Committee recalls that States must take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants. The Committee asks that the next report provide information demonstrating that the relevant authorities have the legal and practical competency to

prevent and respond to activities which encourage racist or xenophobic attitudes towards migrants.

The Committee also notes from the 4<sup>th</sup> report of ECRI that while there is an ombudsman for equality, there is no body with special capacity to combat racism, racial discrimination, xenophobia, anti-semitism and intolerance at national level. The Committee asks what measures are taken in this regard, and what body has competence for their implementation and monitoring.

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information. It considers that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere. The Committee notes from the abovementioned report of ECRI that journalists do not receive training on human rights or on the fight against racism and racial discrimination. It also notes that there is no independent body responsible for receiving complaints against the media. The Committee notes that the Association of Communications Professionals of Andorra (APCA) has been established to promote the right to freedom of information and expression, as guaranteed by the Constitution, and to oversee professional ethics. It asks for information on the activities of this association.

The Committee recalls that States have an obligation to take measures or undertake programmes to prevent the dissemination of false information to departing nationals, as well as to prevent the misinformation of foreigners wishing to enter the country. Authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia). The Committee asks for complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings.

The Committee recalls that to be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia. 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 (Conclusions XV-1 (2000), Austria). The previous report requested up to date information on any action taken in this regard. The report failing to provide such information, the Committee finds that it has not been established that there are sufficient measures to combat misleading propaganda concerning emigration and immigration.

#### *Conclusion*

The Committee concludes that the situation in Andorra is not in conformity with Article 19§1 of the Charter on the ground that it has not been established that adequate measures have been taken to combat misleading propaganda concerning emigration and immigration.

**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 Andorra.

The Committee previously noted that Andorran authorities collaborate closely with French and Spanish authorities (Conclusions 2011). In reply to the Committee's question whether the Andorran authorities collaborate with other States' services, the report states that the Minister of Health and Wellbeing collaborates with Portugal on a case by case basis. The Committee notes that the majority of migrants in Andorra are of French, Spanish and Portuguese origin, with migrants of these nationalities accounting for 46% of the total population and 84% of the non-Andorran population. Nevertheless the Committee asks whether such contact on behalf of migrant workers also occurs or equally may occur between the Minister and services from other countries.

The report states that in the case of return to the origin country, contacts are made through the Portuguese consulate or directly between social services. The cost of return is shared. The Committee asks whether such contact is made equally for nationals of other countries.

*Conclusion*

The Committee concludes that the situation in Andorra is in conformity with Article 19§3 of the Charter.



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

*Paragraph 5 - Equality regarding taxes and contributions*

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

During the reference period, 2010 – 2013, no income tax was exacted in Andorra from physical persons, either nationals or non-nationals.

The Committee notes that on 23 April 2014, outside the reference period, a new income tax was passed by the legislature. The Committee asks for complete and updated information on the contents of this legislation and its implementation, in particular in relation to its application to migrant workers.

The Committee furthermore asks that the next report include information on social insurance contributions in respect of employed persons.

*Conclusion*

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

## **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 Andorra.

The Committee 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 Charter. Under the same conditions (involvement of a migrant worker in legal or administrative proceedings), 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).

With regard to the provision of legal counsel, the Committee previously noted that under Article 99 of the Qualified Law on Justice 1993 (*Llei Qualificada de la Justícia*), the assistance of an advocate is guaranteed for each person who so requests it, or in a criminal trial, each who otherwise fails to appoint an advocate. It also notes that in criminal proceedings the accused is entitled to counsel from the beginning of the procedure. Such assistance in civil and criminal trials is paid for by the state in the event that the receiver demonstrates their poverty or inability to pay.

The report states that free assistance is limited to the assistance of an advocate. If a litigant requires the assistance of an interpreter, the costs are in the first instance borne by him, although the court may order the other party to pay them. The Committee wishes to receive further information on the circumstances in which the other party may be ordered to pay the costs, and what rules apply to criminal proceedings. The Committee understands, however, that the law does not provide for provision of interpretation services for free on a means-tested basis, and therefore not all migrant workers who so require such services in the interests of justice have equal access to them. The Committee considers that the failure to provide by law for free services of interpretation where these are required by the litigant or defendant in the interests of justice constitutes a violation of the Charter.

The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015), and asks under what conditions refugees and asylum seekers may receive legal aid assistance.

### *Conclusion*

The Committee concludes that the situation in Andorra is not in conformity with Article 19§7 of the Charter on the ground that free services of interpretation are not always accessible where these are required by the litigant or defendant in the interests of justice.

**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 Andorra.

The report states that there continue to be no limits on the transfer of earnings and savings of migrant workers.

The Committee refers to its Statement of Interpretation on Article 19§9 (Conclusions 2011), and asks whether there are any restrictions on the transfer of movable property of a migrant worker.

*Conclusion*

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

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

### *Paragraph 11 - Teaching language of host state*

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

Since 1972 there has been a focussed programme of “Andorran Education”, which centres around the Catalan language and the history, geography and institutions of the country. Due to the large migrant population in Andorra, three main schooling systems exist, Catalan, Spanish and French. Bilateral agreements reached by the Andorran government with Spain and France establish the obligation of teaching Catalan language and culture.

For the French school system, students who have lived in Andorra for less than three years at the time of their inscription may not take ordinary classes in Catalan. Instead they undertake three hours of language classes weekly for a maximum of three years.

For the Spanish school system, students who have not obtained the required level of Catalan follow a programme of introduction classes each week for a maximum of three years, the object of which is to facilitate their integration into the ordinary courses.

In the Andorran system, students receive individualised assistance with integration and language to enable them to join the ordinary programmes of study. For primary school children, language and culture courses may be pursued with special adapted measures to assist.

Newly arrived pupils also attend regular classes together with other pupils. As their language skills improve, they are in a position to follow all the classes taught in Catalan. Those who need it, receive full immersion in Catalan for the first month.

Free language courses for newly arrived migrants are offered by the Department of Training for Adults of the Ministry of Education and Culture. The courses are available at different times during the daytime and evening, and may be intensive or long term.

Basic Catalan and Administrative Catalan courses lasting 20 hours are offered free for those registered with the Employment Service. In 2010-2011 the number of people taking such courses was 614, in 2012-2013 the number was 450.

Certain official examinations require a specific level of knowledge of Catalan. The Department of Training for Adults organises courses for public institutions and enterprises which wish their employees to develop their language competencies. In 2011-2012, 934 people registered for these classes.

Five language resource centres for self-learning are available to over-16s, where they can learn Catalan and also discover cultural activities promoted by the centres.

A free language course totalling 60 hours continues to be offered by the Ministry of Culture to those in receipt of unemployment benefit. The courses range from Level A1 to C on the Common European Framework.

### *Conclusion*

The Committee concludes that the situation in Andorra is in conformity with Article 19§11 of the Charter.

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

### *Paragraph 12 - Teaching mother tongue of migrant*

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

The Committee recalls that States should promote and facilitate the teaching of the languages most represented among the migrants present on their territories within their school systems or in other contexts such as voluntary associations or non-governmental organisations.

Portuguese migrants (10,809 in 2013) account for almost 15% of the national population. In 2010-2011 and 2011-2012 Portuguese nationals were the largest group of students beside those with Andorran nationality.

The structure of education in Andorra is organised around three systems, Andorran, Spanish and French. Every student is free to choose which system they follow and education in each is provided for free. Despite a notable reduction in the total population, the number of students in each of these systems has remained stable.

In the Andorran system, from the age of 3 students are taught in Catalan and French by two teachers in each class. English is taught from the age of 8 and Spanish from the age of 10.

In the Spanish system, lay schools teach in Spanish, whereas confessional schools teach in Catalan. The teaching of Portuguese is an option offered from primary school age.

In the French system, the schools are attached to the French Ministry of Education, and students take French examinations. Lessons are conducted in French. The teaching of Portuguese is an option offered from primary school age. Since 2011-2012, it has been an option for students in the French system to follow a bilingual English-Portuguese section in the *Lycée*.

In 2000, the Government signed a convention with Portugal with the aim of promoting the Portuguese language and culture within the three schooling systems.

The agreement made provision for the extra-curricular teaching of Portuguese to children, through financial and resource cooperation of the governments. Such lessons were to be free and the money provided by the Portuguese government. During the reference period, extra-curricular lessons were offered from the age of 6 for two hours per week. At secondary schooling level, students can also follow Portuguese within the curriculum, although this option was not taken up during the reference period in the Andorran system.

In 2010, 611 students were registered on the extra-curricular programme, in 2012-2013, the number was 395, and in the school year 2013-2014 only 116 students registered. The report states that the Portuguese Government passed a resolution in 2013 imposing registration and certification charges on students. The report maintains that the courses remain free, however, where a charge is imposed upon registration this cannot be considered free, especially since the students cannot have access to the textbooks without paying this fee. The cost of registration is €100, and is reduced where more than one child is registered, or the parent(s) are unemployed or single. The charge for certification ranges from €40 to €100 depending upon the level of attestation achieved, and similar reductions apply according to situation.

The Committee asks whether provision for the teaching of any other language is made within the school system or through other organisations.

### *Conclusion*

The Committee concludes that the situation in Andorra is in conformity with Article 19§12 of the Charter.

## **Article 31 - Right to housing**

### *Paragraph 1 - Adequate housing*

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

### ***Criteria for adequate housing***

In its previous conclusion (Conclusions 2011), the Committee asked to be provided with statistics and figures relating to the adequacy of housing. The report states that to assess the adequacy of housing, the Department of Statistics takes account of several indicators, namely overcrowding, high costs and the existence of washrooms and kitchens. It states in this respect that in 2013, 86.5% of households were not living in overcrowded accommodation, 79.2% were not charged high housing costs, 100% had housing with a washroom and 85.9% had housing with a kitchen.

The report also states that the Government has set up financial support for housing renovation and the installation of renewable energy systems. This support was initially earmarked for homes and buildings containing people's main places of residence, then in 2013 it was extended to all buildings irrespective of their use. In 2013 Parliament adopted a law to promote the rehabilitation of the housing stock, improve the energy efficiency of buildings and increase the use of renewable energies. According to data provided by the Housing Department, 59 households were awarded €4.7 million in grants and low-interest loans.

### ***Responsibility for adequate housing***

In its previous conclusion (Conclusions 2011), the Committee asked for information on how the authorities ensure that the rules on adequate housing are respected. The report does not provide any information on this subject so the Committee repeats its request. If the next report fails to provide the information requested, there will be nothing to demonstrate that the situation is in conformity with the Charter.

### ***Legal protection***

Article 28 of the Law of 30 June 1999 on urban property rental provides that if landlords fail to respect their obligations vis-à-vis their tenants, the latter may apply for the termination of the contract and legal reparations for damage and losses incurred, or simply claim compensation, leaving the rental agreement intact.

The Committee asks the next report to indicate whether judicial remedies are affordable and effective.

### ***Measures in favour of vulnerable groups***

The report explains that the Housing Department publishes an annual notice inviting persons or families who meet the conditions set by the regulations to apply for housing grants which help to cover some of their rent. Priority is given to large families, single-parent families, persons with disabilities or their families, persons with mental illnesses or their families and persons and families at risk of poverty. The Committee notes that these grants are currently awarded to 3% of the population.

The Welfare Department also awards grants to persons in vulnerable situations, who may apply for these at any time of the year. They consist of a fixed monthly sum in proportion to the number of family members and cover 100% of rental or hotel costs for persons not receiving housing grants. The hotel costs of victims of natural disasters are also covered by the state. The report does not contain any information on measures to assist Roma people so the Committee repeats its request in this respect.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Andorra is in conformity with Article 31§1 of the Charter.

## **Article 31 - Right to housing**

### *Paragraph 2 - Reduction of homelessness*

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

### **Preventing homelessness**

In its previous conclusion (Conclusions 2011), the Committee asked whether, following the measures taken by the Government, emergency accommodation arrangements met demand. The report begins by pointing out that cases of homelessness are very rare. To meet emergency accommodation requirements, the Government uses the country's hotel network, which offers a large reserve of places. The existence of this extensive network is an alternative to establishing special emergency housing facilities. In this connection, the report points out that there are over 25,000 residential places spread over 982 establishments such as hotels, boarding houses and hostels, all of which are duly approved and supervised by the relevant offices in the Trade and Tourism Department. The report also mentions the existence of welfare establishments offering emergency accommodation places for children without families, dependent persons with disabilities and geriatric patients. Lastly, it points out that pursuant to the law on social services, emergency accommodation is an emergency service for which it is not required to hold any kind of a residence permit. Social services cover the cost of such housing and do the follow-up work to find a lasting housing solution.

As to the long-term reintegration of the homeless, the report states that between 2010 and 2013, 27 people were cared for under the *Càritas Andorrana* programme and 60% of these succeeded in finding work again. However, the report does not provide any further information on additional measures planned to foster the long-term reintegration of homeless people, as requested in the previous conclusion (Conclusions 2011). The Committee repeats its request.

### **Forced eviction**

The Committee notes from the report that in 2013, there were 223 applications for eviction.

The Committee points out that in order to comply with Article 31§2 of the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- prohibition to carry out evictions at night or during winter;
- access to legal remedies;
- access to legal aid;
- compensation in the event of illegal eviction.

The Committee notes from the previous conclusion (Conclusions 2011) that before the date of the eviction is set, the *Batllia*, which is the court with jurisdiction in such cases, will contact social services to try to find a means of rehousing the persons concerned and remedying their financial problems. If an eviction order is issued, tenants must leave the rented accommodation within 15 working days and will be given a formal warning if they fail to obey. The Committee considers that a notice period of 2 months before eviction is reasonable (European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §§ 86-87; International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 78-79). It asks the next report to indicate whether the warning fixes another time-limit. In the meantime, it reserves its position on this issue.

The report does not provide any information on any of the other points referred to above, namely the prohibition to carry out evictions at night or during winter, access to legal



remedies, access to legal aid or compensation in the event of illegal eviction. The Committee asks for information on all these points to be provided in the next report so that it can assess the legal protection of persons threatened with eviction. Pending receipt of this information, the Committee considers that the situation is not in conformity with the Charter on the ground that it has not been established that there is adequate legal protection for persons threatened with eviction.

The Committee points out that when evictions are justified by the general interest, the authorities must take steps to rehouse or financially assist the persons concerned (European Roma Right Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006). It asks therefore for information in the next report on cases of eviction justified by the general interest in the light of the case-law referred to above.

### ***Right to shelter***

In its previous conclusion, the Committee asked for clarification as to whether:

- emergency accommodation satisfied security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether it was equipped with basic amenities such as access to water and heating and sufficient lighting);
- emergency accommodation was provided regardless of residence status;
- the law prohibited eviction from emergency accommodation.

Furthermore, the Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited.

The report states that all establishments which may serve as emergency accommodation meet the relevant security requirements and health and hygiene standards. It also stresses that all emergency accommodation is provided regardless of residence status. Since the report fails to provide any information on the regulations as regards the prohibition of eviction from emergency accommodation/shelters, the Committee repeats its question on this point. Pending receipt of this information, the Committee considers that the situation is not in conformity with the Charter on the ground that it has not been established that the law prohibits eviction from emergency accommodation/shelters.

### ***Conclusion***

The Committee concludes that the situation in Andorra is not in conformity with Article 31§2 of the Charter on the grounds that it has not been established that:

- there is adequate legal protection for persons threatened with eviction;
- the law prohibits eviction from emergency accommodation/shelters without the provision of alternative accommodation.



January 2016

# **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**ARMENIA**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Armenia which ratified the Charter on 21 January 2004. The deadline for submitting the 9th report was 31 October 2014 and Armenia submitted it on 16 March 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report contains also information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to safe and healthy working conditions – Safety and health regulations (Article 3§1)
- the right to social and medical assistance – Adequate assistance for every person in need (Article 13§1)

Armenia has accepted all provisions from the above-mentioned group except Articles 16 and 31§1 to 3.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Armenia concern 34 situations and are as follows:

- 9 conclusions of conformity: Articles 7§2, 7§4, 7§6, 7§8, 7§9, 8§5, 19§1, 19§9 and 27§2
- 18 conclusions of non-conformity: Articles 3§1, 7§1, 7§3, 7§5, 7§10, 8§4, 17§1, 17§2, 19§2, 19§4, 19§5, 19§6, 19§7, 19§8, 19§10, 19§11, 27§1 and 27§3

In respect of the other 7 situations related to Articles 7§7, 8§1, 8§2, 8§3, 13§1, 19§3 and 19§12, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Armenia under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 7§1**

The Labour Code as amended by Law No HO-117-N of 24 June 2010, in its Article 17 (2(1)) states that persons between the ages of 14 and 16 may be involved only in temporary works not causing damage to health, safety, education and morality.

#### **Article 7§7**

Article 170 of the Labour Code has been amended by Law No. HO-117-N of 24 June 2010 and it now provides that "the replacement (giving-up) of annual holiday for financial

compensation was not allowed, with the only exception of the situation when the employment contract is terminated.

### **Article 8§3**

Article 258(3) of the Labour Code, governing nursing breaks, was amended in 2010 (Law No. HO-117-N of 24 June 2010) and now applies to all employees.

### **Article 17§2**

Amendments to the Law "On general education" were introduced in 2012, which provide for inclusive education for children with special needs.

### **Article 19§4**

In December 2013, a new Law "On employment" was adopted. The new law introduces major new programmes which were not contained in the previous legal regulations. Programmes envisaged by the new Law include the organisation of vocational training, assistance in changing employment and the organisation of employment experience for persons with no professional work experience.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

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

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to just conditions of work – Weekly rest period (Article 2§5)
- the right to just conditions of work – Information on the employment contract (Article 2§6)
- the right to organise (Article 5)
- the right to bargain collectively – Conciliation and arbitration (Article 6§3)
- the right to bargain collectively – Collective action (Article 6§4)
- the right of workers to take part in the determination and improvement of working conditions and working environment (Article 22)
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 1 - Safety and health regulations*

The Committee takes note of the information contained in the report submitted in application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014. States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information contained in the report submitted by Armenia in response to the conclusion that it had not been established that there was an adequate occupational health and safety policy (Conclusions 2013).

The Committee recalls that, under Article 3§1, States undertake to formulate and implement a national occupational health and safety policy with the primary focus of fostering and preserving a culture of prevention at the national level (Conclusions 2009, Armenia). Furthermore, adherence of the ILO Occupational Health and Safety Convention No. 155 (1981) is an indicator of the satisfactory implementation of Article 3§1 (Conclusions 2013, Albania). In this regard, the Committee has previously taken note that Armenia has ratified neither ILO Convention No. 155 on Occupational Safety and Health (1981) nor ILO Convention No. 187 on the Promotional Framework on Occupational Safety and Health (2006) (Conclusions 2013). In its previous conclusions, the Committee specifically asked for information on the implementation of the obligations laid down by the Labour Code.

The Committee firstly notes from another source (ILO 'Occupational health and safety in the Republic of Armenia'<sup>1</sup>) that Article 32 of the Armenian Constitution recognizes the right of citizens to working conditions that meet sanitary and safety requirements, and that occupational safety and health is regulated in the Labour Code. The Committee previously noted (Conclusions 2009) that the Ministry of Labour and Social Issues develops and implements a national policy on occupational safety and health aims to elaborate standards and rules, to develop national programmes, to introduce safe technologies, to carry out government control to ensure compliance with legislation and to disseminate best practice to improve health and safety at work.

The report states that, in compliance with Decision of the Government of the Republic No. 857-N of 25 July 2013, the different labour inspectorates with competences on occupational health and safety were reorganised by way of a merger into the State Health Inspectorate of the Staff of the Ministry of Health of the Republic of Armenia (hereinafter the Inspectorate). According to Section 8(10) of the Statute of the Inspectorate, its functions include:

- Organising seminars on implementation of labour legislation for employers, employers' organisations and representatives of employees.
- Providing training and technical assistance to employers and trade unions on occupational safety in order to ensure the implementation of labour legislation.
- Submitting proposals to the Ministry of Labour and Social Affairs on the improvement of implementation of labour legislation.
- Analysing the reasons for accidents and occupational diseases, as well as violations of labour legislation, and submitting proposals to employers on the elimination of occupational hazards and on the restoration of violated rights.
- Monitoring the observance of the mandatory requirements prescribed by law on occupational health and safety at the workplace, investigating cases of workplace accidents and reimbursement of damages, requiring employers to take relevant measures for eliminating deficiencies detected as result of inspections which may endanger the life or health of employees and, in case the employer fail to eliminate the deficiencies within the prescribed term, temporarily terminating the activities of the organisation until the elimination of the violation.
- Defining the terms for elimination of violations according to the standards approved, where there is an expert opinion on violation of requirements for occupational health and safety standards.

- Issuing binding instructions on elimination of violations and prevention of accidents in the framework of administrative proceedings.

The report further explains that the National Strategy for the protection of Human Rights, approved by the Decision of the Government of the Republic of Armenia No. 303-N of 27 February 2014, envisages the drafting of the Decision on the "National programme for protection of work safety and health of employees at the workplace", to be submitted to the Government in the first quarter of 2015. The Committee asks that the next report includes information on the implementation of this programme.

While noting the above information on the legislative framework for occupational health and safety policy, the Committee still did not receive sufficient information on the implementation of this policy, including statistical information on the activity carried out (whether detection of violations and issue of binding instructions to employers or research, training and awareness raising) and information on mechanisms for the regular assessment and review of the policy.

#### *Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 3§1 of the Charter on the ground that it has not been established that there is an adequate occupational health and safety policy.

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<sup>1</sup>[http://www.un.am/up/library/Safety-Health\\_RA\\_NP\\_eng.pdf](http://www.un.am/up/library/Safety-Health_RA_NP_eng.pdf)

## **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 Armenia.

The Committee noted previously that the minimum age for admission to employment or work is 16 (Conclusions 2011). Article 32 of the Constitution provides that children under the age of 16 shall not be permitted to work full-time, and the procedure and conditions for their employment to a part-time job shall be defined by the law. Section 15(2) of the Labour Code states that from the age of 16, persons have the legal capacity to acquire and implement labour rights and engage in work on a full time basis, subject to exceptions stipulated in the Code and other laws.

The Committee noted previously that according to Article 17 of the Labour Code, it is prohibited to conclude a labour contract with a person below the age of 14. It also noted that Article 17(2) of the Labour Code permits persons between the ages of 14 and 16 to work, with the consent of their parent or guardian (Conclusions 2011). The Committee asked what types of work are allowed to be performed by children between 14 and 16, whether this is considered to be light work and its duration.

The report indicates that according to the amendments brought to the Labour Code by Law No HO-117-N of 24 June 2010, Article 17 (2(1)) states that persons between the ages of 14 and 16 may be involved only in temporary works not causing damage to health, safety, education and morality. According to Article 17(3) of the Labour Code, persons at the age of 14 to 18 may not be involved in work on days off, non-working days — holidays and commemoration days — except for the cases of participation in sport and cultural events. The report adds that under Article 101 of the Labour Code, a temporary employment contract is concluded with persons between the ages of 14 and 16 for a period of up to two months. The Committee also notes that Article 140(1(1)) of the Labour Code states that persons between the ages of 14 and 16 may work a maximum of 24 hours per week.

The Committee notes there is no description of the types of work permitted for persons between the ages of 14 and 16. It recalls that Article 7§1 allows for an exception concerning light work, i.e. 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). The Committee considers that the situation is not in conformity with Article 7§1 of the Charter since the definition of light work is not sufficiently precise as there is no description of the types of work which may be considered light or a list of those which are not.

In its previous conclusion, the Committee noted that under Article 140 (1(1)) of the Labour Code, children of 14 years of age are allowed to work up to 24 hours per week and considered that the situation was not in conformity with Article 7§1 of the Charter as the daily and weekly working time for children under the age of 15 was excessive and cannot qualify as light work. The Committee takes note of the information provided in the report according to which children between the ages of 14 and 16 may work up to 8 hours per day (Article 139 (2) of the Labour Code). The Committee therefore maintains its conclusion of non-conformity on this point.

The Committee asked previously whether there are any economic sectors or forms of economic activity which are exempted from the general rules concerning minimum age of employment. The report indicates that the provisions on minimum working age provided for by the legislation refer to all fields of economic activity. The Committee notes from another source that it appears that the Labour Code and its provision relating to the minimum age of admission to employment or work, do not apply to work performed outside the framework of



a formal labour relationship, such as self-employment or non-remunerated work (Direct Request (CEACR) – adopted 2010, published 100th ILC session (2011), Minimum Age Convention, 1973 (No. 138). The Committee asks the next report to provide information on the measures taken or envisaged to ensure that children who are not bound by an employment relationship, such as children performing unpaid work, work in the informal sector or work on a self-employed basis, benefit from the protection provided by Article 7§1 of the Charter. The Committee asks what are the measures taken by the authorities (eg labour inspection) to detect cases of children under the age of 15 working on their own account or in the informal economy, outside the scope of an employment contract.

As regards supervision, the report indicates that in 2013 the State Hygiene and Anti-Epidemic Inspectorate of the Ministry of Health and the State Labour Inspectorate of the Ministry of Labour and Social Affairs were reorganised by way of merger as the State Health Inspectorate of the Staff of the Ministry of Health of the Republic of Armenia, which — pursuant to its Statute — exercises control and supervision over the implementation by employers of the labour legislation, including on issues concerning the employment rights and privileges of employees under eighteen years of age and the guarantees for respect thereof. The report provides information on the questionnaire used by the inspectors of the State Health Inspectorate of the Staff of the Ministry of Health during their inspections. The report does not provide any information with regard to the findings of inspections in respect of child labour (nature and number of violations detected and sanctions applied in practice).

The Committee recalls that the situation in practice should be regularly monitored. It asks that the next report provide information on the number and nature of violations detected as well as on sanctions imposed on employers for breach of the regulations regarding prohibition of employment under the age of 16.

With regard to work done at home, the report does not address the Committee's previous question on how work done at home is monitored in practice. The Committee recalls that work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28).

The Committee asks whether the State authorities monitor work done at home by children under 15 and which are their findings in this respect. The Committee points out that should the next report not provide the information requested, there would be nothing to establish that the situation is in conformity with Article 7§1 of the Charter.

### *Conclusion*

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

- the definition of light work is not sufficiently precise;
- the daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.

## **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 Armenia.

The Committee noted previously that Article 257 of the Labour Code prohibited employing persons under 18 years of age in hard works, work involving possible exposure to agents which are toxic, carcinogenic or dangerous to health, work involving the possible exposure to ionising radiation or other hazardous and harmful agents, work involving higher risk of accidents or occupational diseases, as well as work which a young person might not be able to perform safely due to a lack of experience or attention to safety (Conclusions 2011).

The Committee requested in its previous conclusion the complete list of the types of work which are considered dangerous or unhealthy (Conclusions 2011). The report indicates that pursuant to the Section 257 of the Labour Code, Governmental Decision No. 2308-N establishes a list of types of hazardous works prohibited to persons under 18. According to the report, the Governmental Decision No. 2308-N establishing the list of works considered to be difficult and dangerous for persons below 18 years of age, women who are pregnant and for women caring for a child under one year of age defines hundreds of harmful works based on various factors such as exposure to chemical agents, physical factors, biological factors and industrial agents.

As regards supervision, the Committee asked whether the Labour Inspectorate carried out regular controls in enterprises where potentially dangerous or unhealthy work is performed. The report indicates that the prohibition of employment under the age of 18 for dangerous or unhealthy activities was among the matters included in the questionnaire of inspections conducted by the State Health Inspectorate. However, the report does not provide any information with regard to the findings of such inspections.

The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide up-to-date information on the number and nature of violations detected as well as on sanctions imposed on employers for breach of the regulations regarding the prohibition of employment under the age of 18 for dangerous or unhealthy activities.

### *Conclusion*

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

In its previous conclusion, the Committee found the situation to be not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly working time for children subject to compulsory education is excessive.

The Committee also refers to its Statement of Interpretation on Articles 7§1 and 7§3 on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than six hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015).

The Committee notes from the report that the situation has not changed as children between 14 and 16 years of age are still allowed to work 24 hours per week. The Committee maintains its conclusion of non-conformity on this point.

As regards the age of completion of compulsory education, the Committee previously noted the Government statement that the legislation prescribes that a child may complete the compulsory education at the age of 15 to 16 (5th National Report of Armenia). The Committee notes from another source that according to the UNESCO 2010 report entitled "Education for All – Global Monitoring Report", compulsory education in Armenia lasts from the age of 7 to the age of 15 (Direct Request (CEACR) – adopted 2010, published 100th ILC session (2011), Minimum Age Convention, 1973 (No. 138)). The Committee takes note that according to the information provided by the above mentioned source, the age of completion of compulsory education is one year below the specified minimum age for admission to employment or work. It notes from another source (UNICEF Study " Education for All – School Wastage Study Focusing on Student Absenteeism in Armenia", 2008) that the Government expressed its intention to revise the education system by adding an extra year of compulsory education. The Committee asks that the next report clearly indicate which is the age of completion of compulsory education and the relevant legislation. In particular the Committee asks whether the age limit for compulsory education coincides with the age of admission to employment which is 16, or otherwise whether compulsory schooling comes to an end before young persons are entitled to work.

As regards light work, the Committee notes that under Article 17 (2(1)) of the Labour Code persons between the age of 14 and 16 may be involved only in temporary works not causing harm to their health, safety, education and morality. The Committee recalls that only light work is permissible for schoolchildren under this provision. The notion of "light work" is the same as under Article 7§1(Conclusions I (1969), Statement of Interpretation on Article 7§1).

The Committee refers to its Conclusion on Article 7§1 where it concluded that the situation is not in conformity with Article 7§1 of the Charter since the definition of light work is not sufficiently precise, as there is no description of the types of work which may be considered light or a list of those which are not.

The report indicates that according to Article 17 (3) of the Labour Code, persons at the age of 14 to 16 may not be involved in work on days off, non-working days — holidays and commemoration days — except for the cases of participation in sport and cultural events. The Committee asks in which conditions children subject to compulsory education participate in sport or artistic performances (for example whether the consent of the parents and the curator is required).

As regards work during school holidays, the Committee previously referred to its Statement of Interpretation on Article 7§3 (Conclusions 2011) and asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. The report does not provide the information requested. The Committee reiterates its question. The Committee underlines that if the next report does not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 7§3 of the Charter.

The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide information in its next report on the number and nature of violations detected as well as on measures taken/sanctions imposed on employers for breach of the regulations regarding prohibition of employment of children subject to compulsory education.

#### *Conclusion*

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

- the daily and weekly working time for children subject to compulsory education is excessive;
- the definition of light work is not sufficiently precise.

## **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 Armenia.

The Committee previously found that the situation in Armenia was in conformity with Article 7§4 of the Charter. It noted that Article 140 of the Labour Code established a shorter working time of up to 24 hours per week for young workers under the age of 16 and of up to 36 hours per week for young workers between 16 and 18 years old.

The Committee asked whether the above mentioned rule applied to all young workers. The report indicates that the above mentioned provisions of the Labour Code apply to all employees of the respective age who are in employment relations with employers regardless of their legal form and form of ownership, field of economic activity.

The report provides information on the rest time for employees under the age of 18 as established by the Labour Code. Young workers under 18 years of age, whose working time exceeds four hours, are granted an additional break of at least 30 minutes during the working time. According to Section 154 (2) of the Labour Code the duration of daily uninterrupted rest for employees from 14 to 16 years old may not be less than 14 hours, whereas for employees from 16 to 18 years old it may not be less than 12 hours and must include the period from 22:00 to 6:00. Article 155 (7) of the Labour Code provides that employees under 18 years of age are granted at least two rest days per week.

In its previous conclusion, the Committee requested information on the activity of the Labour Inspectorate. The report indicates that the questionnaire of inspections conducted by the State Health Inspectorate of the Staff of the Ministry of Health contains matters related to working time and rest periods for young workers under the age of 18. However, the report does not contain information on the findings of such inspections.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It therefore asks that the next report provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding working time for young workers under the age of 18. The Committee underlines that should the next report not provide the information requested, there would be nothing to establish that the situation is in conformity with Article 7§4 of the Charter.

### *Conclusion*

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

## **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 Armenia.

### **Young workers**

The report states that the minimum hourly wage for a 40-hour week (an adult worker) is AMD 270 (€ 0.50), while for the 36-hours week (16-18 years olds) is AMD 300 (€ 0.56) and for the 24-hour week (young workers below 16 years of age) is AMD 450 (€ 0.84). The report does not specify whether this is the net hourly wage.

The Committee recalls that young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For 15/16 year-olds, a wage of 30% lower than the adult starting wage is acceptable. For 16/18 year-olds, the difference may not exceed 20%. 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.

Since Armenia has not accepted Article 4§1 of the Charter, the Committee makes its own assessment on the adequacy of young workers wage under Article 7§5. For this purpose, the ratio between net minimum wage and net average wage is taken into account. Thus, the Committee asked in its previous conclusion (Conclusions 2011) information on the net values of minimum wage and average wage in order to assess the situation. The report does not provide the requested information.

The Committee takes note of the data provided by other sources (National Statistical Service of Armenia) according to which the average monthly wage amounted to AMD 146,524 (€ 269) in 2013. From the data provided in the report, it results that the minimum monthly wage of an adult worker stood at AMD 43,200 (€ 79) as of 1 July 2013. The Committee notes that the monthly minimum wage corresponds to only 30% of the average wage, which is too low to secure a decent standard of living. Therefore, the Committee considers that the right to a fair pay of young workers is not guaranteed since the reference wage itself (the minimum wage of adult workers) is too low to secure a decent standard of living.

### **Apprentices**

The report provides no information as to the allowances paid to apprentices. The Committee reiterates its request that the next report provide information and examples on the levels of allowances paid to apprentices at the beginning of apprenticeship and at the end. It points out that if the next report does not provide the requested information there will be nothing to establish that the situation in Armenia is in conformity with the Charter on this point.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

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

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

The Committee noted previously that under the Labour Code, the period necessary for the improvement of qualification at workplace or educational institutions was included in the working time (Section 138 of the Labour Code), and considered the situation to be in conformity with the Charter (Conclusions 2011).

The report indicates that according to Section 174 of the Labour Code, as amended through the Law No. HO-117-N of 24 June 2010, employees shall be granted a leave of three working days for each examination in order to prepare for examinations for admission to secondary vocational and higher education institutions. Employees studying at general education, secondary vocational or higher education institutions are granted a study leave upon the motion of the educational institution: (i) to prepare for and take current examinations – three working days for each examination; (ii) to prepare for and take a test – two working days for each test; (iii) to prepare and defend a graduation paper – 30 working days; (iv) to prepare for and take each state (graduation) examination – six working days. The employee will be paid for his or her study leave by the employer, in an amount which is not lower than the average daily salary of the employee for each day, in case the employee was sent to receive education by the employer (Section 200 of the Labour Code).

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It therefore asks that the next report provide information on the monitoring activity of the authorities, on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding the inclusion of time spent on vocational training by young workers in the normal working time.

### *Conclusion*

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

The report indicates that the Labour Code, as amended in 2010 through the Law No. HO-117-N, provides now that the minimum duration of annual leave shall be 20 working days in case of a five-day working week, and 24 working days in case of a six-day working week. Collective agreements or contracts can provide for longer annual leave (Article 159 of the Labour Code).

The Committee previously asked whether young workers had the possibility to take the leave lost, due to illness or accident, at some other time (Conclusions 2011). The report indicates that according to Article 167 of the Labour Code, the annual leave may be postponed to a later time upon the consent of the employee and the employer, if the employee is temporarily unable to work. According to Section 167(3) of the Labour Code, the transferred annual leave, as a rule, is granted in the same working year, but not later than within 18 months, starting from the end of the working year, for which the annual leave has not been granted or has been partially granted. Through the mediation or upon the consent of the employee, the unused part of annual leave may be transferred and added to the annual leave of the subsequent year.

In its previous conclusion (Conclusions 2011), the Committee considered that the option of giving-up the annual holiday for financial compensation was not in conformity with Article 7§7 of the Charter. The report indicates that Article 170 of the Labour Code has been amended by Law No. HO-117-N of 24 June 2010 and it now provides that "the replacement (giving-up) of annual holiday for financial compensation was not allowed, with the only exception of the situation when the employment contract is terminated. Financial compensation may be paid in case of termination of the employment contract to an employee who is entitled to annual holiday if the employee refuses the leave or the annual leave cannot be granted to the employee. The report states that financial compensation is excluded during employment relations and any breach of this rule by the employer triggers administrative liability.

The report further indicates that the monetary compensation for the unused annual leave shall be paid when the employment contract is rescinded. The amount of compensation shall be determined in accordance with the number of days of the unused annual leave to be granted for the given period. If the employee has not been granted annual leave for a period longer than one year, the compensation shall be paid for all the unused annual leaves.

The Committee previously asked information on the activity of the Labour Inspectorate (Conclusions 2011). The report indicates that in 2013 the State Hygiene and Anti-Epidemic Inspectorate of the Ministry of Health and the State Labour Inspectorate of the Ministry of Labour and Social Affairs were reorganised by way of merger as the State Health Inspectorate of the Staff of the Ministry of Health of the Republic of Armenia, which — pursuant to its Statute — exercises control and supervision over the implementation by employers of the labour legislation, including issues concerning the employment rights of employees under eighteen years of age and the guarantees for respect thereof. The report adds that the inspections are conducted by the Inspectorate based on the schedule of inspections approved for each year, irrespective of the legal form and form of ownership of the employers. However, the report does not provide any information with regard to the findings of such inspections. The Committee asks whether the new created State Health Inspectorate of the Staff of the Ministry of Health monitors whether the employers comply with the legislation/rules concerning paid annual holidays of young workers under 18.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It therefore asks that the next report provide on the number and nature of violations detected



as well as on sanctions imposed for breach of the regulations regarding paid annual holidays of young workers under the age of 18.

*Conclusion*

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

## **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 Armenia.

The Committee noted previously that under Section 148 of the Labour Code, young workers under the age of 18 are not allowed to be engaged in night work and night time is the period between 10 p.m. and 6 a.m.

The Committee asked whether the prohibition of night work applies to all young workers (Conclusions 2011). The report indicates that the prohibition of night work provided by the Labour Code refer to all employees under 18 years of age, regardless of the field of activity.

In its previous conclusion (Conclusions 2011), the Committee asked information on the monitoring activity of the Labour Inspectorate. The report indicates that in 2013 the State Hygiene and Anti-Epidemic Inspectorate of the Ministry of Health and the State Labour Inspectorate of the Ministry of Labour and Social Affairs were reorganised by way of merger as the State Health Inspectorate of the Staff of the Ministry of Health of the Republic of Armenia, which — pursuant to its Statute — exercises control and supervision over the implementation by employers of the labour legislation, including issues concerning the employment rights of employees under eighteen years of age and the guarantees for respect thereof. The report adds that the prohibition of night work for young persons under 18 years was included in the questionnaire of inspections conducted by the State Health Inspectorate of the Staff of the Ministry of Health of the Republic of Armenia. The inspections are conducted by the Inspectorate based on the schedule of inspections approved for each year, irrespective of the legal form and form of ownership of the employers. However, the report does not provide any information with regard to the findings of such inspections.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It therefore asks that the next report provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of night work for young workers under the age of 18. The Committee points out that if the next report does not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 7§8 of the Charter.

### *Conclusion*

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

The Committee noted previously that according to Article 249 of the Labour Code, young workers under the age of 18 are obliged to undergo a medical examination upon admission to employment, whereas until reaching the age of 18, with a prescribed periodicity. The periodic medical examination of young workers under 18 is conducted at the expense of the employer. It asked information on the periodicity and scope of the medical examinations.

The report indicates that according to Article 249 (7) of the Labour Code, the list of occupations and jobs subject to preliminary and periodic mandatory medical examination, as well as the procedure for conducting medical examinations are established by the Decision of the Government No 347-N of 27 March 2003.

The report provides Annex 2 to the above mentioned Decision of the Government which contains the list of activities, the employees who are subject to compulsory medical examination, the scope and the periodicity of such examinations. The report indicates that according to this Decision, all persons to be admitted to employment and those working in the occupations listed by the Decision, shall be subject to compulsory medical examination irrespective of their age (including young workers under 18).

The Committee notes that for all occupations listed in Annex 2 of the Decision of the Government No 347-N of 27 March 2003, the medical examinations shall be conducted at the recruitment and subsequently once each term or once a year. The same Annex provides the list of physicians- specialists who will carry out the examinations and their scope in case of each occupation/job.

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

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

### ***Protection against sexual exploitation***

The Committee recalls that under Article 7§10 of the Charter, States 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. The following are the minimum obligations:

- as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised. In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts. Furthermore, States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.
- a national action plan combating the sexual exploitation of children should be adopted.

An effective policy against commercial sexual exploitation of children should cover primary and interrelated forms: child prostitution, child pornography and trafficking in children.

- child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration;
- child pornography is given an extensive definition and takes account of the fact that new technology has changed the nature of child pornography. It includes the procurement, production, distribution, making available and simple possession of material that visually depicts a child engaged in sexually explicit conduct.
- trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.

In its previous conclusion (Conclusions 2011) the Committee wished to be informed of the legislative framework protecting children against pornography and prostitution. The Committee takes note of the Replies to the General Overview Questionnaire regarding the implementation of the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse. In particular it takes note of Articles 132, 142, 143, 166, 262 and 263 of the Criminal Code, as amended.

The Committee notes from the Concluding observations on the initial report of Armenia submitted under Article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, adopted by the UN-CRC (2013) that the provisions of the Criminal Code do not criminalise offering, obtaining, procuring or providing a child for child prostitution, or importing, exporting, offering, or possessing child pornography.

The Committee notes that the Criminal Code does not precisely define 'child' and 'minor'. Besides, the Committee considers that with the information at its disposal, it does not find it established that all acts of sexual exploitation of children (as defined above), including simple possession of child pornography are criminalised with all children below 18 years of age.

Therefore, the Committee concludes that the situation is not in conformity with the Charter. It asks the next report to provide information about the precise legislative basis criminalising all the above mentioned activities with children under 18 years of age.

### ***Protection against the misuse of information technologies***

The Committee asks for full information concerning supervisory mechanisms and sanctions for sexual exploitation of children through the information technologies. It further asks whether legislation or codes of conduct for Internet service providers is foreseen in order to protect children.

### ***Protection from other forms of exploitation***

The Committee notes from the report that the draft Law On Identification and Support of victims of Human Trafficking or Exploitation which specifies minor victims as a separate category was adopted by the National Assembly at the first reading. The Committee wishes to be kept informed about its implementation.

The Committee notes from the Report submitted by the Armenian authorities on measures taken to comply with Recommendation CP(2012)8 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings that within the framework of the regional programme "Strengthening awareness on trafficking through education in Armenia, Georgia and Azerbaijan", the office of the International Organisation for Migration in Armenia, has organised and conducted training courses for 9 children's homes and 15 staff members invited from the children's rights protection departments of all the marzpetarans of the Republic of Armenia and from the Municipality of Yerevan.

The Committee takes note of the information concerning the preliminary investigation of crimes relating to trafficking and sexual exploitation. In 2012-2013 criminal charges were brought against 11 persons. 5 persons were convicted in the criminal cases involving trafficking of children. According to the report training courses on child trafficking were organised in 2012/2013 for about 640 police officers.

In its previous conclusion the Committee wished to be informed of the incidence of street children and measures taken to protect and assist them. It notes that the report does not provide any information in this respect. The Committee considers that it has not been established that measures taken to protect and assist street children are adequate.

### ***Conclusion***

The Committee concludes that the situation in Armenia is not in conformity with Article 7§10 of the Charter on the grounds that:

- it has not been established that the legislation protects all children below 18 years of age from all forms of sexual exploitation;
- it has not been established that adequate measures are taken to protect and assist street children.

## **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 Armenia.

### ***Right to maternity leave***

The Committee previously noted that Article 172 of the Labour Code provides for a standard period of 140 days of pregnancy and maternity leave, namely 70 days to be taken before birth and 70 days after birth, which can be extended in case of complications or multiple births (up to a total of 180 days). It noted that this leave was mandatory and, in reply to the Committee's question, the report clarifies that in case of early delivery, unused days of pregnancy leave shall be added to maternity leave. The report also confirms that this scheme applies to all employed women in the public as in the private sector.

### ***Right to maternity benefits***

Article 172 of the Labour Code provides that all working women are entitled to pregnancy and maternity leave with their full wage being paid for the whole length of the leave. The same provision, according to the report, applies to all employed women, in the public as in the private sector. The Committee previously noted that the only qualifying condition is to be in insured employment.

As regards the amount of benefits, which are paid from the state budget, the report refers to Article 22 of the Law "On temporary incapacity benefits", adopted on 27 October 2010: the average monthly salary is calculated dividing by twelve the income paid by the employer to the employee for twelve consecutive calendar months preceding the month of occurrence of the temporary incapacity for work ("calculation period"). If the employee worked for less than twelve months as of the day of the temporary incapacity for work, the income paid by another employer during the calculation period is taken into account when calculating the average monthly salary of the employee.

The Committee refers to its Statement of Interpretation on Article 8§1(Conclusions 2015) and asks how the benefits are calculated in the case of an employee who has been working less than twelve months during the calculation period, i.e. whether interruptions in the employment record are taken into account in the determination of maternity benefits and whether the minimum rate of such benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value (in the absence of this indicator, the Committee takes the national poverty threshold into account, i.e. the monetary cost of the household basket containing the minimum quantity of food and non-food items which is necessary for the individual to maintain a decent living standard and be in good health, see Conclusions 2013 on Article 13§1, Armenia).

### ***Conclusion***

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

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

### ***Prohibition of dismissal***

The Committee notes from the report that Article 117 of the Labour Code, which was found not to comply with Article 8§2 of the Charter (Conclusions 2011), was abrogated on 7 August 2010 and replaced by a new provision – Article 114 – which prohibits the employer from terminating the employment contract of an employee from the date of notification of pregnancy until one month after the end of maternity leave, without exceptions. The report indicates that these provisions apply to all the employees.

### ***Redress in case of unlawful dismissal***

According to the report, the provisions governing remedies in case of unlawful dismissal were also amended in 2010 (Law No. HO-117-N of 24 June 2010) and apply to all employees.

Article 265, as amended, provides that the employee can contest the rescission of the employment contract within one month from the day of notification of dismissal. If the courts find that the dismissal was unlawful, the employee's rights will be restored. In that case, the employer is liable to pay the average salary for the whole period of forced inactivity, calculated on the basis of the average daily salary of the employee.

If for any reason the reinstatement is not possible, the employer is liable to pay the employee a compensation for the whole period of forced inactivity, till the day of entry into force of the judgment, in an amount comprised between two and twelve times the average salary. The Committee asks whether this upper limit covers compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation. Should the next report not provide the requested information, there will be nothing to establish that the situation is conformity in this respect.

### ***Conclusion***

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

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

According to the report, Article 258(3) of the Labour Code, governing nursing breaks, was amended in 2010 (Law No. HO-117-N of 24 June 2010) and now applies to all employees: in addition to the general breaks for rest and meal, a nursing employee shall be granted a nursing break of at least 30 minutes every three hours until the child is one and a half years old. These breaks are remunerated in the average hourly salary.

### *Conclusion*

The Committee concludes that the situation in Armenia 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 Armenia.

It previously noted that, under Article 148 of the Labour Code, pregnant women and women with a child under three years of age may only be assigned to night work with their consent and that they must be transferred to daytime work if night work has or may affect their health. It noted in this respect that the law provided for night workers a pre-entry medical examination and periodical medical examinations afterwards according to a predetermined schedule agreed by the employer, but it did not consider it established that these regulations offered sufficient protection for the employed women covered by Article 8 of the Charter, insofar as there was no evidence that compulsory medical examination had to take place not only upon recruitment but whenever an employee during her pregnancy, postnatal and nursing period was assigned to night work, and that frequent medical check ups were also compulsory thereafter.

The report refers to the legislative changes made in 2010 to the relevant provisions of the Labour Code (Law No. HO-117-N of 24 June 2010), in particular Article 148 concerning work at night, Article 249 on compulsory health examinations and Article 258 on maternity protection with respect to heavy and harmful activities. The Committee does not find however that these amendments have substantially modified the situation which it has previously found not to be in conformity with the Charter, insofar as there is no indication that a medical check up can take place out of the predetermined schedule agreed by the employer, according to Article 249, in particular when an employee working at night becomes pregnant or when she resumes night work after her maternity leave or at the employee's request during such periods. In addition, although the report refers to the prohibition set by Article 258 to employ pregnant women or women taking care of a child under the age of one in heavy or harmful work, nothing indicates that night work is assimilated to heavy and harmful work in this context. Accordingly, the Committee asks the next report to provide further clarifications as to how employees working at night during pregnancy or during their postnatal/breastfeeding period can effectively have a medical assessment of the compatibility of their condition with nightwork. In the meantime, it continues to consider that it has not been established that regulations on night work offer sufficient protection for the employed women covered by Article 8 of the Charter.

In response to the question of whether the same rules apply to employees working in the public sector, the report confirms that the same rules apply to all employees.

### *Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 8§4 of the Charter on the ground that it has not been established that regulations on night work offer sufficient protection for the employed women who are pregnant, have recently given birth or are nursing their infant.

## **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 Armenia.

Under Article 258 of the Labour Code, as amended in 2010 (Law No. HO-117-N of 24 June 2010) it is prohibited to engage pregnant women or women taking care of a child under the age of one in heavy, harmful, especially heavy and especially harmful works, as defined by the national legislation.

The Committee had previously noted that in accordance with the Government Decision No. 2308-N of 29 December 2005, the activities which were considered as harmful for pregnant women and women taking care of a child under the age of one were those involving chemicals (benzol and its derivatives, halogen derivatives, chlorobenzylidene, lead and lead derivatives), physical agents (ionising radiation, radioactive substances, vibration, noise, high temperature, extreme temperatures), biological factors and that the activities which were considered heavy for this category of workers included underground work, work involving lifting weights, heights, explosives agents, etc. The Committee asks the next report to provide comprehensive and updated information as regards the list of activities and factors which are prohibited and/or restricted for the categories of women covered by Article 8§5 of the Charter. It asks in particular to confirm that the employment of pregnant women, women who have recently given birth and women nursing their infants is still prohibited in underground work in mines and that other dangerous activities, such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents, are prohibited or strictly regulated for the group of women concerned depending on the risks posed by the work. Should the next report not provide the requested information, there will be nothing to establish that the situation is conformity in this respect.

The Committee notes from the report that, under Article 258 of the Labour Code, based on the list of harmful conditions and dangerous factors of work, as well as the findings of workplace evaluation, the employer shall be obliged to determine the duration and nature of dangerous factors affecting safety and health of pregnant women and women taking care of a child under the age of one. After identification of the potential effect, the employer shall be obliged to undertake temporary measures to ensure the elimination of the risk of effect of the dangerous factors. Where the dangerous factors are impossible to eliminate, the employer shall undertake measures to improve the working conditions so that pregnant women and women taking care of a child under the age of one are not exposed to the effect of such factors. Where it is impossible to eliminate such effect as a result of improvement of working conditions, the employer shall be obliged to transfer the woman (upon her consent) to another job within the organisation. In case of absence of such possibility, the woman shall be provided with a paid leave prior to granting pregnancy and maternity leave. The Committee asks whether, in case of temporary transfert to another post the woman concerned is entitled to maintain her regular level of salary and whether she retains the right to return to her previous employment at the end of the protected period.

The report states, in response to the Committee's question, that the same rules apply to women employed in the public as in the private sector.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Armenia is in conformity with Article 8§5 of the Charter.

## **Article 13 - Right to social and medical assistance**

### *Paragraph 1 - Adequate assistance for every person in need*

In application of the reporting system adopted by the Committee of Ministers at the 1996th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Armenia in response to the conclusion that it had not been established that elderly persons without resources received adequate social assistance.

With respect to the adequacy of the level of social assistance, the Committee recalls that it must be such as to make it possible to live a decent life and to cover the individual's basic needs. In order to assess the level of assistance, the Committee takes into account basic benefits, additional benefits and the poverty threshold in the country, which is set at 50% of the median equivalised disposable income and calculated on the basis on the Eurostat at-risk-of-poverty threshold (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, §112). In the absence of this indicator (median equivalised income as calculated by Eurostat), the Committee may take into account nationally defined thresholds such as the monetary cost of the household basket containing the minimum quantity of food and non-food items which is necessary for the individual to maintain a decent living standard and be in good health (Conclusions 2009, Armenia). The Committee further recalls that, given that Armenia has not accepted Article 23 of the Charter (the right of elderly persons to social protection), the Committee assesses the level of non-contributory pensions paid to a single elderly person without resources under Article 13§1 (Conclusions 2013, Italy).

In its previous conclusion the Committee noted the failure to provide information on the minimum total assistance paid to elderly persons (single) without resources, including pension benefits, family benefits and other supplements.

The report states that, under the national pension system, elderly persons without resources having reached 65 years and who do not fulfil the required length of service or insurance period (currently 9 years of covered employment) are entitled to receive old age benefit. The amount of this benefit was AMD 14,000 (€26.1) per month as of 1 January 2014. In addition, the report explains that disability benefits are determined based on the disability category (degree of disability), amounting in 2014 to AMD 19,600 (€36.6) per month for the first category, AMD 16,800 (€31.3) for the second category and AMD 14,000 (€26.1) for the third category. The report finally indicates that, in the cases where a person receiving an old age benefit or a disability benefit is also entitled under Armenian law to a pension due to the loss of the breadwinner, he must choose between one or the other.

From MISSCEO the Committee notes that the basic social assistance benefit available to the population in general subject to need until July 2014 amounted to AMD 16,000 (€30.2) per household per month. There is a supplement which varies according to vulnerability score and geographic location in the range AMD 5,500 (€10.4) to AMD 8,000 (€15.1). The report states that as from August 2014 the amount of basic social assistance benefits corresponds to AMD 17,000 (€32.3). The Committee recalls that in its previous conclusion (Conclusions 2013, Armenia) it found this benefit to be manifestly inadequate.

The Committee notes from an official source ("Social Snapshot and Poverty in Armenia" survey 2014) that the "lower" national poverty line for 2013 was AMD 32,318 (€60.5) on a monthly basis and that the "upper" national poverty line was AMD 39,193 (€73.3). The Committee asks for clarification on whether old age benefits for elderly people who do not fulfil the required insurance period are supplemented by other social benefits, including social benefits for families and housing benefits. Meanwhile, noting that the level of the old

age benefit falls far below the national poverty lines, the Committee considers that the situation of elderly persons without resources is not adequate in the meaning of Article 13§1.

*Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 13§1 of the Charter on the ground that the social assistance provided to elderly persons without resources is not adequate.

## **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 Armenia.

### ***The legal status of the child***

In its previous conclusion the Committee asked whether there were any restrictions to the right of adopted children to know their origins. It notes from the report that the confidentiality of adoption is provided for by Article 128 of the Family Code. The Committee recalls in this regard that Article 17 guarantees the right of a child to know, in principle, his or her origins. The Committee asks whether the Family Code establishes any restrictions to this right.

In its previous conclusion the Committee reiterated its question whether the law permitted discrimination between children born within and outside the marriage e.g. in respect of maintenance obligations and inheritance rights. It notes that the report does not provide this information. Therefore, the Committee considers that it has not been established that there is no discrimination between children born within and outside the marriage.

### ***Protection from ill-treatment and abuse***

In its previous conclusion the Committee held that the situation was not in conformity with the Charter as corporal punishment was not explicitly prohibited in the home.

The Committee notes from the Global Initiative to End Corporal Punishment of Children that prohibition is still to be achieved in the home, alternative care settings and schools. There is no defence for the use of corporal punishment enshrined in legislation but there is no explicit prohibition. In theory, the prohibition of cruelty, violence and humiliation in childrearing in Article 53 of the Family Code would prohibit corporal punishment by parents, which invariably violates a child's dignity, but the law is not interpreted in this way – and the potential for such an interpretation is undermined by the near universal social acceptance and use of corporal punishment in childrearing.

The Committee notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2011)1, §377) that in accordance with Section 9 of the Law on the Protection of the Rights of the Child, each child had a right to protection against any type of violence and any person including the child's legal representative were forbidden to exercise any violence against the child or any punishment humiliating the child's dignity. An express prohibition of corporal punishment has been included in the new draft Law on Domestic Violence.

The Committee notes from the report that for the purpose of ensuring the compliance of the legislation with the Revised European Social Charter, as well as having regard to the priority of protection of interests of a child, a provision has been introduced to the Family Code on excluding beating as a means of child upbringing.

In this connection, the Committee notes from the Global Initiative to End Corporal Punishment of Children that in 2015, the Government accepted a recommendation to prohibit corporal punishment in all settings made during the Universal Periodic Review of Armenia and confirmed that prohibition would be included in draft amendments to the Family Code. The Committee asks the next report to provide the information on the provision in the Family Code which explicitly prohibits all forms of corporal punishment of children in the home.

The Committee notes that during the reference period the situation which it has previously found not to be in conformity with the Charter has not changed. The Committee reiterates its previous finding of non-conformity on the ground that corporal punishment is not prohibited in the home.

### ***Rights of children in public care***

In its previous conclusion the Committee asked for information on measures taken to decrease institutionalisation of children, including their direct impact i.e. the number of children in foster care as opposed to that in long-term care institutions.

According to the report, the policy adopted by the Government mainly aims at ensuring child care and upbringing in a family by means of reducing the number of children in orphanages and boarding institutions for child care and preventing the flow of children to such institutions.

Decision N 1273-N of 13 November 2014 introduced amendments to the 2013-2016 Strategy Plan for the Protection of Rights of Children, the main purpose of which is to establish various institutions in the country providing alternative services of care and protection for children left without parental care and to reduce the number of children placed in centralised large institutions.

As of 2014, the number of children under care in state orphanages stood at 730. As a result of reforms that have been implemented since 2009, the number of children in state and charitable orphanages has reduced by 117.

The Committee wishes to receive more details regarding the development of foster care, including the number of children placed in foster families as well as the trend in de-institutionalisation of childcare.

As regards restriction of parental rights, the Committee asks whether the financial situation of the family can become the sole ground of placement of children.

### ***Right to education***

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

### ***Young offenders***

In its previous conclusion the Committee found that the maximum length of pre-trial detention of minors was excessive.

According to the report, detention may be imposed on a minor who is accused of a minor or medium-gravity criminal offence only in cases where he or she has breached the conditions of the alternative measure of restraint imposed on him or her. In any case detention as a measure of restraint may be imposed on an accused who is a minor in extreme cases and for the shortest period of time.

The duration of detention or home arrest imposed on a minor during pre-trial proceedings may not exceed one month. The overall duration of detention imposed on a minor during pre-trial proceedings may not exceed two months, when being accused of a minor or medium-gravity crime; six months, when being accused of a grave or particularly grave crime. In the latter case, detention imposed on a minor may, in exceptional cases, be prolonged for two months at most.

The Committee notes that according to Article 89 of the Criminal Code the maximum sentence that can be imposed on a minor is 10 years.

The Committee also asks whether young offenders in pre-trial detention and when serving a prison sentence are always separated from adults.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International

Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect that against negligence, violence or exploitation.

#### *Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 17§1 of the Charter on the grounds that:

- it has not been established that there is no discrimination between children born within and outside the marriage.
- not all forms of corporal punishment of children are prohibited in the home.

## **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 Armenia.

In its previous conclusion the Committee found that the situation was not in conformity with the Charter on two grounds:

- measures taken to reduce drop-out from compulsory schooling were not adequate;
- it had not been established that measures taken to increase the enrolment rate in secondary schools were sufficient.

As regards the first and second grounds of non-conformity, the Committee notes UNICEF that the net enrolment in the secondary school stood at 85% for males and 87,7% for females (the data update of 2013), while the net attendance ratio at 66,9% for males and 75,8% for females.

According to the report, the goals defined by the United Nations Millennium Declaration and the Education for All global movement are benchmarks for the development of Armenia by 2015. In particular, the Government aims at achieving 99% of gross enrolment ratio in basic schools and 95% of gross enrolment ratio in high schools by 2015.

The Committee considers that the enrolment and attendance rates in the secondary education remain low and the measures taken during the reference period to raise these rates have not been sufficient. Therefore, it reiterates its previous finding of non-conformity.

Since Armenia has not accepted Article 15§1 of the Charter, the issues relating to integration of children with disabilities into mainstream education are examined under this provision.

In its previous conclusion the Committee wished to be informed of measures taken to integrate children with disabilities into mainstream education. It asked in particular whether legislation explicitly protected persons with disabilities from discrimination in education and training, whether measures were in place to facilitate the integration of children with disabilities into mainstream education and whether individualised educational plans were crafted for students with disabilities.

The Committee notes from the report that for ensuring access to education and equal opportunities, reforms have been implemented in the field of special education aimed at structural improvements, development of the admissions system, decentralisation of the implemented services, introduction of new management and financing mechanisms, improvement of the quality of childcare and education.

According to the Law on education, education for children in need of special conditions for education may be provided both at general education institutions and special institutions through special programmes, upon the choice of parents. In line with this provision of the Law, measures have been taken to organise the education of children in need of special conditions for education in general education schools. Inclusive education is provided in 101 general education schools, where 2612 children in need of special conditions for education are studying.

Schools implementing inclusive education receive additional funds from the State Budget for organising the education of children in need of special conditions for education, according to the procedure approved by the Government. Schools are equipped with parental and resource centres where individual classes are organised for children in need of special conditions for education in line with individual educational plans.

The National Assembly has adopted in the first reading the draft Law of the Republic of Armenia "On supplementing and amending the Law on general education", which envisages a transfer to universal inclusive education.



In the context of the Law, a transfer to uniform inclusive education in the system of general education is envisaged by providing assistance in organising education to those involved in the educational process at three levels, namely at school level – by the educational institution where the child is studying; at regional level – by a regional pedagogical and psychological support centre; at the state level – by a state pedagogical and psychological support centre.

The Committee notes from the Concluding observations on the combined third and fourth periodic reports of Armenia, adopted by the Committee on the Rights of the Child ( UN-CRC, 2013) that the amendments to the Law “On general education” were introduced in 2012, which provide for the inclusive education for children with special needs. However, the UN-CRC notes that despite the increasing trend in inclusive education, a large number of children with disabilities who live in care institutions and rural areas, do not receive formal education.

The Committee notes that the factual information contained in these observations may be of relevance for the conclusion of the Committee. Therefore, it asks the next report to provide up-to-date information concerning the factual situation indicated in these observations.

The Committee also wishes to be informed about the legislative developments and namely, whether the legislation will explicitly protect persons with disabilities from discrimination in education. It also wishes to be informed about the statistics regarding children with disabilities in mainstream schools. In the meantime, the Committee reserves its position on this point.

#### *Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 17§2 of the Charter on the ground that the net enrolment and attendance rates in the secondary education are low.

## **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 Armenia.

#### ***Migration trends***

Between 1988 and 1992 Armenia saw the arrival of over 200,000 refugees from Azerbaijan due to the war of Nagorno-Karabakh. People born in Azerbaijan represented 40.4% of all individuals born abroad, among whom a large majority now have Armenian citizenship (89.7%). Other important migrant communities are from Georgia, Russia and Iran.

Prior to the economic crisis, Armenia saw a rise in immigration. In 2006, 2,818 residence permits were issued; in 2007, 3,921 and in 2008, 4,155 – an average annual increase of 15.8%. Major countries of origin were Iran (almost 29%), USA (10%), Syria (9%), Iraq (7%), and Russia (6%).

However, Armenia has seen continual patterns of mass emigration since 1991. In the period of 2001 and 2011 the resident population fell from 3.2 to 3.0 million persons. Net migration stood at –320,000, a drop of 10% of the total population. The preferred destinations for Armenian migrants are Russia and the US, while European Union Member States are less common destinations.

According to the 2013 European Training Foundation Report on Migration in Armenia, motivations to migrate were predominantly connected to issues of employment. The study showed that the lack of employment opportunities in Armenia was the key motivation for 40% of migrants. In 2010, the real unemployment rate in Armenia was 19%. Youth unemployment was particularly high (39% in 2010) and it tends to be higher among young women and the urban and better educated youth in general. The data from the ILO report (2009) also confirms that Armenia's emigration flows during 2002-08 have predominantly involved labour migrants.

In addition to long term emigrants, a relatively stable group of temporary labour migrants has emerged. As a result, there is an average annual migration of 15,000 persons to neighbouring countries for work purposes.

#### ***Change in policy and the legal framework***

The Committee notes that bilateral interstate agreements for regulating relations in the area of migration have been concluded with at least 10 states. Armenia has acceded to the conventions related to the Status of Stateless Persons (1954), for the Protection of Human Rights and Fundamental Freedoms (1950), on the Nationality of Married Women (1957), Concerning Discrimination in Respect of Employment and Occupation, the Strasbourg Framework Convention for the Protection of National Minorities (1995), and the ILO Migration for Employment Convention (C97).

The Law on Foreigners is the key legal act regulating the employment of foreigners in Armenia.

The Committee notes that the State Migration Service (SMS) was created in 2010 within the Ministry of Territorial Administration. It is the central authority responsible for the development and implementation of the state policy on management of migration processes. It is also mainly responsible for the coordination of government activities on policy development and drafting legal acts concerning migration issues.

The Committee notes that the International Organisation for Migration (IOM) runs several programmes to regulate migration, combat trafficking, and improve integration through advice and education.

The Committee notes from the report that Recent key policy instruments regarding migration include the Concept for the Policy of State Regulation of Migration in the Republic of Armenia, 2010; the Action Plan for Implementation of the Policy Concept for the State Regulation of Migration in the Republic of Armenia, 2012-2016 and the Concept on Studying and Preventing Irregular Migration Originating from Armenia, 2012-2016 (adopted in 2011).

### ***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 notes from the 2013 European Training Foundation Report on Migration in Armenia that social networks are the predominant source of information and support in preparing to migrate, with only a small share of the respondents stating that they would currently rely on state support. Knowledge of possible state programs is also low, at only 11%.

The report states that in 2010-2013, Migration Resource Centres have been established. The purpose of these centres is informing, orienting and training persons intending to leave for abroad and to work abroad (mostly migrant workers), as well as to support their reintegration upon return.

In particular, activities carried out include:

- providing of free consultation on migration and labour legislation of different countries;
- cooperating with and acting as a reliable and linking partner between foreign organisations and labour migrants to the extent possible;
- informing about dangers of unlawful labour migration or means of avoiding them and protection against them;
- organising, where necessary, courses for professional education, re-qualification or improving the qualification

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. It asks whether other forms of information are available beside the Migration Resource Centres. It also asks whether information is available in a number of languages to assist migrants in understanding their rights.

### ***Measures against misleading propaganda relating to emigration and immigration***

While it details certain laws and policies intended to combat misleading propaganda in relation to migration, which have been promulgated in Armenia, the report provides no information about the implementation of such measures in practice.

According to the 2011 report of the European Commission Against Racism and Intolerance (ECRI) on Armenia, there is no overt hostility vis-à-vis the ethnic minorities that are present in Armenia today. Armenia is not confronted with a particular racist-violence problem.

According to the abovementioned report of ECRI, there is no comprehensive civil and administrative legislation against racial discrimination and no provisions in the Criminal Code prohibiting organisations that promote racism.

The Committee also notes that the Human Rights Defender has not organised awareness campaigns to inform the public on issues surrounding discrimination and migration.

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information. It considers that in order to combat misleading propaganda, there must be effective organs to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.

It is noted in the abovementioned ECRI report that there is a self-regulatory instrument for the media, which deals with discrimination issues, however, not all representatives of the industry have signed up. The Public Council is working towards a new Code of Ethics under the aegis of the President of the Republic.

The Committee notes from the abovementioned report of ECRI that under Article 24 of the Law on TV and Radio it is prohibited to inspire national or religious hatred or discord. Responsibility for its enforcement lies with the State TV and Radio Commission. This is a body composed of eight members, which has the power to impose administrative sanctions.

In its report, ECRI notes that there have been complaints to the Commission about racism and related intolerance leading to reprimands and warnings.

The Committee recalls that States have an obligation to take measures or undertake programmes to prevent the dissemination of false information to departing nationals, as well as to prevent the misinformation of foreigners wishing to enter the country. Authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia).

The Code on Administrative Offences (Art. 201) defines sanctions for the employer (in the case of a legal entity, their executive directors) if they employ foreigners without a work permit or without appropriate resident status. The employer is punished by a fine of 100-150 minimum monthly salaries.

The Committee also notes the Trafficking Policy of Armenia 2010-2012 was implemented during the reference period. It asks for further information on the content of this policy and on actions taken to apply it. It asks what other steps are being taken to combat human trafficking and other abuses of potentially vulnerable migrants.

According to the report of ECRI, the Human Rights Defender's office gets recognition and receives an increasing number of complaints from various vulnerable groups, especially refugees. According to ECRI, the greatest challenge is its budget, which, despite recent increases, remains inadequate. The Committee asks for full and up to date information on the activities of the Human rights Defender.

According to ECRI, no independent mechanism for dealing with complaints against the police has been created. There are no statistics on offences motivated by religious hatred and civil- and administrative-law actions for racial discrimination.

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.

ECRI notes in its report that members of the judiciary, law-enforcement authorities and lawyers receive general human-rights training. The Committee asks for further details regarding this training, and whether it includes content related to discrimination or racism, and to migration in particular.

The Committee notes that a number of activities have been organised to promote the provision of information to combat misleading propaganda, in particular in combination with the Migration Resource Centres. It also notes that strategies and legal frameworks exist to combat trafficking and to deal with discrimination. It asks that the next report provide a full and up to date description of the situation in law and in practice regarding the matters dealt with above and highlighted in the case law of the Committee. In particular, it requests information on measures taken to implement and reinforce the legal and policy framework.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 19§1 of the Charter.

## **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 Armenia

### ***Departure, journey and reception of migrant workers***

The Committee recalls that it previously asked for a full description of the legal framework relating to the departure, journey and reception of migrant workers and the measures taken to implement it (administrative arrangements, programmes, action plans, projects, etc.) (Conclusions 2011).

The Committee notes from the report that Migration Resource Centres have been set up during the reference period. The report states that the focus of services provided by these centres is to give information to potential emigrants, and to support the reintegration of returning migrants.

The Committee recalls that 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).

The Committee recalls that reception 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). It asks what services are available for newly arrived migrants to support them upon reception in Armenia.

Reception means the period of weeks which follows immediately from their 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).

The Committee considers that the information provided in the report is not sufficient to establish that the situation in respect of assistance provided for the departure, journey and reception of migrant workers is in conformity with the Charter. It requests that the next report provide a full and up-to-date description of the situation, having regard to the abovementioned requirements.

### ***Services for health, medical attention and hygienic conditions during 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 requests details of any measures taken in regard of collective recruitment, if it should occur.

### *Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 19§2 of the Charter on the ground that it has not been established that appropriate measures are taken to facilitate the departure, journey and reception of migrant workers.

## **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 Armenia.

The Committee recalls from its previous conclusion (Conclusions 2011) that co-operation with emigration and immigration States is undertaken by Armenian authorities within the framework of bilateral agreements concluded with a number of States.

The Committee previously asked, in the abovementioned conclusion, for a description of the contacts and information exchanges established by social services in emigration and immigration countries. No such description is found in the current report. There is, however, mention that the Migration Resource Centres which have been established during the reference period can act as “a reliable and linking partner between foreign organisations and labour migrants”. The Committee asks whether the scope of these links extends only to issues of employment. It also notes from the report that the Migration Resource Centres can “introduce the representatives of Armenia in other countries, Armenian communities, international organisations and other non-governmental organisations and the services provided by them.” The Committee asks that the next report provide evidence to demonstrate what kinds of service are involved in this communication, and whether these services are provided to migrants who are not nationals of Armenia.

The Committee recalls that 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). The Committee notes that the number of immigrants in Armenia is relatively low, however it notes that a large number of Armenians now reside or work outside of its territory, and therefore may require assistance. Whilst it considers that collaboration among social services can be adapted in the light of the size of migratory movements (Conclusions XIV-1 (1998), Norway), it holds that there must still be established links or methods for such collaboration to take place.

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. 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 (Conclusions XIV-1 (1998), Belgium).

Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (Conclusions XV-1 (2000), Finland).

The Committee asks again that the next report provide a full and up-to-date description of the contacts and information exchanges established by social services in emigration and immigration countries. It considers that if the information requested is not provided in the next report, there will be nothing to establish that the situation is in conformity with 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 4 - Equality regarding employment, right to organise and accommodation*

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

The Committee recalls from its previous conclusion that the Constitution of the Republic of Armenia, along with other legislation, prohibits discrimination (Conclusions 2011).

### **Remuneration and other employment and working conditions**

The report states that in 2010-2013, the sphere of employment was regulated by the Law "On the employment of population and social protection in case of unemployment" which envisages the voluntary nature and free choice of employment. This Law prohibits discrimination in employment relations. Article 3 of that Law states that it applies to foreigners as well as to nationals.

The Committee notes from the report that migrant workers in Armenia must have a residence status and be registered with the territorial centres of the State Employment Agency of the Ministry of Labour and Social Affairs of the Republic of Armenia.

The report states that in 2012 the 2013-2018 Employment Strategy was approved by the Government of the Republic of Armenia. The Committee asks for further details concerning the content and implementation of this Strategy, in particular in relation to the situation of migrant workers.

In December 2013, a new Law "On employment" was adopted. According to the report, the new law introduces major new programmes which were not contained in the previous legal regulations. Programmes envisaged by the new Law include the organisation of vocational training, assistance in changing employment and the organisation of employment experience for persons with no professional work experience.

The Committee notes from the report that State programs regulating the sphere of employment are accessible also to migrants staying in the Republic of Armenia if they enjoy residence status.

The Committee notes from the Migration and Integration Policy Index (MIPEX) report on Armenia (published 2010) that temporary migrant workers were not necessarily guaranteed equal access to the full labour market or public employment services because authorities retain significant discretion in regulating access to these services.

The Committee asks what body is responsible for the implementation of employment programmes and services, and whether any data is collected concerning the number of migrant workers who avail themselves of such programmes. It asks whether there are guidelines or rules which govern the actions of the responsible authority when dealing with migrant workers. It also asks whether employees of employment services receive training on non-discrimination.

The Committee further asks whether there is a body which can receive complaints concerning discrimination in employment. It asks for any further information regarding the activities of such a body.

The Committee notes from the ILO website that the State Labour Inspectorate has power to inspect employers and impose sanctions. The Committee asks for further information on its activities in relation to discrimination and migrant workers, and for details of whether any sanctions have been imposed for these reasons.

The Committee also asks for information regarding the judicial application of the non-discrimination legislation.



### ***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 contains no information regarding migrant workers' membership of trade unions and enjoyment of the benefits of collective bargaining. The Committee previously asked for a full and up-to-date description of the relevant legal framework, and the measures taken to implement it. It reiterates this request. In the meantime it finds that it has not been established that the situation is in conformity with Article 19§4(b) of the Charter.

The Committee refers to the Statement of Interpretation on Article 19§4 (Conclusions 2015) and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

### ***Accommodation***

The report provides no information regarding equal treatment in relation to accommodation.

The Committee asks what programmes exist to assist people in finding or affording accommodation. It asks whether these are available to migrant workers on an equal basis with nationals. It also asks what conditions must be fulfilled in order to receive such assistance.

The Committee further requests information regarding the number of people who receive assistance with their housing needs.

The Committee recalls that there must be no legal or de facto restrictions on home-buying (Conclusions IV (1975), Norway), access to subsidised housing or housing aids, such as loans or other allowances (Conclusions III (1973), Italy).

The Committee notes from the abovementioned MIPEx report that "permanent residents enjoy some of the same social and economic rights as Armenian nationals, with notable exceptions such as (...) land ownership." The Committee notes that the Constitution of the Republic of Armenia, and Article 4 of the Land Code, explicitly provide that foreigners may not own land but may only be users of it. The Committee considers that this may constitute discrimination against migrant workers, and asks for information on how equal treatment with respect to accommodation, in particular private housing and home-buying, is secured.

The Committee asks whether any policies are implemented to promote non-discrimination in matters of housing, in particular in the rental sector.

### ***Conclusion***

The Committee concludes that the situation in Armenia is not in conformity with Article 19§4 of the Charter on the ground that it has not been established that migrant workers enjoy equal rights with respect to membership of trade unions and collective bargaining.

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

*Paragraph 5 - Equality regarding taxes and contributions*

Armenia has submitted no information on this provision in its report.

The Committee previously asked for a full description of the relevant legal framework and the measures taken to implement it (administrative arrangements, programmes, action plans, projects, etc.) (Conclusions 2011). As no information on these matters is provided, the Committee finds that it has not been established that no discrimination against migrant workers occurs in relation to employment taxes and contributions.

*Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 19§5 of the Charter on the ground that it has not been established that no discrimination against migrant workers occurs in relation to employment taxes and contributions.

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

### *Paragraph 6 - Family reunion*

Armenia has submitted no information on this provision in its report.

The Committee previously asked for a full description of the relevant legal framework and the measures taken to implement it (administrative arrangements, programmes, action plans, projects, etc.) (Conclusions 2011).

### **Scope**

The Committee recalls that the definition of family includes the minor children of migrant workers, and their spouses. It considers that the maximum age limit permissible under Article 19§6 for the family reunion of spouses is the age at which marriage may be legally recognised in the host state, as any higher age requirement hinders rather than facilitates family reunion.

The Committee requests that the next report provide a description of the scope of family reunion in Armenia, including whether there are any age limits imposed for children or spouses.

### **Conditions governing family reunion**

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).

States may require a certain length of residence of migrant workers before their family can join them. A period of one year is acceptable under the Charter, but a longer period is considered excessive (Conclusion 2011, Statement of interpretation on Article 19§6).

The level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions XVII-1 (2004), the Netherlands).

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee notes from the 2010 report of the Migration and Integration Policy Index on that reunited family members obtain equal rights as their sponsor, autonomous residence permits, and can apply for permanent residence after a few years. However, the report also states that a major area of weakness is the authorities' wide discretion in the procedure. Applicants can be rejected without due account taken of their personal and family circumstances and without the right to representation before an independent administrative court.

The Committee considers 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. It considers that the lack of an independent

mechanism for review of decisions on family reunion applications is not in conformity with the Charter.

The Committee asks that the next report provide a full and up-to-date description of the legal framework for family reunion, including any restrictions or requirements, and the measures taken to implement it. It also asks for statistical information concerning the number of family reunions.

#### *Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 19§6 of the Charter on the ground that there is no right of review of a decision rejecting an application for family reunion before an independent body.

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

### *Paragraph 7 - Equality regarding legal proceedings*

The Committee notes that the report does not contain any information pertaining to legal aid and assistance for migrant workers.

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 I (1969), Italy, Norway, United-Kingdom).

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

The Committee previously noted that the Advocacy Act guaranteed legal assistance free of charge in cases prescribed by the Criminal Code and Civil Code. The Committee asks what categories of case are covered by legal assistance. It asks what conditions are required for individuals to be eligible for free legal assistance. The Committee noted in its previous Conclusion that a Bill on Amendments to the Act, which would introduce a scheme of entitlement based on the individual circumstances of the person, was before parliament. It asks for updated information on the status of these amendments and their content. In the meantime it considers that the information available to the Committee is not sufficient to enable it to determine whether the situation is in conformity with the Charter.

The Committee notes that Sections 41 and 42 of the Advocacy Act provide for a Public Defender.

The Committee notes that Article 46 of the Civil Procedure Code allows for the appointment of a translator at the behest of either of the parties, who shall pay for the services of the translator. The Committee is unable to find any information on the services of translators or interpreters in criminal proceedings. It considers that this is of utmost importance in enabling foreigners to participate in legal proceedings. It therefore reiterates its demand for information concerning the arrangements for interpretation and translation, including who bears the cost. In the meantime it considers that it has not been established that the situation in this regard is in conformity with the Charter.

The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid assistance.

### *Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 19§7 of the Charter on the ground that it has not been established that migrant workers are secured treatment not less favourable than that of Armenian nationals in respect of relevant legal proceedings through the provision of legal aid, interpretation and translation services.

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

### *Paragraph 8 - Guarantees concerning deportation*

The Committee notes that the report submitted by Armenia does not contain any information regarding the expulsion of foreigners from Armenia.

Article 19§8 of the Charter obliges 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). In this respect, the Committee previously noted (Conclusions 2011) that Section 30 of the Law on Foreigners lays down the grounds for expulsion of a foreigner. Pursuant to that section, a foreigner shall be required to leave the territory where:

- the validity period of his or her entry visa or of residence status has expired;
- the entry visa has been revoked on the grounds referred to in Article 8(1), (2), and (3) of this Law;
- his or her application for obtaining a residence status or extending the term has been refused;
- he or she has been deprived of residence status on the grounds referred to in Article 21 of this Law.

Article 21 of the law provides for revocation of residence status where the foreigner:

- has submitted false information in order to obtain residence status;
- was entitled to reside on the basis of marriage, and that marriage has broken down, except where the foreigner applies for a temporary residence permit, having been married and lived in Armenia for one year (Article 15(3));
- has been absent from the country for more than six months;
- threatens the state security or public order.

Article 32 of the abovementioned Law prohibits collective expulsion, and proscribes expulsion in situations of abuse of human rights, or where there is evidence that the individual would be subject to persecution on the grounds of racial, religious affiliation, social origin, citizenship, or political convictions, or if the foreigners concerned might be subjected to torture or cruel, inhuman or degrading treatment or punishment, or to the death penalty. Furthermore, it is prohibited to expel a foreigner if they are a minor, are over 80 years of age, or have a minor under their care.

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

The Committee asks whether the individual must be convicted of a crime prior to being determined a threat to state security or public order, and what the procedure for determining whether an individual fulfils paragraph (d) of Article 21 of the Law on Foreigners is. It also asks whether the authority and the court are required to consider the individual circumstances when making the decision to expel a foreigner.

Article 8 of the abovementioned Law also provides for revocation of an entry visa on grounds of national security, and also on the basis that a migrant is suffering from an infectious disease. The Committee asks which infectious diseases have been established as

constituting grounds for expulsion. It recalls that risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment (Conclusions V (1977), Germany). It asks whether a person would still be expelled despite their acceptance of treatment measures.

The Committee recalls that States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake (Conclusions V (1977), United Kingdom).

The Law on Foreigners (Articles 31 and 34) requires a court decision in order for an expulsion order to be served. If the expulsion is rejected, the foreigner must be granted a temporary residence permit. If the expulsion decision is appealed, as provided for by Article 35, the expulsion shall be suspended.

The Committee reiterates its request for a full and up to date description of the rules regarding expulsion, and requests statistics and other information on its application in practice. In the meantime, it is unable to assess the overall situation relating to the expulsion of migrants. It therefore finds that it has not been established that the situation is in conformity with article 19§8 of the Charter.

#### *Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 19§8 of the Charter on the ground that it has not been established that migrants lawfully residing in Armenia shall not be expelled unless they endanger national security or offend against public interest or morality.

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

### *Paragraph 9 - Transfer of earnings and savings*

Armenia has submitted no information on this provision in its report.

According to information submitted by Armenia on 14 July 2011, replying to some Committee's additional questions, there are no restrictions on the transfer of earnings of migrant workers.

In its previous conclusion (Conclusions 2011), the Committee nevertheless requested a relevant and comprehensive description of the law and practice in relation to the transfer of earnings and savings of migrant workers.

The Committee recalls that this provision obliges States 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). It requests that the next report provide a full and up to date description of the legal framework of transfers and remittances, and any practical measures taken to implement it. With reference to its Statement of Interpretation on Article 19§9 (Conclusions 2011), the Committee furthermore asks whether there are any restrictions on the transfer of the movable property of migrant workers.

### *Conclusion*

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



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

### *Paragraph 10 - Equal treatment for the self-employed*

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

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 in Armenia not to be in conformity with Articles 19§2, 19§4, 19§5, 19§6, 19§7, 19§8, and 19§11. Under Article 19§4, part of the reasoning of the Committee was that it had not been established that migrant workers were secured equal treatment in matters of housing, and the Committee notes that this same issue also applies with regard to self-employed migrants. Accordingly, for the same reasons as stated in the conclusions on the abovementioned Articles, the Committee concludes that the situation in Armenia is not in conformity with Article 19§10 of the Charter.

### *Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 19§10 of the Charter as the grounds of non-conformity under Articles 19§2, 19§4, 19§5, 19§6, 19§7, 19§8, and 19§11 apply also to self-employed migrants.

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

### *Paragraph 11 - Teaching language of host state*

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

The report states that in quite a few general education schools of the Republic of Armenia Armenian language classes are organised. The Committee also notes from the information provided by the representative of Armenia to the Governmental Committee that the International Organization of Migration also organises some Armenian language courses for migrants who apply for them.

The 2010 report of the Migration and Integration Policy index (MIPEX) on Armenia highlights that education of migrant children is a problem in Armenia. It affirms that legal access to education is unfavourable in Armenia. All children are guaranteed the right to at least compulsory education, however in many cases, immigrant children educated in Armenia then face additional fees to access vocational training and higher education.

According to the 2011 report of the European Commission against Racism and Intolerance (ECRI) on Armenia, there are there three main types of secondary schools: (i) those providing an Armenian curriculum which also have Russian classes and sometimes teach minority languages as extracurricular topics, (ii) those with an Armenian/minority curriculum (also with Russian classes) and (iii) those where Russian is the main language of education; ethnic-minority pupils often attend the latter in order to benefit from instruction in their mother tongue. The abovementioned MIPEX report notes, however, that most pupils only benefit from tailored instruction if there are bilateral agreements in place.

The Committee notes that the report provides no information pertaining to the education of adult migrant workers and their adult family members. It recalls having previously noted (Conclusions 2011) that no programmes or activities existed to enable migrant workers to learn Armenian. The Committee considers that the information provided is not sufficient to demonstrate that migrant workers or their families have effective access to Armenian language courses. It therefore reiterates its conclusion that the situation is not in conformity with the Charter.

The Committee requests that the next report provide a full and up to date description of the situation concerning the teaching of the Armenian language to migrant workers and their family members, as well as statistical data in order for the Committee to assess the extent of provision of any language courses.

### *Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 19§11 of the Charter on the ground that teaching of the Armenian language is not organised or promoted sufficiently for migrant workers or their adult family members.

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

### *Paragraph 12 - Teaching mother tongue of migrant*

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

The report states that in quite a few general education schools of the Republic of Armenia additional educational programs for the instruction of foreign languages are organised (English, French, German, Italian, Spanish, Persian, Georgian). Schools with Russian classes and advanced instruction of the Russian language also exist in the country. Children of migrant workers may also study at these schools.

According to the 2011 report of the European Commission against Racism and Intolerance (ECRI) on Armenia there are three main types of secondary schools: (i) those providing an Armenian curriculum which also have Russian classes and sometimes teach minority languages as extracurricular topics, (ii) those with an Armenian/minority curriculum (also with Russian classes) and (iii) those where Russian is the main language of education; ethnic-minority pupils often attend the latter in order to benefit from instruction in their mother tongue. The Migration and Integration Policy Index report on Armenia (2010) notes, however, that most pupils only benefit from tailored instruction if there are bilateral agreements in place.

According to the report of ECRI, the Armenian authorities have taken important steps towards streamlining minority education. The Ministry of Education is investing considerable effort and funding into producing textbooks and curricula for teaching most minority languages (with significant input from ethnic-minority representatives), but the process is far from complete.

The Committee requests that the next report provide a full and up to date description of the situation concerning the teaching of the mother tongue of the migrant worker to his or her children, including through community projects. It asks that statistics for the number of children being taught the mother tongue of their parent(s) be provided. In the meantime, it considers that the information provided in the report does not permit it to assess the situation. It therefore reserves its position on this issue.

### *Conclusion*

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

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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

In its previous conclusion the Committee asked what vocational training and guidance existed for persons with family responsibilities.

The Committee recalls in this regard that to be able to return to professional life, such persons may need special assistance in terms of vocational guidance and training. However, if the standard employment services (those available to everyone) are well developed, the lack of extra services for people with family responsibilities cannot be regarded as a human rights violation (Conclusions 2003, Sweden).

The Committee notes in this regard that Armenia has not accepted Article 10§3 of the Charter where the Committee examines the existence of vocational training and retraining facilities of adult workers.

The report states that the Law On Employment having entered into force since 1 January 2014 provides for a new subprogramme within the framework of the organisation of professional teaching, for persons facing the risk of dismissal. The beneficiaries of the programme include also women (or men) registered by the authorised body as job-seekers within three months following the end of leave for taking care of a child under the age of three. According to the report, professional teaching courses will be organised for them to reduce the risk of dismissal, and to help avoid losing their job. The Committee wishes to be kept informed about the implementation of this law and the number of persons with family responsibilities having undergone the training and vocational guidance.

### ***Conditions of employment, social security***

In reply to the Committee's question, the report states that under Article 176 of the Labour Code unpaid leave shall be granted upon the request of the employee taking care of a sick family member (for at most 30 days a year). Besides, Article 12 of the Law on Temporary Incapacity Benefits provides that the benefit for the care of a sick family member shall be provided to employees for seven days in case of a sick adult family member and 24 days in case of a sick child.

### ***Child day care services and other childcare arrangements***

In its previous conclusion the Committee asked for information on the coverage rate of children (aged 0-6 years) in child day care services and other childcare arrangements. It also asked whether there was a sufficient provision of childcare facilities, which would be affordable and of high quality (quality being assessed on the basis of the number of children under the age of six covered, staff to child ratios, staff qualifications). In the absence of this information in the report, the Committee considers that it has not been established that childcare services are adequate.

### *Conclusion*

The Committee concludes that the situation in Armenia is not in conformity with Article 27§1 of the Charter on the ground that it has not been established that childcare services are adequate.

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

### *Paragraph 2 - Parental leave*

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

The Committee notes from the report that Article 173 of the Labour Code, as amended provides that leave for taking care of a child under the age of three shall be granted upon the request of the mother, father, or the custodian actually taking care of the child. The leave may be taken in a single period or be used in parts. The employees entitled to such leave may take it in turn. The Committee asks what is the length of the non-transferable part of fathers' entitlement to parental leave.

According to Article 27 of the Law On State Benefits, one of the parents or the only parent or a custodian of a child who is on leave for taking care of a child under the age of three shall have the right to receive the benefit for the care of a child under the age of two.

The Committee recalls that under Article 27§2 of the Charter the States are under a positive obligation to encourage the use of parental leave by either parent. The States shall ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave.

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

The Committee asks what is the level of the parental benefit.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Armenia is in conformity with Article 27§2 of the Charter.

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

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

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

### ***Protection against dismissal***

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.

### ***Effective remedies***

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as legislation made no provision for the reinstatement of workers unlawfully dismissed on account of their family responsibilities.

The Committee notes that according to Article 265, as amended, if the courts find that the dismissal was unlawful, the employee's rights will be restored. In case of impossibility of reinstatement, the court will order the employer to compensation for the entire period of forced idleness in the amount of the average salary and pay compensation in exchange for non reinstatement of the employee in the amount of not less than the average salary, but not more than twelve times the average salary.

The Committee understands that the compensation in lieu of reinstatement will be ordered in case of impossibility of reinstatement due to the damaged labour relationship.

In its previous conclusion the Committee noted that there was a ceiling to the pecuniary damage which could be paid to an employee unlawfully dismissed on the ground of parental responsibilities. It asked whether compensation for non-pecuniary damage could be sought through other legal avenues (e.g. non-discrimination legislation).

The Committee notes that the report does not provide this information. Therefore, the Committee considers that it has not been established that the compensation for unlawful dismissal due to family responsibilities is adequate.

### ***Conclusion***

The Committee concludes that the situation in Armenia is not in conformity with Article 27§3 of the Charter on the ground that it has not been established that the compensation for unlawful dismissal due to family responsibilities is adequate.



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**AUSTRIA**

*This text may be subject to editorial revision.*





The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Austria which ratified the Charter on 20 January 2011. The deadline for submitting the 3rd report was 31 October 2014 and Austria submitted it on 6 November 2014.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

Austria has accepted all provisions from the above-mentioned group except Articles 7§6, 19§4, 19§8, 19§§10, 19§11, 27§3 and 31. As regards Article 8§2, the Committee refers to the letter addressed to the Austrian Government on 22 May 2015 signed by the President, Giuseppe Palmisano, and appended to these conclusions.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Austria concern 26 situations and are as follows:

- 21 conclusions of conformity: Articles 7§1, 7§2, 7§3, 7§4, 7§7, 7§8, 7§9, 8§1, 8§3, 8§4, 8§5, 17§2, 19§1, 19§2, 19§3, 19§5, 19§7, 19§9, 19§12, 27§1 and 27§2
- 4 conclusions of non-conformity: Articles 7§10, 16, 17§1 and 19§6

In respect of the remaining situation related to Article 7§5, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Austria under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 16**

Under the Act to Reform the Law of Parent and Child and Name Law 2013, the courts can entrust parents with joint custody even against one of the parents' will, where it is ruled that this would be more in the interest of the child's well-being than if one parent were to have sole custody.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),

- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).]

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- right to a fair remuneration – decent remuneration (Article 4§1)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 Austria.

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).

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).

Children are defined as minors under the age of 15 or older if compulsory education is completed later (Section 2(1) of the Young Persons Employment Act 1987 (*Kinder- und Jugendlichen Beschäftigungsgesetz, KJBG*)) and young persons are individuals under 18 years of age who are no longer children (Section 3 *KJBG*).

The report indicates that child labour is generally prohibited in Austria (Section 5 *KJBG*). The employment of children is permitted only for the purpose of instruction or education or, in the case of one's own children, when they are given light household tasks for a short period (Section 4 *KJBG*).

In specific cases the head of the provincial government can approve the deployment of children at music, theatre or other performances or at photo or film shoots or television or audio recordings (Section 6 *KJBG*). Approval may be granted only if:

- a special artistic, scientific or educational interest exists or for the purpose of recording advertising and
- the character and nature of the work justify it in the specific case.

Approval may be granted only under written consent by the child's legal representative. The deployment of children at variety shows, cabarets, bars, sex shops, dance clubs, discotheques or similar businesses is forbidden. In the case of commercial performances, the Labour Inspectorate's opinion must first be heard and a general practitioner or paediatrician must issue an official medical opinion certifying that the child meets the physical requirements for the work. In the case of film or television or similar recordings, approval may furthermore be granted only under condition of an opinion by an ophthalmologist certifying that no objections exist to such work.

Section 5a *KJBG*, as amended in 2010, permits children who are at least 13 years of age (instead of 12 years of age as prior to the amendment) to be employed under certain conditions at isolated and light tasks. The permitted activities are:

- tasks at family businesses;
- tasks in the household;
- errands, providing help at sports grounds and playgrounds, gathering flowers, herbs, mushrooms and fruit, and comparable activities when not performed within the framework of a commercial business or an employment relationship.

The report indicates that isolated tasks are not considered light if, when performing them, the child exceeds the level of work it can be expected to reasonably perform when considering children's varying capabilities based on age and personal ability.

Section 5a *KJBG* specifies the following additional limitations:

- prohibition of employment on Sundays and holidays;
- prohibition of night work;
- a limit of two hours' work on school days and on school holidays, whereas the total number of hours dedicated to school instruction and to light jobs must not exceed seven hours;
- any impairment of school attendance or the fulfilment of religious duties is prohibited;
- any risk to the child's physical or mental health and development or safety must be ruled out, as must be any risk of accident or of harmful effects due to heat, cold or moisture, or due to physically harmful substances or radiation, dust, gases or vapours.

The report further indicates that analogous regulations to those listed above are provided for the agricultural and forestry sector (Sections 109 and 110 of the Agricultural Labour Act (*Landarbeitsgesetz, LAG*)). As regards young persons employed as contractual employees in the public service, the Contractual Public Employees Act 1948 (*Vertragsbedienstetengesetz 1948, VBG*), requires a minimum age of 15 years in order to be admitted to the federal service (Section 3 (1) no. 4 *VBG*). The provisions of the *KJBG*, that pertain to protection also apply to young persons employed as contractual public employees.

The report indicates that the District Administration Authorities are jointly responsible for monitoring compliance with the provisions of the act, in collaboration with the Labour Inspectorates (labour inspectors responsible for child labour and the protection of young persons and apprentices), municipal authorities and school administrations. An obligation exists to report any evidence of violations of child labour regulations; this obligation applies to school teachers, physicians and bodies of private youth welfare organisations as well as all corporate bodies whose responsibilities include matters pertaining to youth welfare (Section 9 *KJBG*).

The report indicates that during the period 2010-2012 the Labour Inspectorate identified 10 cases of violations of regulations related to child labour. The Committee asks information on the sanctions imposed in cases of violation. The Committee asks the next report to provide information on the number and nature of violations detected.

Regarding work done at home, States are required to monitor the conditions under which it is performed in practice. The Committee asks whether the authorities monitor work done at home by children under 15 and which are their findings in this respect.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 7§1 of the Charter.

## **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 Austria.

The report indicates that there have been no changes to the relevant legislation during the reference period.

The Ordinance on Prohibitions and Restrictions of Employment for Young Persons (*Verordnung über Beschäftigungsverbote und Beschränkungen für Jugendliche, KJBG-VO*) prohibits young persons from performing (with some exceptions subject to conditions) work with hazardous substances, work under physical forces, work under psychological or physical strain, work with hazardous work equipment and other hazardous or stressful work or procedures. "Young persons" refers to persons who are below the age of 18.

Section 2 *KJBG-VO* prohibits the employment of young persons in the following businesses:

- sex shops, sex cinemas, striptease clubs, table-dancing clubs, go-go clubs, peep shows and clubs with peep shows;
- at the manufacturing, sale and presentation of pornographic products, irrespective of the medium (data carrier) used;
- betting offices and all activities related to the brokering and the agreement of bets on a commercial basis;
- at the cash desk of gambling halls where machines offering cash or material winnings are located.

The report indicates that young persons under 18 are prohibited from performing the following types of work, listed in Sections 4 to 6 *KJBG-VO*: work with hazardous substances (lead, asbestos etc.); work under physical forces; work under psychological and physical strain; work with hazardous work equipment; other hazardous and stressful work and procedures (demolition work in construction and civil engineering, work on scaffolding etc.).

Young persons under 18 are permitted to perform the types of work listed above in certain cases, but only under the condition that those persons are in training, and the work is necessary for the training and performed under supervision (Section 3(2) or Section 5 No. 3 *KJBG-VO*). The Committee asks information on the activities of the Labour Inspectorate of monitoring these arrangements.

The report indicates that in 2012 from a total number of 1,636 cases of violations of the specific provisions aimed at protecting young persons, 29 concerned breaches of prohibitions and restrictions of employment.

The Committee recalls that the situation in practice should be regularly monitored and asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment under the age of 18 for dangerous or unhealthy activities.

### *Conclusion*

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

The report indicates that there has been an amendment to the legal framework during the reference period. Section 5a of Young Persons Employment Act 1987 (*KJBG*) permits children who are at least 13 years of age (instead of 12 years of age as prior to the amendment) to be employed under certain conditions at isolated and light tasks. As noted under Article 7§1, Section 5 a *KJBG* provides a limit of two hours' work on school days and on school holidays, whereas the total number of hours dedicated to school instruction and to light jobs must not exceed seven hours.

The Committee asked in its previous conclusion (Conclusions 2011) whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday.

The report indicates that according to Section 7 (2) No. 3 *KJBG*, the employment of children during school holidays is only admissible if the head of the provincial government issues an administrative decision ensuring that:

- the children are employed for a maximum of one third of the school holidays and only to the extent absolutely necessary;
- the performances, photo or film shoots, television or audio recordings are of special value for culture or popular education and cannot take place outside of the school holidays.

The report underlines that children are permitted to work during school holidays only if they are involved in isolated and light tasks and not on a regular basis. Where such work is performed regularly during school holidays and not just in isolated cases, such tasks are no longer permitted but constitute illegal child labour.

The report indicates that the total duration of school holidays is of three months. The summer holidays last two months. Since the period of employment as provided by in Section 6 *KJBG* may last for one month of the school year at most, two months must therefore be time off school. The report indicates that the legislation therefore ensures that at least two weeks of school holidays remain free of any employment, because even if employment for the one month permitted falls within the summer holidays, one month of leisure is left during the summer holidays.

The report indicates that in 2012 from a total number of 1,636 violations of the specific provisions aimed at protecting young persons detected by the Labour Inspectorate, 443 violations concerned breaks, rest periods, night rest, rest on Sunday and holidays, weekly time off. The report indicates that a large number of young workers, namely 1,111 were working in hotels and restaurants and other violations concerned work in manufacturing, wholesale and retail trade, repair of motor vehicles and motorcycles, construction. The Committee asks whether children subject to compulsory education were employed in the above mentioned sectors.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment of children who are subject to compulsory education.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 7§3 of the Charter.

## **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 Austria.

The Committee recalls that under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. The report indicates that the working time of young workers under the age of 18 should not exceed 8 hours per day and 40 hours per week (Section 11 of the Children and Young Persons Employment Act – *KJBG*). The Committee has previously found this to be in conformity with the Charter as time spent on vocational training is included in the hours of work (Conclusions XV-2 (2001)). The Committee examined the exceptions deviating from the above mentioned rule and considered that, in the light of the conditions which must be fulfilled before applying a different (flexible) distribution of working time, and notably that authorisation must be provided by collective agreement, the situation was not contrary to the Charter (Conclusions XV-2 (2001)). The Committee asks what limits apply to working time of children aged between 15 and 16.

With regard to young persons employed in private households, the report indicates that working time, including standby time when the employee waits to provide the services, must not exceed 80 hours within any two calendar weeks in the case of employees under the age of 18 years, and 100 hours in the case of such persons living in the employer's household (Section 5(1) of the Domestic Help and Domestic Employees Act (*Hausgehilfen- und Hausangestelltengesetz – HGHAG*). Section 5(7) *HGHAG* provides that an extension of the normal working hours by a maximum of 18 hours within any two consecutive weeks can be agreed in writing in the employment certificate where the members of the employer's household include small children (i.e. children up to age three) or where the employer or another member of the household has a physical disability requiring constant care and provision of such care cannot be ensured in any other way. The Committee asks how the Labour Inspectorate monitors these arrangements and examples of sanctions applied in cases of breach of regulations concerning young persons employed in private households.

Concerning young persons employed in agriculture and forestry, Section 109a (1) in conjunction with Section 109 (1) of the Agricultural Labour Act (*Landarbeitsgesetz, LAG*) and the agricultural labour regulations (at *Länder* level) require special consideration to be given to the health and physical development of young persons under the age of 18 years and of all others who continue to be in an apprenticeship or a training relationship lasting at least one year. They must also be provided with the time off required to attend occupational school (courses), without any pay reduction. According to Section 109 (2) of the law cited above, the regular weekly working time of young persons must not exceed 40 hours and daily working time nine hours. Section 109 (7) of the same law prohibits young persons from being deployed for night work or overtime and for work on Sundays and public holidays except in particularly urgent cases. The Committee asks for information on how the Labour Inspectorate monitors the working time of young persons in agriculture and forestry.

The report provides information on the activities of the Labour Inspectorate. In 2012, from 1,636 cases of violations of the specific provisions aimed at protecting young persons identified by the Labour Inspectorates, 309 cases concerned violations of the maximum working time and 29 cases concerned breaches of prohibitions and restrictions of employment. The Committee asks information on the sanctions imposed on the employers in practice for breach of the rules concerning the reduced working time for young persons who are not subject to compulsory education.

### *Conclusion*

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

## **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 Austria.

The detailed statistics provided in the report indicate that the wage gap for young workers in relation to adults does not exceed 20-30% and that apprentice wages range from around a third or more of an adult starting wage at the beginning of the apprenticeship to two-thirds or more at the end as required by Article 7§5.

### **Young workers**

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

The report provides detailed figures indicating the amount of remuneration received by unskilled workers and skilled workers in 2013 in different economic sectors and Länder. The Committee notes that, overall, the salary paid to unskilled workers represents more than 80% of the salary paid to skilled workers. The Committee asks clarification whether the salary indicated for skilled workers corresponds to an adult starting wage and the salary indicated for unskilled workers represents the wage paid to young workers.

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

In order to assess the situation, the Committee needs information on the minimum wage/starting wage of young workers and adult workers calculated net. The Committee underlines that it requests information on the net values, that is, after deduction of taxes and social security contributions. Net calculations should be made for the case of a single person. In the meantime, the Committee reserves its position on this point.

### **Apprentices**

Under 7§5 of the Charter, apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period (Conclusions II (1971), Statement of Interpretation on Article 7§5), starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (Conclusions 2006, Portugal).

The report indicates that Section 17 of the Vocational Training Act (*Berufsausbildungsgesetz, BAG*) specifies the apprentice's entitlement to apprenticeship allowance, required to be disbursed by the person authorised to train apprentices. For every economic sector, the amount of apprenticeship allowance is stipulated in collective agreements. If the apprentice's allowance is not regulated by collective agreement, the amount is based on the agreement stipulated in the apprenticeship contract. In the absence of a collective agreement, the apprentice is entitled to the same amount of apprenticeship pay due for the same, related or similar apprenticeship trades.

The report states that apprenticeship allowance must continue to be paid for the duration of instruction at the occupational school as well as for the duration of the final apprenticeship



examination and the sub-exams as stipulated in the training regulations. This means that an apprentice who has completed training and takes the final examination during the period of further employment as specified in Section 18 *BAG* is entitled to continued apprenticeship allowance until the apprenticeship examination is taken.

The report provides detailed figures comparing apprentices' allowances – broken down by branch, by year of apprenticeship and by Land – with relevant adult workers starting or lowest wages. These figures show that, overall, apprentices receive more than one third of an adult worker's starting or lowest wage at the beginning of their apprenticeship and more than two thirds at the end. The Committee considers that the situation is in conformity with Article 7§5 of the Charter as regards apprentices' allowances.

#### *Conclusion*

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

## **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 Austria.

The report indicates that according to Annual Leave Act (*Urlaubsgesetz*), Federal Law Gazette No. 390/1976 as amended, the minimum annual holiday consists in 30 working days (35 calendar days for takecarers) and there are no special regulations for young persons. Equivalent provisions apply to groups of workers such as construction workers, homeworkers, farm and forestry workers, and public-sector employers who do not fall under the Annual Leave Act.

The report indicates that at the young person's request, the employer must agree to allow at least twelve working days of annual leave to be taken between 15 June and 15 September (Section 32 (2) of Young Persons Employment Act 1987 (*Kinder- Jugendlichen-Beschäftigungsgesetz, KJBG*)).

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It therefore asks that the next report provide on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding paid annual holidays of young workers under the age of 18.

### *Conclusion*

The Committee concludes that the situation in Austria 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 Austria.

It notes that there have been no changes to the legal framework during the reference period.

The report provides information on the activities of the Labour Inspectorate with regard to the enforcement of the regulations aimed at protecting young persons. It indicates that in 2012 from a total number of 1,636 violations of the specific provisions aimed at protecting young persons detected by the Labour Inspectorate, 443 violations concerned breaks, rest periods, night rest, rest on Sunday and holidays, weekly time off.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding night work.

### *Conclusion*

The Committee concludes that the situation in Austria 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 Austria.

The report indicates that relevant provisions applicable to young persons and to adult employees are specified in Chapter 5 "Health monitoring" of the Workers Protection Act (*ArbeitnehmerInnenschutzgesetz, ASchG*), Federal Law Gazette No. 450/1994 as amended, and in the supplementary Ordinance on Health Monitoring at Work (*Verordnung über die Gesundheitsüberwachung am Arbeitsplatz, VGÜ*), issued by the Federal Minister of Labour and Social Affairs, Federal Law Gazette II No. 27/1997, as amended.

The report indicates that initial and follow-up medical examinations (Section 49 *ASchG*), hearing examinations in cases of noise exposure (Section 50 *ASchG*) and other specialised examinations (Section 51 *ASchG*) are to be performed by specifically authorised physicians. The results of the examinations are recorded in a medical report. The reports as well as evaluations resulting from initial and follow-up medical examinations must be immediately forwarded to the medical services of the competent Labour Inspectorate. The Labour Inspectorate issues an administrative decision on the individual's medical fitness. Where the decision ascertains that the person is not medically fit, the employee must no longer be deployed to perform the tasks listed in the administrative decision.

The report indicates that Section 3a of *VGÜ* allows employees under the age of 21 years to be employed in mining only on condition that an initial medical examination takes place prior to starting work and follow-up examinations are carried out at one-year intervals where the individual continues to work.

The Committee recalls that the intervals between check-ups must not be too long (Conclusions 2011, Estonia). It asks what is the duration between the medical examinations of young employees working in other sectors than mining.

The report indicates that the Ordinance on Prohibitions and Restrictions of Employment for Young Persons (*Verordnung über Beschäftigungsverbote und Beschränkungen für Jugendliche, KJBG-VO*), Federal Law Gazette II no. 436/1998, prohibits the employment of young persons at certain businesses or types of work that are associated with particular health or moral hazards, or subjects such activities to conditions. Section 3(3) of *KJBG-VO* specifically prohibits female young persons from performing tasks involving exposure to dangerous substances such as lead, benzene or carbon disulfide.

The Committee recalls that the situation in practice should be regularly monitored and asks up-to-date information on the activities of the Labour Inspectorate of monitoring whether the obligation of submitting young workers to regular medical examination is ensured in practice.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

### ***Protection against sexual exploitation***

The Committee notes from the report that the Sexual Offence Amendment Act 2013 (Federal Law Gazette I no. 116/2013) introduced changes to the legislation governing sexual exploitation of children, in line with EC Directive 2011/93/EU, EC Directive 2011/36/EU, the recommendations of the Council of Europe's GRETA Group of Experts concerning implementation of the Council of Europe Convention on Action against Trafficking in Human Beings and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

The Committee notes that a new paragraph 2a was added to Section 215a StGB which specifies imprisonment of up to one year in cases where an individual consciously views a pornographic performance in which minors aged 14 years and older play a role.

In this connection, the Committee observed in its previous conclusion (Conclusions 2011) that producing and possession of pornographic representations of minors older than 14 years was not a criminal offence, if it was intended for the minor's own use and if it was produced with his or her consent.

The Committee also takes note of the Concluding observations of the UN Committee on the Rights of the Child on the combined third and fourth periodic report of Austria (2012) that the UN-CRC noted with concern that the possession of certain forms of child pornography is not criminalised, for example pornographic representation of children or child pornography involving children between 14 and 18 when they give their consent to the production of such pornography for strictly private use.

The Committee further notes from ECPAT (Global monitoring status of action against commercial sexual exploitation of children, Austria) that provisions addressing child pornography provide weak legal protection to children between the ages of 14 and 18. Article 208(a) of the *Penal Code*, which came into force in January 2012 does not criminalise production or possession of child pornography if it was produced for personal use and the adolescent depicted is over the age of 14 and has consented to the production. According to ECPAT, the definition of child pornography should not distinguish between children older and younger than 14, and the law should be strengthened to criminalise the possession of child pornography involving adolescents between the ages of 14 and 18 years regardless of the child's consent.

The Committee notes that even with the legislative amendments which were aimed at strengthening the legal protection against sexual exploitation of children, the situation regarding protection of children against child pornography until 18 years of age, has not improved. The Committee recalls that under Article 7§10 of the Charter all acts of child pornography, including all representations of a child until the age of 18, even when produced and possessed with the latter's consent, should be criminalised. Therefore, the situation is not in conformity with the Charter.

### ***Protection against the misuse of information technologies***

According to the report, a working group was set up involving the relevant ministries, the *Länder*, the internet sector and NGOs, which discusses ways of improving the protection of children against sexual exploitation by means of new information technologies.

The Committee further notes that a criminal offence was introduced that makes contacting children for sexual purposes ("grooming") liable to prosecution.

The Committee notes that where punishable acts are committed on the service platforms service providers operate, service providers are involved parties firstly in the sense of penal law. Section 3 No. 2 of the E-Commerce Act (*E-Commerce-Gesetz*) defines service providers as natural persons or legal entities or other legal subjects that provide a service of the information society, which includes all types of providers and search engine operators as well as operators of websites, forums, guest books or archives.

### ***Protection from other forms of exploitation***

According to the report, the working group on the trafficking of children, under the Task Force on Human Trafficking, has published a booklet entitled "Trafficking of children in Austria". Background information and check list for youth welfare workers, police, immigration authorities, embassies and consulates, and justice officers to help identify victims of child trafficking", which has gone through a number of editions (the most recent in 2013) is made available to and used in training with the intended audience.

According to the report, as stated in the 2012 report of the working group on child trafficking, unaccompanied minors without a regular residence, who had been used by others for criminal purposes and incited to carry out crimes (mostly theft, but prostitution as well) in most cases in greater Vienna, were detained by the police.

Carinthia has up to now been confronted with potential victims of trafficking mostly in cases involving crossborder adoption. In Lower Austria, potential victims of child trafficking are suspected particularly among individuals at the initial reception centre (EAST) and care centre at Traiskirchen. Grounds for suspicion also emerge in Tyrol in cases of unaccompanied underage aliens.

The Committee notes that a total of 79 cases involving minors were investigated with respect to potential child trafficking in the period of 2010 to 2012.

The Committee asks whether children, victims of sexual exploitation can be prosecuted.

The third National Action Plan for Combating Trafficking in Humans, for the period of 2012 to 2014, was adopted by the Austrian federal government on 20 March 2012. The national action plans are based on a widely inclusive approach that takes in coordination, prevention, protection for victims, and criminal prosecution at the national level, as well as cross-border cooperation. Numerous activities concern child trafficking.

### ***Conclusion***

The Committee concludes that the situation in Austria is not in conformity with Article 7§10 of the Charter on the ground that not all children until the age of 18 are protected against all forms of child pornography.

## **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 Austria.

### ***Right to maternity leave***

According to the report, the situation which the Committee previously found to be in conformity with Article 8§1 (Conclusions XIX-4, 2011) has not changed: the Maternity Protection Act provides for 16 weeks maternity leave, including a compulsory leave of eight weeks immediately prior to the presumed date of confinement and another compulsory leave of eight weeks following childbirth. The same rules apply to women employed in the public sector. The report furthermore indicates that comparable regulations exist for public employees of the *Länder* and for the agricultural and forestry sector through sections 96a to 108 of the Agricultural Labour Act.

### ***Right to maternity benefits***

The Committee previously noted that all women insured under the General Health Insurance Act may qualify for daily maternity benefits. It previously noted that women engaged in “marginal employment”, whose wages are below the threshold for compulsory insurance contributions are entitled to some maternity benefits if they are voluntarily insured (Conclusions XV-2, 2001). Furthermore, it notes from another source (Rille-Pfeiffer, C. and Dearing, H. (2014) ‘Austria country note’, in: P. Moss (ed.) International Review of Leave Policies and Research 2014 – available at [Leavenetwork.org](http://Leavenetwork.org)) that unemployed women are eligible for maternity payment if they have completed three months continuous employment or have been compulsorily health-insured for 12 months within the last three years.

Maternity benefits are paid during the whole duration of the maternity leave (16 weeks) and correspond to 100% of the average daily wage earned over the last 13 weeks (or 3 months) preceding the maternity leave. The same rules apply to employees of the public sector.

The Committee refers to its Statement of Interpretation on Article 8§1 (Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

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

The report indicates that there have been no changes to the situation which was previously found to be in conformity with the Charter: according to Section 9 of the Maternity Protection Act, employees are entitled to a 45-minute nursing daily break when they work at least four and half hours, and two 45-minute breaks when they work eight or more hours – or 90 minutes if there are no nursing facility in the vicinity of the place of work. Nursing breaks are granted without loss of pay and are considered as part of working time. This provision of the Maternity Protection Act also applies to women employed in the public sector. The same protection is guaranteed by the Agricultural Work Act for women employed in the agricultural sector (Section 101). The Committee asks whether nursing breaks are provided during the first nine months of the child (Conclusions 2005, Cyprus).

### *Conclusion*

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

Under Section 6(1) of the Maternity Protection Act 1979, as amended, pregnant or breastfeeding employees, including public federal employees, must not work between 8 p.m. and 6 a.m.

As an exception, according to paragraphs 2 and 3 of the same provision, work can be allowed until 10 p.m. in specific sectors but under certain conditions (at least 11 hours uninterrupted rest must be provided and, in certain cases, work is only allowed upon individual authorisation by the Labour Inspectorate) and provided that night work is not prohibited for other reasons. The Committee asks the next report to clarify whether the employed women concerned are transferred to daytime work and what rules apply if such transfer is not possible.

Similar rules apply in respect of women employed by a *Land* or a municipality, domestic employees and workers covered by the Agricultural Labour Act.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

It previously noted (Conclusions XIX-4 (2011), Article 8§4b) that the Maternity Protection Act prohibits employment in underground mining for pregnant women (Section 4(2)(12)), for women who are nursing their infant (Section 4a(2)) and during the 12-week period after childbirth (Section 5(3)).

Furthermore, Section 4 of the Maternity Protection Act prohibits pregnant women from performing any heavy physical work or any work or working process which is harmful to their health or that of their unborn child, which includes (i) work which entails the regular manual lifting of loads; (ii) work performed mainly in the standing position or causing static strain; (iii) work entailing a risk of occupational disease; (iv) work entailing exposure to any harmful agents where damage cannot be ruled out; (v) work with equipments and machines entailing heavy strain on the feet; (vi) work in or on means of transport; (vii) peeling wood with hand knives; (viii) piece-work, assembly-line work and any other performance-related work if the associated average output is beyond the pregnant employee's strength; (ix) work performed in sitting position unless breaks are possible; (x) work with biological agents; (xi) work in high pressure atmosphere; (xii) work involving frequent stretching, bending, crouching etc.; (xiii) work involving exposure to excessive vibrations, smells or particular psychological stress; (xiv) work involving exposure to tobacco smoke.

The prohibition under (i), (iii), (iv), (viii) and (xi) also applies to women who are nursing their infant or have given birth in the last 12 weeks. The latter are also prohibited from performing the activities referred to under (ii) and (vii). These rules also apply to women employed in the public sector and similar provisions apply to the agricultural and forestry sector. Further activities can be prohibited on a case by case basis if the Labour Inspectorate decides that they are harmful to the concerned employee, whether she is pregnant, nursing or has recently given birth.

### *Conclusion*

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

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

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

### ***Social protection of families***

#### ***Housing for families***

The report explains that the *Länder* are responsible for the legislation and enforcement in the field of direct support of housing construction and refurbishment through subsidised loans, annuity and interest subsidies, housing allowances, etc. In addition, various "accompanying" indirect subsidies, such as tax benefits, are granted by the Federal Government. The report indicates that in 2009 38,063 dwellings, not counting Vienna, were completed.

The Committee recalls that under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24). In this respect, the Committee wishes the next report to indicate the steps taken to promote the provision of an adequate supply of housing for families.

As regards legal protection, the Committee recalls that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies. Any appeals procedure must be effective (Conclusions 2003 France, Italy Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; FEANTSA v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France). The Committee asks the next report to provide information on the legal protection of the right to adequate housing.

As to protection against eviction, the report provides the following information:

- an eviction order must be issued by a court;
- parties lacking the required means are entitled to legal aid, i.e. legal counsel provided by a lawyer during the proceedings;
- the courts have the remit to work towards achieving an amicable resolution or settlement of the dispute;
- the parties can lodge an appeal against the rulings rendered in the proceedings before superior courts. The request for a legal remedy normally suspends the legal effect and enforceability of a ruling;
- if the eviction order rendered by a judicial body is in breach of the law, the injured party is entitled to assert public liability claims against the State. Parties lacking the required means can also obtain legal aid;
- in legal cases involving eviction, the court may set a longer period for vacating the premises than is specified by the law if the tenant puts forward substantial grounds and if delaying the eviction does not cause any disproportionate disadvantage to the landlord. Such extension may not be more than nine months;
- the landlord is to indemnify the tenant for the damage incurred through the loss of the rented property if he/she does not subsequently use the property for the purpose stated as the reason for terminating the agreement and circumstances have not changed in the meantime.

The Committee notes that in some provinces subsidies for housing construction and refurbishment and housing allowance are restricted to Austrian nationals or EU/EEA nationals (*Carinthia, Styria*) or they are subject to length of residence's conditions (*Upper Austria, Salzburg, Tyrol, Vienna*). The Committee recalls that discrimination (based on nationality or length of residence requirements) is not in conformity with the Charter. The Committee considers that the situation is not in conformity with Article 16 of the Charter on the ground that equal treatment for nationals of the other States Parties with regard to the payment of housing subsidies is not ensured (nationality, length of residence requirements).

As regards Roma families, the report mentions the National Roma Integration Strategy up to 2020 and several measures taken to implement it: creation of a website within the website of the Federal Chancellery focusing on "Roma Strategy"; national monitoring performed by a dialogue platform that includes representatives of the Federation and the states, civil society (Roma) associations and experts from the fields of science and research; a study on the situation of Roma in housing presented in 2014; continuous dialogue with the Roma minority advisory council which meets with representatives from the Department for National Minorities at least once a year to discuss inclusion policies and subsidizing. The Committee wishes the next report to provide information on the outcome of these measures, including some figures.

Concerning refugees, the Committee notes from a study on Refugee Integration in Austria published by UNHCR in 2013 that refugees struggle with accessing suitable, affordable, secure, independent housing. It therefore asks the next report to indicate the measures that are being taken in order to overcome this issue.

### ***Childcare facilities***

The Committee notes that as Austria has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

### ***Family counselling services***

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)) and all the information at its disposal leads it to consider that the situation remains in conformity with the Charter in this respect.

### ***Participation of associations representing families***

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)), which it considered to be in conformity with the Charter.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

Pursuant to the Act to Reform the Law of Parent and Child 2001, both spouses have the option of retaining full custody of the child upon divorce as during their marriage, if they submit to the custody court an agreement stipulating the parent with whom the child will mainly reside. By this arrangement, both parents receive equal treatment even after separating. Under the Act to Reform the Law of Parent and Child and Name Law 2013, the courts can entrust parents with joint custody even against one of the parents' will, where it is ruled that this would be more in the interest of the child's well-being than if one parent were to have sole custody.

In cases of divorce by mutual consent, which represent 90% of all divorces, the spouses are required to reach an agreement regulating: care of their children, custody, the exercise of the right to personal contact, maintenance obligations towards their common children as well as the relationships arising from laws governing maintenance and any legal claims based on

property rights. In cases of non-mutual divorce, the items listed above can be clarified in separate proceedings, following the divorce proceedings and once the divorce has been pronounced. The report stresses that the court is required to respond to any risks to the child's well-being that become known during divorce proceedings.

The Committee asks the next report to provide information on the rights and obligations of spouses in respect of reciprocal responsibility, ownership, administration and use of property.

### ***Mediation services***

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)) for a description of mediation services.

The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided. The Committee notes that part of the cost of mediation is met by the couple, on the basis of their combined income and the number of children. The average subsidy is €1,000, with the couple contributing €200. It asks the next report to indicate what assistance is available for families in case of need.

### ***Domestic violence against women***

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)) for an overall description of the issue of domestic violence against women. In addition, it takes note of the latest developments in this respect. First, since 1 August 2013, if a minor under the age of 14 years is threatened, the law requires that the endangering person be prohibited from entering (or coming within 50 metres of) a childcare facility, school or after school care facility attended by the minor. Second, where protection from the endangering person is needed for a longer period, the endangered person may petition the courts to issue an interim injunction, which can be imposed irrespective of any prohibition to return order issued by the police and vice versa. Third, a shelter for young women who are threatened with or the victims of forced marriage opened in Vienna as of 1 August 2013. Fourth, in 2013 the funding available for violence protection centres amounted to €6.7 million. Fifth, the report mentions a series of important publicised action during the reference period, such as the two-year project co-financed by the EU called "Progress – Living non-violently" focusing on information, prevention and raising awareness. Sixth, the Committee takes note of the information provided by different *Länder*.

### ***Economic protection of families***

#### ***Family benefits***

According to Eurostat data, the monthly median equivalised income in 2013 was €1,839. The report indicates that the following amounts of child benefits are applicable per child and month (status as of 1 January 2013):

- 0-3 years: €105.40;
- 3-9 years: €112.70;
- 10-18 years: €130.90;
- 19 years and older: €152.70.

In addition, the following amounts are added to the total family allowance per month:

- with two children €6.40 per child;
- with three children €15.94 per child;
- with four children €24.45 per child; etc.

Child benefits represented a percentage of that income as follows: 5.7% for the first child 0-3 years of age; 6.1% for the first child 3-9 years of age; 7.1% for the first child 10-18 years of age; 8.3% for the first child 19 years and older, etc. The Committee considers that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of the monthly median equivalised income. On the basis of the figures indicated, the Committee considers that the amount of benefits is compatible with the Charter.

### ***Vulnerable families***

Despite the Committee's request, the report provides no information on the steps taken to ensure that vulnerable families, such as Roma families receive financial protection. It therefore reiterates its question. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter in this respect.

### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The report stresses that there are no minimum residence requirements applied to foreign nationals, who thus enjoy equal treatment with regard to family benefits.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

### ***Conclusion***

The Committee concludes that the situation in Austria is not in conformity with Article 16 of the Charter on the ground that equal treatment for nationals of the other States Parties with regard to the payment of housing subsidies is not ensured (nationality, length of residence requirements).

## **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 Austria.

### **Protection from ill-treatment and abuse**

The Committee notes that corporal punishment is prohibited in all settings, including the home.

### **Rights of children in public care**

In reply to the Committee's request for information concerning the criteria for the restriction of custody of parental rights, the report states that according to Article 181 of the Austrian General Civil Code (*ABGB*), the court is authorised – where the behaviour of the child's parents threatens the well-being of their minor child, to take the necessary measures to ensure the child's well-being, and in particular to fully or partially revoke custody or revoke any rights of consent and approval defined by law.

Article 182 *ABGB* stipulates that child custody rights shall be restricted by means of a court order only to the extent required for guaranteeing the child's well-being.

Pursuant to Article 211 *ABGB*, the youth assistance office has to file motions for court orders within the scope of child custody required to ensure the minor child's well-being. In case of imminent danger, the youth assistance office may preliminarily decide itself upon the required measure with regard to care and education, which will be valid until the court ruling is issued; a motion for such ruling has to be filed without delay by the youth assistance office, but no later than within eight days.

In the course of such proceedings, the persons whose custody rights are affected are heard and they have the right to appeal to court decisions under Article 181 *ABGB* as well as Section 107a *AußStrG* by means of a *Rekurs* pursuant to Section 45 *AußStrG*.

In accordance with established domestic case law, the revocation of a person's child custody rights is *ultima ratio* (last resort).

The Committee takes note of the information from the *Länder* concerning the situation of children in public care. It notes that in Burgenland if the child's well-being is at risk, children and young persons have to be granted full residential care, which comprises placement with close relatives, other persons providing care and in residential facilities.

The Committee notes however that there are 28 residential care facilities which provide care for children who were taken out of their families due to the families' inadequate or lacking resources.

In this connection, the Committee recalls that placement must be an exceptional measure and is only justified when it is based on the needs of the child. The financial conditions or material circumstances of the family should not be the sole reason for placement (Conclusions 2011, Statement of Interpretation on Articles 16 and 17). The Committee also refers to the judgements of the European Court of Human Rights where the latter held that separating the family completely on the sole grounds of their material difficulties has been an unduly drastic measure and amounted to a violation of Article 8 (*Wallová and Walla v. Czech Republic*, application No. 23848/04, judgment of 26 October 2006, final on 26 March 2007).

The Committee asks whether children can be taken into care solely on the basis of inadequate resources of parents.

The Committee further notes that in Lower Austria due to the expansion of non-institutional services, the care provided by families has increased. Foster care is given priority over institutional care in the case of small children. There are around 3,000 children benefiting

from residential care, about 800 with foster families and around 900 in institutions in lower Austria.

The Committee wishes to be kept informed of the number of children placed in foster care or residential care as opposed to institutions. It also wishes to know what is the maximum number of children in a single institution.

### ***Young offenders***

In its previous conclusion (Conclusions 2011) the Committee asked what was the maximum length of pre-trial detention for young offenders. It notes in reply that according to Section 35 of the *Jugendgerichtsgesetz* (JGG) the maximum duration for young offenders is three months. However, in case of a suspected crime falling within the competence of the regional court sitting, the maximum pre-trial detention is one year.

The Committee notes from the Concluding observations of the UN Committee on the Rights of the Child on the combined third and fourth periodic report of Austria (2012) that even if the average length of pre-trial detention of juveniles is 49 days and that the number of juveniles detainees has decreased, the UN-CRC is concerned that under the law, the maximum length of pre-trial detention for juveniles is one year, that prisons where juveniles are deprived of their liberty are reportedly overcrowded and juveniles not always separated from adult prisoners, and that a high percentage of juveniles on remand suffer from psychological or psychiatric disorders without access to adequate health care.

The Committee recalls that children should only be exceptionally be detained pending trial for serious offences, for short periods of time and should in such cases be separated from adults (Conclusions 2011, Denmark). It considers that since the legislation permits detention of children pending trial for one year, the situation is not in conformity with the Charter.

The Committee asks whether young offenders are always separated from adults both in prisons as well as during pre-trial detention.

As regards whether young offenders have a statutory right to education, the report states that regular schooling and instruction has to be provided to young prisoners in special penal institutions. In other penitentiaries where juvenile offenders are detained, instruction and training has to be offered to young inmates as far as possible and practicable.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee notes from the report that according to Section 2, paragraph 1 No. 4 of the Basic Welfare Support Agreement – Article 15a of the Federal Constitutional Law children illegally residing have access to basic welfare support in their capacity of aliens without the right of residence. According to Article 6, basic welfare support comprises accommodation and medical treatment. Article 7 provides for additional services for unaccompanied minors.



### *Conclusion*

The Committee concludes that the situation in Austria is not in conformity with Article 17§1 of the Charter on the ground that the maximum length of pre-trial detention of minors is excessive.

## **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 Austria.

The Committee recalls that under Article 17§2 of the Charter States must establish and maintain a well-functioning education system.

The Committee notes from the report that compulsory education comprises nine years. Parents or other legal guardians are obliged to ensure that their children complete compulsory schooling and that they attend school regularly.

The Committee notes that depending on the resources available the parents or guardians are obliged to provide the means for their child to be able to duly attend school, especially the required school books, learning and working materials.

The Committee recalls in this respect that under Article 17§2 of the Charter in order for there to be an accessible and effective system of education there must be *inter alia* a functioning system of primary and secondary education provided free of charge.

Article 17§2 implies that all hidden costs such as books or uniforms must be reasonable, and assistance must be available to limit their impact on the most vulnerable population groups so as not to undermine the goal being pursued (European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France Complaint No. 82/2012, decision on the merits of 19 March 2013, §31) .

The Committee asks whether such assistance is provided to vulnerable groups.

The Committee notes from the report that in order to prevent the violation of compulsory education laws already at an early stage, the legal basis for a package of measures to combat the violation of compulsory education laws was created in 2012, following a decision taken by the Austrian Council of Ministers. After having been reviewed, the five-step plan for preventing violations of compulsory education laws entered into force on 1 September 2013 (Section 24a of the Compulsory Schooling Act 1985). The aim of the new five-step plan is to identify the causes of violations against compulsory education laws and to take appropriate steps.

According to the report, in 2011/2012, the percentage of young persons who had not completed compulsory schooling was 3.9%.

The implementation of compulsory education up to the age of 18 was enshrined in the Government programme. It aims to give all persons under 18 years of age the opportunity to undergo education or training beyond compulsory schooling. This goal should be reached primarily by providing sufficient low-threshold offerings, by restricting unskilled work by juveniles and, in addition, by imposing an administrative penalty, with effect from the school year 2016/17. The Committee wishes to be informed.

The Committee recalls that the States have positive obligations to ensure equal access to education for all children. In this respect particular attention should be paid to vulnerable groups, such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, etc.

As regards education of children of Roma origin, even though educational policies for Roma children may be accompanied by flexible structures to meet the diversity of the group and may take into account the fact some groups lead an itinerant or semi-itinerant lifestyle, there should be no separate schools for Roma children. Special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group (Conclusions 2011, Slovak Republic).

The Committee asks what measures are taken to guarantee equal and effective access to education to children of Roma origin as well as children from vulnerable groups.

The Committee further recalls that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that states parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2 , Conclusions 2011).

The Committee asks whether unlawfully present children have a right to education.

*Conclusion*

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

## **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 Austria.

### ***Migration trends***

Austria has one of the most significant populations of people with migrant backgrounds in Europe, with 17% of the working-age population in 2010 being foreign-born. Since the 1960's, immigration has constituted an important element of population growth in Austria.

The largest groups with migrant backgrounds come from Serbia, Turkey and Bosnia and Herzegovina. The fall of the Iron Curtain in the late 1980s and ensuing conflicts in the former Yugoslavia triggered large scale migration movement into Austria. Consequently, new laws regulating immigration and asylum were introduced with the aim of tightening Austria's immigration policy. From 2001 to 2005, net migration increased again, a trend which was mainly a consequence of family reunification of third country nationals as well as immigration of European Union (EU) nationals. More restrictive legal provisions for third country nationals were introduced due to these developments in 2006, which resulted in a decline in inflow figures and a further shift of weight of inflows to EU nationals. On 1st January 2010 a share of about 10.7% of the total population of Austria was comprised of foreign nationals and about 17.8% of the population had a migration background.

In 2013, 151,280 immigrations and 96,552 emigrations resulted in an international net migration gain of 54,728 people. Around 72% of Austria's net migration gains originated from other countries within the European Union (40,214 people). At the regional level, Vienna remained the major destination of international immigration. In 2013, the Austrian capital received about 44% of all international net-migration.

According to a report of the OECD on Labour Market Integration of Immigrants in Austria, published in 2011, integration of migrants is not unfavourable in international comparison, though research shows low integration outcomes for women, both migrants and their children. The proportion of educated migrants who find employment in jobs which require lower levels of qualification is among the highest in the OECD.

### ***Change in policy and the legal framework***

In February 2011, the federal government adopted a new "Aliens Law Package", which updated the frameworks for regular and temporary immigration which were previously laid out in 2005. As from 1 July 2011, immigration from non-EU Member States will be based on a catalogue of criteria replacing the 'quota system' in force now. The core of the new legislation relating to aliens will be the so-called Red-White-Red Card for highly skilled immigrants or key labour force (academic professions, skilled workers) from non-EU Member States. This Red-White-Red Card will grant the right of residence and labour market access. Applications will have to be filed with Austria's diplomatic representations. Decisions on admission will no longer be based on quota but on a system of credits (language skills, age, education, etc.)

### ***Free services and information for migrant workers***

The Committee notes from the report that a number of new initiatives have been launched in Austria aimed at increasing the capability of migrants to integrate by raising their awareness of opportunities. This has been coupled with continued provision of educational services to improve cultural, linguistic and political knowledge and engagement among migrants.

The report states that four centres for the recognition and evaluation of qualifications acquired outside Austria (ASTs) were established and funded by the Ministry of Social Affairs in 2013. In the first year, 4,600 individuals received assistance.

The Public Employment Service has budgeted a total of € 4.87 million in funding in 2014 for 16 counselling centres throughout Austria to support migrant workers and one centre for the Roma ethnic group.

In Vienna, a specific department was established to deal with the integration needs of migrants and provide expertise to other areas of government. The report states that a number of major projects have been created through this department, including the '*Start Wien*' project, which targets both EEA and third country nationals, and provides them with workshops on various topics relevant to living in Austria, conducted in their first language. There are also basic education courses to assist with literacy, numeracy and computer skills. The Committee notes from the report that other specific projects have targeted in particular women and mothers of young children, and youths, to provide tailored services for their integration in the community. The '*Perspektive*' project also provides assistance to refugees granted asylum and new immigrants to Vienna, with the aim of facilitating their access to the labour market.

In addition to advice centres, information for migrants is available through a number of internet sites. The governmental website is available in English and German and provides information on the process of applying to work in Austria, healthcare, education, working conditions and housing. It is also possible to contact the relevant ministries for further information through a form on the website. The advisory centre for migrants in Vienna also runs a website which is available in the most common migrant languages, including Bosnian, Serbian, Turkish and Arabic. Special attachés have been set up in Budapest, Prague and Warsaw to advise individuals wishing to migrate to Austria on the process and their employment rights.

The report states, in response to the Committee's question, that Austrian residents wishing to travel abroad can contact their embassies or representatives in the country of destination for further assistance.

The Committee considers that, taking into account the wide provision of information on the internet, and the targeted face to face counselling services provided by federal and local bodies aimed at promoting the integration and success of migrants, the situation in this regard is in conformity with the Charter.

### ***Measures against misleading propaganda relating to emigration and immigration***

With regard to the Committee's question raised in its previous conclusion (Conclusions XIX-4, 2011), the report provides updated information on the training of law enforcement officials. Police officers undergo basic training which lasts 2 years and involves significant training in issues such as human rights, vocational ethics, communication and conflict management. The report states that further initiatives have been created to address problems specifically related to racism and xenophobia, which take into account input from the Austrian Human Rights Advisory Council and NGOs.

Mandatory seminars have been organised in cooperation with the Anti-Defamation league since 2001. These seminars focus specifically on raising officers' awareness concerning racism and discrimination.

The Ministry of the Interior has also launched a recruitment drive for women and people with migrant backgrounds, to increase diversity within the government and the police force. The Committee notes, however, that no statistical information is available concerning the number of employees with minority ethnic or migration backgrounds.

From the government's 2014 Report to the European Commission against Racism and Intolerance (ECRI), the Committee notes a number of laws and policies aimed at combatting racism and xenophobia.

Firstly, pursuant to the Associations Act as well as on the basis of individual criminal-law provisions, it is prohibited to found and/or maintain associations that promote and/or incite racial discrimination.

To implement the EU Framework Decision 2008/913/JHA on combating Racism and Xenophobia and in reaction to the recommendations of the European Commission against Racism and Intolerance and the Committee on the Elimination of Racial Discrimination Austria has amended Article 283 of the Penal Code (PC). The amendment entered into force on 1 January 2012.

Article 283(1) PC now criminalises public incitement to violent acts against a religion or religious organisation or to a group of people defined by race, colour of skin, language, religion or ideology, nationality, national or ethnic origin, gender, disability, age or sexual orientation or against a member of such a group expressly because of his or her membership to such a group. Article 283 PC is not limited to a particular way of distribution or to a particular act like speech or writing, therefore dissemination or distribution by or of posters, stickers, of messages or pictures via internet are covered.

The National Action Plan for Integration was adopted by the Austrian Government on January 19, 2010. The NAP comprises 7 chapters, to take into account the cross-sectorial (interdisciplinary) aspects of integration. The chapters include education, employment, health, intercultural dialogue and housing and regional issues. The Committee welcomes the adoption of a comprehensive plan for integration, and asks for further information on its implementation in the next report.

The Committee also notes the existence of the National Roma Integration Strategy up to 2020 (Roma Strategy 2020). It notes that in 2012 an inclusive platform with participants from public authorities and other key stakeholders was established to monitor the implementation of the strategy. The Committee requests that the next report contain further information on the implementation and effects of this strategy.

An independent Ombudsman Board exists to monitor the implementation and safeguarding of human rights. The Committee notes, however, from the Conclusions of ECRI (adopted December 2012) that funding for the Ombudsman Board was limited, and that additional financial resources were required. The Committee notes from Austria's report to ECRI that the scope of operation of the Ombudsman Board has since been enlarged. It asks for information on the funding arrangements for this new enlargement, particularly in relation to combatting racial and xenophobic prejudice and discrimination.

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information, and of deterring the promulgation of discriminatory views. It considers that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.

The Committee notes the reestablishment in 2010 of the Austrian Press Council, a self-regulatory body for the enforcement of journalistic standards. It notes from the abovementioned Conclusions of ECRI that the Press Council has established a code of honour which provides a set of ethical guidelines. This forms the basis for decisions of the Press Council's Senates on complaints which are submitted.

Pending receipt of the requested information, the Committee considers that the situation with regard to measures taken to combat racist and misleading propaganda is in conformity with the Charter.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 19§1 of the Charter.

## **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 Austria.

### ***Departure, journey and reception of migrant workers***

The legal framework for reception of migrants staying for more than 6 months is set out in the Settlement and Residence Act 2005, as recently amended in 2013.

The Committee recalls that reception 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). Reception means the period of weeks which follows immediately from their 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). The Committee asks for further information to be contained in the next report on the content and implementation of the Settlement and Residence Act as amended.

The Committee notes the numerous integration programmes mentioned in the report, including the provision of information on all aspects of life for newly arrived migrants, as well as access to educational programmes and assistance from employment services. It asks whether other help is available from the state, in particular to assist migrants who may lack shelter, food, or access to healthcare. The Committee asks whether there are limits or restrictions on the access of working migrants to state welfare provision, and if so, what those limits are.

With regard to emigration, the prospective emigrant is personally responsible for seeking employment. The authorities representing Austria support Austrians in other countries in emergency situations, for return transportation, monetary support and loans.

### ***Services for health, medical attention and hygienic conditions during the journey***

The report states that Austria has no agreements concluded under government supervision that pertain to group migration. Departure and entry of migrants takes place individually by train, car or aeroplane. 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 requests details of any measures taken in regard of collective recruitment, if it should occur.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 19§2 of the Charter.



## **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 Austria.

According to the report, the situation, which the Committee previously found to be in conformity with the Charter, has not changed (Conclusions XIX-4, 2011).

The Committee 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 (Conclusions XV-1 (2000), Belgium). 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. Common situations in which co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (Conclusions XV-1 (2000), Finland).

The Federal Government and the *Länder* support NGOs which specialise in the assistance of migrant workers and cooperate with welfare institutions in the countries of origin. For instance, the activities of the Austrian branch of the International Social Service (ISS) have been financed by public funds to a large extent. The ISS is active in most European countries, including the former Yugoslavia and Turkey, where about 85% of migrant workers in Austria are from, with a network of national branches, affiliated bureaux and correspondents, and is in close contact with all of them.

### *Conclusion*

The Committee concludes that the situation in Austria is in conformity with Article 19§3 of the Charter.

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

### *Paragraph 5 - Equality regarding taxes and contributions*

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

The Committee notes that Section 1 of the Income Tax Act (*Einkommensteuergesetz, EStG*) 1988, Federal Law Gazette No. 400 as amended, states that the citizenship of a person subject to taxation is irrelevant for determining income tax (payroll tax). Unlimited tax liability only requires that individuals have their domicile (*Wohnsitz*) or ordinary residence (*gewöhnlicher Aufenthalt*) in Austria, or their residence (*Aufenthalt*) for more than six months.

The laws governing social security are based on the principle of compulsory insurance, meaning that anyone taking up employment at a level of pay superseding the minimum set for social security is normally included in the social security scheme. Here Austria makes no distinction, neither along the lines of their citizenship nor the type of employment pursued (i.e. self or dependently employed).

The Committee notes that duties to pay contributions or to register, as well as later entitlement to benefits, may arise even in the case of individuals who do not meet all requirements for legal residence. It asks in what circumstances such duties and entitlements may arise, and asks for confirmation that the rules apply equally to nationals in the same circumstances.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 19§5 of the Charter.

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

### *Paragraph 6 - Family reunion*

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

The Committee notes that the Aliens' Law Reform Act 2009 clarified the status of family members holding a settlement permit, by amending Section 27 of the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz – NAG*) to specify that such family members are independently entitled to settlement, so that they no longer derive entitlement during the first five years.

### **Scope**

Austria ratified the Revised Social Charter on 20 May 2011 and it entered into force on 1 July 2011. The Committee will therefore examine Austria's conformity with the Revised Charter for the reference period under consideration during this cycle. The Appendix of the Revised Charter reads:

"For the purpose of applying this provision (Article 19§6), the term "family of a foreign worker" is understood to mean at least the worker's spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker."

Austria was previously found to be in violation of the European Social Charter of 1961 on the ground that Austrian law and practice did not provide for family reunion up to the age of twenty-one for the children of all migrant workers. It remains the case that the age limit for family reunion of children in Austria is 18. However, this does not constitute grounds of violation of Article 19§6 of the Revised Charter, as it coincides with the age of majority in Austria.

The Committee notes from the report that the minimum age of spouses who wish to apply for family reunion and are not EU or EEA nationals has been raised from 18 to 21. The Committee notes that for some couples this could therefore entail a wait of greater than one year. It considers that the maximum period of one year laid down in its case-law (Conclusions I, II, Germany) must apply without discrimination to all migrants and their families regardless of their specific situations, save for legitimate intervention in cases of forced marriage and fraudulent abuse of immigration rules. The Migrant Integration Policy Index (MIPEX) states that "2009's 21-year age limits may further discourage sponsors and delay spouses' integration. Waiting another 3 years abroad is supposed to fight arranged and forced marriages, even if the measure affects all marriages." The Committee considers that raising the age threshold above the age at which a marriage may be legally recognised in the host state does not allow for sufficient consideration of the individual merits of an application, and is an undue hindrance to family reunion. Therefore, the Committee considers that the situation with regards to the scope of family reunion in Austria is not in conformity with Article 19§6 of the Charter.

### **Conditions governing family reunion**

The Committee notes that the quota system continues to apply to certain categories of application for family reunion. The information provided to the Governmental Committee (Governmental Committee, Report concerning Conclusions 2011) states that the vast majority of applications are not subject to the quota system.

The report states that "a residence title has to be awarded notwithstanding any otherwise applicable quota regulations if family reunion is based on grounds laid down in Article 8 of the Human Rights Convention. Children born in the time period between the mother's application for and the granting of the right to stay in Austria are also exempt from the quota system (Section 12 para. 8 of the Settlement and Residence Act – NAG)".

The information provided to the Governmental Committee highlights the rule that either the quota of the year when the application is filed or the quota of the following year can be referred to when granting a residence title connected with quota-based family reunion. This means that a waiting period of three years is not generally applicable, but after expiry of three years at the latest the quota requirement ceases to apply.

The Committee asks for specific information on the circumstances in which the quota system continues to apply, or other information pertaining to those families who are required to wait for a period exceeding one year until a quota place becomes available for family reunion, or reach the three year limit. The Committee repeats its conclusion (Conclusions XIX-4, 2011) that the situation in Austria is not in conformity with Article 19§6 of the Charter because families may still be required to wait in excess of the one year residence requirement allowed under the Charter.

With regard to language requirements, the Committee notes from the report that there is a general requirement under Section 21a of the NAG for family members to prove their knowledge of the German language at level A1 in order to qualify for entry. A number of family members are exempt from this requirement, due to the nature of the residence permit they apply for, which is based upon the permit which the sponsoring resident possesses. Exceptions from the requirement to provide evidence of proficiency in German prior to arrival include individuals not yet 14 years of age when the application is made and third-country nationals who because of their state of physical or mental health cannot be reasonably expected to provide such evidence. The requirement can also be waived if the applicant is an unaccompanied minor (to protect the child's well-being) or if necessary in order to respect private and family life as specified in Article 8 ECHR. Nevertheless, the general requirement to demonstrate level A1 competence in the German language is still applied to family members who do not come within the scope of this exception. The Government's migration website states that family members are required to prove their language proficiency, unless they are family members of the following: holders of a residence title "Red-White-Red Card" for Very Highly Qualified Workers; holders of a residence title "EU Blue Card"; or holders of a residence title "Long-term Resident – EC".

The Committee recalls that the requirement that members of the migrant worker's family sit language and/or integration tests to be allowed to enter the country, or pass these tests once they are in the country to be granted leave to remain discourages applications for family reunion and therefore constitutes a condition likely to prevent family reunion rather than facilitate it. It accordingly constitutes a restriction likely to deprive the obligation laid down in Article 19§6 of its substance and is not in conformity with the Charter (Conclusions 2011, Statement of Interpretation on Article 19§6). The Committee considers that the situation in Austria, where applicants may be required to prove that they have proficiency in German at level A1 on the Common European Framework, is thus not in conformity with the Charter.

Furthermore, in relation to language requirements, according to the information provided in the report and communicated to the Governmental Committee, an Integration Agreement applies to migrants intending to settle in Austria.

There are two modules, 12 months (extendable for 1 year for personal reasons), then within 5 years for module 2. Only module 1 is mandatory. It comprises a test in German proficiency. Applicants are required to pass at level A2 in the Common European Framework. Courses are available from accredited institutions, and the OIF will refund 50% of the costs up to €750. Migrants who also need assistance with basic literacy may be given another voucher which entitles them to recoup 100% of the cost of basic literacy courses, and then proceed to the Integration module and recoup 50% of the costs up to €750.

The test involved in the Integration Agreement is not a pre-requisite for entry or granting of a residence permit, though it may be taken into consideration upon application for renewal or permanent residency. The Committee asks whether an application for leave to remain may be rejected on the basis that the Integration agreement test has not been passed. The

Committee notes the possible cost to migrants: for example, the OIF charges €130 for each test, and accredited course providers can charge as much as €1800 for intensive courses up to level A2.

The Committee recalls that it has held that states are required to provide classes in the national language for migrants and members of their families free of charge under Article 19§11 (Conclusions 2011, Norway). It refers to its conclusion in that context that a requirement to pay substantial fees is not in conformity with the Charter, and considers that this also applies to the conditions for family reunion under Article 19§6, where language courses and tests are part of the process. While it acknowledges that the language test does not bar initial grant of a permit, it notes that migrants are required to sign an integration agreement which entails such a test in most cases. The Committee therefore asks whether further assistance is available to migrants who are in financial difficulty, and asks that the next report provide any statistics on the percentage of migrants who pass and receive reimbursement of costs. In the meantime, the Committee reserves its position on this issue.

The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of Interpretation on Article 19§6). The Committee asks whether a means requirement applies in Austria, and if so, what the criteria are and how it is calculated.

With regard to housing conditions, Austrian law requires the sponsor to prove that the family, upon reunion, has a residence which is equivalent to normal local accommodation. This requirement is based on Directive 2003/86/EC.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee notes that Article 8 of the European Convention on Human Rights is systematically considered prior to determination of whether a migrant meets this requirement. It also notes that no rejections made on this basis are known to the Federal Ministry of the Interior, the appellate authority in settlement and residence matters. Due to the systematic nature of consideration, the Committee considers that the requirement is applied in a way which sufficiently takes into account the importance of the right to family reunion. Therefore it concludes that the situation in this regard is in conformity with the Charter.

The Committee considers 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. The Committee asks what appeal mechanisms exist to challenge decisions against the grant of family reunion.

The Committee notes that there is no longer a health examination required prior to immigration. Austrian law requires that the family member who will move to Austria be covered by adequate health insurance.

The Committee notes that statistics were not available for rejected applications during the reference period. The Committee asks for any statistics which become available to be

furnished in the next report, including raw numbers of applications for family reunion and grants or rejections, any disaggregated data, and information on any appeals to the Federal Ministry of the Interior based upon rejections.

### *Conclusion*

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

- the age limit of 21 for family reunion of married couples who are not nationals of an EEA member state does not facilitate family reunion;
- under the quota system which limits the number of requests which may be accepted during any given year, families may be required to wait for up to three years before being granted reunion, a delay which is excessive;
- the fact that certain categories of sponsored family member need to prove knowledge of the German language at level A1 on the Common European Framework hinders the right to family reunion.

## **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 Austria.

The Committee notes from the report that no distinction is made in civil proceedings between Austrian citizens and EU or third-country nationals.

The report states that parties lacking means are granted legal aid without regard to their citizenship. Legal aid may include provision of legal counsel in the proceedings, with the cost borne, at least initially, by the State. Other procedural costs may also be borne by the State.

Legal aid also includes the cost of translating any documents, and interpretation services during the hearing and in legal counselling sessions between the attorney and the party.

The Committee 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. Under the same conditions (involvement of a migrant worker in legal or administrative proceedings), whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter if he or she cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial proceedings (Conclusions 2011, Statement of interpretation on Article 19§7).

The Committee asks what criteria are applied to determine whether a party is “lacking means” for the purposes of qualifying for legal aid. It requests that the next report provide an explanation of the mechanism for calculating qualification for legal aid assistance.

The Committee refers to its Statement of interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 19§7 of the Charter.

## **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 Austria.

The Committee notes from the report that migrant workers can transfer any income from employment to their countries of origin, without the requirement of identification being presented to trading institutions.

Section 2 of the Foreign Exchange Act (*Devisengesetz*) 2004 specifies that capital flows to and from other countries shall not be subject to any limitations, with the exception of those set forth in EU legislation. There are certain obligations to report the transfer to the Osterreichische Nationalbank. The Federal Criminal Police Office may also prohibit or postpone the completion of any transaction where it is suspected that the transaction is connected to money laundering or terrorist financing. The Committee considers that such limitations as exist on the right to transfer income and savings are justified under Article G of the Charter, and do not discriminate directly or indirectly. It therefore concludes that the situation in this regard is in conformity with the Charter.

With reference to its Statement of interpretation on Article 19§9 (Conclusions 2011), the Committee asks whether there are any restrictions on the transfer of movable property of a migrant worker.

### *Conclusion*

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



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

### *Paragraph 12 - Teaching mother tongue of migrant*

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

The Committee notes from the report that Austria has committed itself to promoting the languages of migrants as part of the regular school system. As such, it has devised curricula for primary schools, lower secondary schools and upper secondary schools which enable teaching to take place in languages other than German. Teachers are employed by the Austrian school authorities, though the Committee notes that they may be employed under special contracts which pay less, due to their initial education taking place in another country.

Teaching is provided in primary schools as an optional exercise with no grades given, while at other schools it is offered as an elective subject, or also as an optional exercise. To assure the quality of instruction, teachers are required to keep records in the same manner as for other school subjects.

School books are provided for free to children, either through the School Book List (for Turkish, Bosnian-Croatian-Serbian and Albanian), or through distribution from the Federal Ministry for Education.

All school children who speak a language other than German in their family, or are raised bilingually, are eligible to receive instruction in their mother tongue. It may be integrated into regular instruction or added to regular classes (i.e. after the last class ends), in which case, there is a minimum number of 12 at secondary schools, and various other limits exist set by the *Laender* for Primary schools. Groups can, however, be set up between schools and age levels.

During the 2012/2013 school year, a total of 32,757 pupils undertook classes in their mother tongue, including 14,911 learning Turkish, 10,778 learning Bosnian-Serbian-Croatian, and 2,379 learning Albanian. Classes exist for at least 24 different languages. The majority of teachers and students are situated in Vienna due to relative population density and demographics.

### *Conclusion*

The Committee concludes that the situation in Austria is in conformity with Article 19§12 of the Charter.

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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

The Committee recalls that the aim of Article 27 is to promote the reconciliation of professional and family responsibilities.

Article 27 requires States Parties to take specific measures in the field of vocational guidance and training, so as to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities (Conclusions 2007, Armenia).

According to the report, an active and supportive attitude as well as low-threshold information offers are important to enable women and men to return to the labour market as quickly as possible after a family-related interruption. In addition to support programmes and grants provided by the Public Employment Service, persons re-entering the labour market receive special support through the 'return-to-work- initiative. Early information, individual counselling and specific training programmes are offered to enable persons re-entering the labour market to plan their career objective and be aware of the consequences of the decision whether and to what extent they resume work.

Returnees are advised by specially trained consultants and special information events take place to prepare them for re-entering the labour market. The framework for programmes offered to returnees is defined by nationwide minimum standards. "Re-entry with a future" is tailored to women re-entering the labour market after their careers have been interrupted for family-related reasons. The focus is placed on the reconciliation of work and family life. The primary objective of women's counselling centres is to provide support in organising childcare and to resolve other family-related issues.

The Committee notes that in 2013 39,694 women and 4,032 men re-entering the labour market were supported.

### ***Conditions of employment, social security***

The Committee recalls that implementing Article 27§1 may also require the adoption of measures concerning length and organisation of working time. Workers with family responsibilities should be allowed to work part time or to return to full employment (Conclusions 2005, Estonia). These measures cannot be defined unilaterally by the employer but should be provided by a binding text (legislation or collective agreement).

According to the report, pursuant to Section 14 of the Employment Contract Law Adaptation Act (Federal Law Gazette No 459/1993) workers with duties to provide assistance to family members may opt to negotiate a reduction of standard weekly working time with their employers. They have the right to return to the original standard working time after their care duties have ended. Sections 14a et seq. AVRAG stipulate that employees may take full-time or part-time family hospice leave. Section 16 of the Paid Annual Leave Act (Federal Law Gazette No. 390/1976) sets forth the employees' entitlement to paid time off for caring for a close relative living in the same household who has fallen ill.

In the event that salaried employees (white-collar) need to be absent from work due to family responsibilities, they are also entitled to paid time off under the provisions of Section 8, para 3 of the Salaried Employees Act (Federal Law Gazette No. 292/1921). Blue-collar workers are entitled to such paid time off under the provisions of Section 1154b of the General Civil Code.

The Committee recalls that Article 27§1 requires States Parties to take account of the needs of workers with family responsibilities in terms of social security. The Workers should be entitled to social security benefits under the different schemes, in particular health care, during periods of parental/childcare leave.

According to the report, social insurance protection remains in effect throughout this period, with the employer paying all contributions.

The Committee also wishes to know to what extent periods of leave due to family responsibilities are taken into account for determining the right to pension and for calculating the amount of pension. It recalls in this respect that crediting of periods of childcare leave in pension schemes should be secured equally to men and women.

### ***Child day care services and other childcare arrangements***

The Committee recalls that under Article 27§1 affordable, good quality childcare facilities should be made available. Child day care may be arranged in many ways, for example in crèches, kindergartens, family day care or as a form of pre-school. Moreover, day care may be private or public. In all cases, the Committee examines if there is a sufficient provision of childcare places, and whether services are affordable and of high standard (quality being assessed on the basis of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and the amount of the financial contribution parents are asked to make).

According to the report, in 2011-2014 the Federal Government provided a total of € 55 million in funding for childcare facilities, which were co-financed by the competent *Länder* with the same amount. Grants and subsidies of € 15 million were available per year in 2012-2014.

The expansion initiative (Agreement pursuant to Article 15a of the Federal Constitutional Law on the expansion of institutional childcare facilities) focused on expanding childcare facilities for children under three, promoting childminder services and extending opening hours throughout the year. In 2013 further expansion has been confirmed by the Council of Ministers both in terms of quantity and quality.

The Committee asks that the next report contain a detailed list of the number of places in crèches and other childcare institutions broken down by age bracket and the number of rejected applications.

The Committee asks what are the requirements regarding qualifications of staff working in childcare facilities. It also asks how qualifications of personnel and the quality of child care services in general are monitored.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 27§1 of the Charter.

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

### *Paragraph 2 - Parental leave*

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

The Committee recalls that the focus of Article 27§2 are parental leave arrangements which are distinct from maternity leave and come into play after the latter. National regulations related to maternity or paternity leave fall under the scope of Article 8§1 and are examined under that provision. The States should provide the possibility for either parent to obtain parental leave.

Consultations between social partners throughout Europe show that an important element for the reconciliation of professional, private and family life are parental leave arrangements for taking care of a child. Whilst recognising that the duration and conditions of parental leave should be determined by States Parties, the Committee considers important that national regulations should entitle men and women to an *individual right* to parental leave on the grounds of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided to each parent and at least some part of it should be non-transferable.

The Committee notes from the report parental leave is governed by Sections 15 *et seq.* of the Maternity Protection Act and Section 2 *et seq.* of the Parental Leave for Fathers Act.

Parents may take – subsequent to maternity leave – parental leave for a minimum period of two months up to the end of the 24th month of the child's life. Parents can alternate when taking parental leave. They can split this parental leave period twice amongst themselves. Except for the first alternation for a one-month period, it is not allowed for both parents to take parental leave at the same time. One parent, however, can also take parental leave without splitting it. The employer's approval is not required for taking parental leave. The unilateral declaration of intent of the leave-taking parent is sufficient. Living in the same household with the child, however, is a prerequisite for taking parental leave.

The mother who takes parental leave subsequent to maternity leave has to notify her employer while on maternity leave and the father has to do so within eight weeks after the child's birth. If parents split parental leave, the father has to notify his employer thereof no later than three months prior to the expiration of the mother's leave period (or vice versa). Additionally, the child's other parent must not be on parental leave at the time of part-time employment.

As regards public service, the Committee notes from the report that the provisions of the *MschG* and the *VKG* governing the entitlement to parental leave and part-time employment for mothers and fathers are – with minor adaptations to public-sector employment law (e.g. with respect to procedural rules) – also applicable to federal employees in public service.

In order to increase the participation of fathers in after-birth childcare, a leave period referred to as "daddy's month" ("*Papamonat*") was introduced in the public service sector. Under this measure, fathers are entitled to take unpaid (early) parental leave of up to four weeks during the maternity protection period (*Schutzfrist*) (cf. Section 78d *BDG* 1979). Fathers are free to choose the starting date and the duration of this kind parental leave within the period from childbirth until the expiry of the mother's prohibition of employment (usually eight weeks). This type of leave does not reduce the parental leave pursuant to the Parental Leave for Fathers Act.

The Committee recalls that the remuneration of parental leave (be it continuation of pay or via social assistance/social security benefits) plays a vital role in the take up of childcare leave, in particular for fathers or lone parents.

In notes in this respect that alongside the general framework under labour law, the Childcare Benefit Act (*Kinderbetreuungsgeldgesetz, KBGG*), Federal Law Gazette I No. 103/2001 as amended, also contains stipulations to allow parents to remain in employment and/or to re-enter the labour market. As of 2010, the *KBGG* has provided for two systems with a total of five childcare benefit schemes (flat-rate system with four schemes and one income-related benefit scheme) to choose from, which gives parents an even bigger choice. The diverse and flexible childcare benefit options allow parents to plan their lives individually according to their wishes and ideas and thus contribute to better reconciliation of family life and work.

The income-related childcare benefit scheme (parents in employment relationships receive 80% of their latest salary in childcare benefit, until the child has completed its 14th month at the most) increasingly encourages fathers to take a brief time-out to care for their child.

With the flat-rate options, an individual additional-income limit has been in effect since 1 January 2010: while receiving a flat rate of childcare benefit, the parent may earn additional income amounting to as much as 60% of the most recent previous income but no more than € 16,200 per calendar year. The possibility to earn an additional income while receiving childcare benefit facilitates an earlier re-entry into the labour market especially for mothers; additionally, by generating additional income, mothers and fathers can contribute more to their own retirement provision and, in doing so, reduce the risk of poverty in old age.

As parents receiving childcare benefit are automatically covered by health insurance, their social protection is also provided for.

#### *Conclusion*

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

## APPENDIX

**European Committee of Social Rights  
Comité européen des Droits sociaux**



**The President / Le Président**

Ambassador Rudolf LENNKH  
Permanent Representative of Austria  
to the Council of Europe  
29, avenue de la Paix  
67000 STRASBOURG

Strasbourg, 22 May 2014

Dear Ambassador,

I refer to the third Report submitted by Austria under the Revised European Social Charter, registered by the Secretariat on 6 November 2014.

In the Report, the Government of Austria indicates that “With regard to Article 8§2 Austria is still bound by Article 8§2 of the 1961 Charter” and, in so far as Article 8§2 is concerned, it refers to its previous reports on the implementation of the 1961 Charter, noting that the relevant legislation remains unchanged.

In this respect, the Committee wishes to draw the attention of the Government to the fact that Austria, having ratified the Revised European Social Charter, has an obligation – under Part IV, Article C of the Charter – to submit a report concerning the application of such provisions of Part II of the Revised Social Charter as it has accepted, and that the European Committee of Social Rights shall assess from a legal standpoint the compliance of Austrian law and practice with the obligations arising for Austria from the Revised Charter.

Therefore, the Committee considers that the fact that Austria has submitted a report on the application of Article 8§2 of the 1961 Charter is not in conformity with the supervision procedure set out in Part IV, Article C of the Revised Social Charter. Likewise, it would not be in conformity with Part IV, Article C of the Revised Charter for the Committee to assess compliance of Austrian law and practice with obligations arising from the 1961 Charter.

For the above reasons, the Committee has decided not to assess the third Report submitted by Austria in the part concerning Article 8§2 of the 1961 Charter.

Furthermore, with respect to the declaration included in the Report, according to which “With regard to Article 8§2 Austria is still bound by Article 8§2 of the 1961 Charter”, the Committee wishes to recall the letter of 23 May 2011 sent to the Austrian authorities by the Treaty Office of the Council of Europe, concerning the Austrian instrument of ratification of the Revised Social Charter, in which the Government declared that “*Austria wishes to notify that it does not intend to denounce Article 8, paragraph 2, and Article 15, paragraph 2, of the 1961 European Social Charter (ETS No. 35) implicitly by ratifying the European Social Charter (Revised). Rather, in addition to the European Social Charter (Revised), Austria continues to consider itself bound by Article 8, paragraph 2, and Article 15, paragraph 2, of the 1961 European Social Charter.*”

In its letter, the Treaty Office considered that, due to this declaration, “the instrument of ratification does not fully comply with the provision of Article B of the European Social Charter (Revised)”. It observed that

*As indicated in the explanatory report of the European Social Charter (Revised) it is essential, for reasons of clarity and legal certainty, that States should not be bound by two sets of substantive provisions, some of which may be at variance as a result of the revision of the Charter itself. In addition, another specific purpose of Article B is to ensure that when States ratify the Revised Charter they do not implicitly denounce certain provisions of the Charter.*

*It follows that, in accordance with Article B of the European Social Charter (Revised), Austria should either accept Article 8, paragraph 2, and Article 15, paragraph 2, of the European Social Charter (Revised), or denounce Article 8, paragraph 2, and Article 15, paragraph 2, of the 1961 European Social Charter.*

The Committee fully shares the reasoning and position expressed in the above-mentioned letter of the Treaty Office of the Council of Europe and, with a view to a proper application of the Revised Social Charter and its supervision procedure, kindly asks Austria to consider whether either to accept Articles 8§2 and 15§2 of the Revised Social Charter, and start submitting reports on such provisions, or to denounce Articles 8§2 and 15§2 of the 1961 Charter.

Yours sincerely,



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January 2016

# **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**AZERBAIJAN**

*This text may be subject to editorial revision.*





The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Azerbaijan which ratified the Charter on 2 September 2004. The deadline for submitting the 8th report was 31 October 2014 and Azerbaijan submitted it on 3 February 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

Azerbaijan has accepted all provisions from the above-mentioned group except Articles 17 and 31.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Azerbaijan concern 19 situations and are as follows:

– 9 conclusions of conformity: Articles 7§1, 7§2, 7§4, 7§6, 7§8, 7§9, 8§3, 8§4 and 27§3;

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

In respect of the situation related to Article 8§2, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Azerbaijan under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

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

- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to organise (Article 5)
- the right to bargain collectively – joint consultation (Article 6§1)
- the right to bargain collectively – conciliation and arbitration (Article 6§3)
- the right of workers to take part in the determination and improvement of working conditions and working environment (Article 22)
- the right to dignity in the workplace – moral harassment (Article 26§2)
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 Azerbaijan.

The Committee noted previously that according to Article 17(5) of the Constitution, children under 15 cannot be employed. According to Article 46(4) of the Labour Code, employment contracts can be concluded with individuals of at least 15 years of age. The Committee previously asked whether there were activities or economic sectors which were exempted from the general rule (Conclusions 2011).

The report indicates that the provisions of the Labour Code apply to all enterprises, establishments, organisations, as well as workplaces where an employment agreement exists as well as to employees performing jobs in their homes using their employer's materials. According to the Labour Code, any labour contract concluded with children under the age of 15 shall be null and void, and the employer who concluded such contract is subject to administrative liability. The Committee notes that the prohibition on employing children under the age of 15 as prescribed by the Labour Code seems to apply only to work performed in the framework of an employment agreement and not to self-employment or work performed in the informal economy. The Committee notes from another source that as of January 2011, 20,000 children were working in agriculture, out of which 5,000 were self-employed (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Minimum Age Convention, 1973 (No. 138) – Azerbaijan (Ratification: 1992). The Committee asks what are the measures taken by the authorities (eg labour inspection) to detect cases of children under the age of 15 working on their own account or in the informal economy, outside the scope of an employment contract.

The Committee previously noted that the provisions of the Labour Code allowing light work for children who have reached the age of 14 were repealed. It notes from a more recent source that the labour law is being amended in order to identify types of light work activities permitted to children between 15 and 16 years of age (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Minimum Age Convention, 1973 (No. 138) – Azerbaijan (Ratification: 1992). The Committee requests information on any new developments/progress made in this regard.

With regard to supervision, the Committee notes from the information provided in the report and another source, that the State Labour Inspectorate Service inspected 16,887 enterprises in all sectors of the economy, including 431 agricultural enterprises, regardless of ownership and legal form, and identified five cases of violations of the rights of workers under 18 years of age. Fines in total amount of 5,000 Azerbaijani New Manat (AZN) (€ 4,342.13) were imposed for breaching the rule prohibiting employment under the age of 15.

The Committee recalls that the situation in practice should be regularly monitored. It therefore asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment under the age of 15.

With regard to work done at home, the report does not address the Committee's previous question on how work done at home is monitored in practice. The Committee recalls that States are required to monitor the conditions under which work done at home is performed in practice (Conclusions 2006, General Introduction). The Committee asks whether the State authorities monitor work done at home by children under 15 and which are their findings in this respect. The Committee underlines that should the next report not provide the information

requested, there would be nothing to establish that the situation is in conformity with Article 7§1 of the Charter.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 7§1 of the Charter.

## **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 Azerbaijan.

According to Article 250 of the Labour Code, employment of workers younger than 18 years old in difficult and hazardous work conditions, in underground tunnels, mines and other types of underground work, in places such as night clubs, bars, and casinos which could be detrimental to their development, as well as in places where alcoholic beverages, narcotic components and toxic material are kept or sold, is prohibited. Article 251 of the Labour Code sets limits for weight lifting by workers under 18 years of age.

The Committee noted previously that the list of dangerous and unhealthy types of work which are prohibited for young workers under 18 was approved by Decision No. 58 of 24 March 2000 of the Cabinet of the Ministers. The Committee asked that the Government provide a copy of this list. The report indicates that the employment of persons under the age of 18 is prohibited in occupations with harmful and hard labour conditions in mining, construction of subway, tunnels and underground installations, geological exploration, topography-geodesy, metal production, production and transmission of electricity and heating, energy industry. However, the report does not provide the list of dangerous and unhealthy activities prohibited for young workers under 18. The Committee reiterates its request.

The Committee notes from another source that the Committee on the Rights of the Child, in its concluding observations of 2012, expressed its concern at the significant numbers of children involved in informal work in the agricultural sectors of tea, tobacco and cotton, including in hazardous situations (CRC/C/AZE/CO/3-4, para. 69). The Committee asks how the State authorities monitor children working in hazardous conditions in the informal economy, particularly in the above mentioned sectors and what concrete measures have been taken by the authorities to improve the supervision.

The report indicates that according to Article 53.10 of the Code of Administrative Offences, the State Labour Inspectorate Service may impose fines ranging from 3,000 to 4,000 Azerbaijani New Manat (AZN) (€ 2,601 to € 3,469) on a person who employs young persons under 18 in difficult and hazardous work conditions, while legal entities shall be fined between AZN 10,000 and 13,000 (€ 8,673 to € 11,272).

The Committee recalls that the situation in practice should be regularly monitored. It asks for information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment under the age of 18 for dangerous or unhealthy activities.

### *Conclusion*

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

The Committee noted previously that according to Article 250 of the Labour Code, the employment of young persons under the age of 18 who are subject to compulsory general secondary education, in work depriving them from full education is prohibited (Conclusions 2011). The Committee asked whether this prohibition applies to all young persons under 18 in all circumstances, or if not, asked that the next report explain the regulatory framework governing employment of children still subject to compulsory education.

The report reiterates that the admission to employment of children under the age of 18 who are subject to compulsory secondary education is prohibited according to the Labour Code. The Committee notes from another source that as of January 2011, 20,000 children were working in agriculture (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Minimum Age Convention, 1973 (No. 138) – Azerbaijan (Ratification: 1992). The Committee recalls that Article 7§3 concerns the effective exercise of the right to compulsory education. In order to assess the conformity of the situation with the requirements of the Charter, the Committee requests to be provided with data on the situations in practice and up-to-date statistical information on children carrying out an economic activity in the informal economy.

The Committee recalls that under this provision, 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 (Conclusions 2006, Portugal). During school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework (Conclusions 2006, Albania). The Committee asks what are the specific measures taken by the authorities to ensure that children who are still subject to compulsory education do not actually perform work which could deprive them from the full benefit of education. It also asks what sanctions are applied in practice in situations of non-compliance and information on the violations detected by the labour inspectorate.

As regards work during school holidays, the Committee previously referred to its Statement of Interpretation on Article 7§3 (Conclusions 2011). In particular it asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. It also asked what are the rest periods during the other school holidays.

The report does not provide the information requested, but only states that the matter of employment of pupils and students during summer breaks will be considered in the draft proposals of the Labour Code. Given the lack of information, the Committee concludes that the situation is not in conformity with Article 7§3 of the Charter as it has not been established that children who are still subject to compulsory education are guaranteed the benefit of an uninterrupted rest period of at least two weeks during summer holiday.

### *Conclusion*

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§3 of the Charter on the ground that it has not been established that children who are still subject to compulsory education are guaranteed an uninterrupted rest period of at least two weeks during summer holiday.



## **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 Azerbaijan.

The Committee noted previously that according to Article 91 of the Labour Code stipulates, young persons under 16 years of age can be employed up to 24 hours per week and young persons aged 16 to 18 may be employed up to 36 hours per week (Conclusions 2011). The Committee asked information on the findings of the Labour Inspectorate with regard to the observance of the above mentioned rules in practice.

The report provides the thresholds of fines which can be imposed for violation of the applicable rules, but it does not provide any information on the monitoring activity of the Labour authorities. The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide information on the number and nature of violations detected by the Labour authorities as well as on sanctions imposed on employers in practice for breach of the rules concerning the reduced working time for young persons who are not subject to compulsory education.

### *Conclusion*

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

## **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 Azerbaijan.

The Committee recalls that in application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices to appropriate allowances. This right may result from statutory law, collective agreements or other means. 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). In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes and social security contributions.

### **Young workers**

The Committee previously concluded (Conclusions 2011) that the situation in Azerbaijan was in breach of Article 7§5 of the Charter on the ground that the minimum wage of young workers was not fair.

The report states that according to Article 253 of the Labour Code young workers under 18, who work for a reduced working time, are paid the same wage for the same kind of work as adults. The work of young workers under 18 who are engaged in piecework is paid on the basis of the piece-rate pay determined for adults. Young workers under 18 are given additional payment according to rates for the time difference between the reduced working time and the daily working time for adults.

With regard to the minimum wage of adult workers, in its Conclusions 2014, the Committee found the situation in Azerbaijan not to be in conformity with Article 4§1 of the Charter on the ground that the monthly minimum wage does not ensure a decent standard of living as it amounted up to only 27.55% of the net average wage, in contrast with the 60% of the net average wage which is considered as a satisfactory threshold under Article 4§1.

The Committee recalls that 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. For 15-16 year-olds, a wage of 30% lower than the adult starting wage is acceptable. For 16-18 year-olds, the difference may not exceed 20%. 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.

The Committee notes that in the present case the young workers are paid the same wage for the same kind of work as adults and that the monthly minimum wage of adults represents only 27.55% of the net average wage. Under Article 7§5, the Committee examines if young workers are paid the equivalent of 80% of a minimum wage in line with the Article 4§1 fairness threshold (60% of the net average wage). Thus, if young workers’ wage amounts to 80% of the minimum threshold required for adult workers (60% of the net average wage), the situation would be in conformity with Article 7§5 (Conclusions XVII-2 (2005), Spain). The Committee notes that the young workers’ wage represents only 27.55% of the average net wage, which does not meet the requirements of Article 7§5 of the Charter. It therefore considers that the situation is not in conformity with the Charter on the ground that the young workers’ wages are not fair.

The Committee recalls that each report should provide information on net values of both minimum and average wages 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***

The report indicates that the terms, procedures and duration of training and the parties' obligation are governed by the respective agreement for training concluded upon mutual consent between the employer and the employee.

The report does not provide information on the allowances paid to apprentices. The Committee reiterates its request that the next report provide examples of allowances paid to apprentices. It points out that if the next report fails to provide the information requested there will be nothing to show that the situation in Azerbaijan is in conformity with the Charter on this point.

### ***Conclusion***

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

## **Article 7 - Right of children and young persons to protection**

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

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

The report indicates that the time spent by the employees under the age of 18 for vocational training with the consent of the employer is considered as part of normal working hours. The Committee asked previously whether in such cases there is no obligation to compensate with extra working hours and whether this time is remunerated as such. The report does not answer the question. The Committee reiterates its question.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the monitoring activity and findings (violations detected and sanctions applied) of the Labour Inspectorate in relation to the inclusion of time spent on vocational training in the normal working time.

### *Conclusion*

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

The Committee noted in its previous conclusion that employees under the age of 16 have the right to 42 calendar days of holiday per year and employees aged 16 to 18 can take 35 calendar days of holiday per year. Young workers with limited health capacity can have more than 42 calendar days of holiday per year (Conclusions 2011).

The Committee asked previously whether in the event of illness or accident during the holidays, young workers have the right to take the leave lost at some other time (Conclusions 2011). The report indicates that according to Article 133 of the Labour Code, the young employees under 18 may be granted leave at a time convenient for them. The report indicates that the postponement of holidays as provided in the order of preference schedule from one month of the current year to the next or from the current to the next year of employment or next calendar year is allowed. The Committee notes from another source that according to Article 134 of the Labour Code, the holidays may be postponed at the employee's initiative in case of a temporary disability (Labour Code of 1 February 1999).

The Committee asked whether young workers are allowed to waive their right to annual leave in return for increased remuneration. The report indicates that according to Article 135 of the Labour Code, employers are prohibited from refusing to grant leave to the employees. The report states that the employees are paid compensation in the established amount and manner for unused holiday during the relevant employment year. The Committee considers that the option of giving-up the annual holiday for financial compensation is not in conformity with Article 7§7 of the Charter.

The Committee recalls that the situation in practice should be regularly monitored and therefore it asks information on the number and nature of violations detected as well as on sanctions imposed by the monitoring bodies for breach of the regulations regarding paid annual holidays of young workers under the age of 18.

### *Conclusion*

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§7 of the Charter on the ground that young workers have the option of giving-up their annual holiday for financial compensation.

## **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 Azerbaijan.

The Committee noted previously that according to the Article 254 of the Labour Code, young workers under the age of 18 are not permitted to work at night. For young workers under the age of 18, night time is considered between 8 p.m. and 7 a.m. (Conclusions 2011).

In its previous conclusion (Conclusions 2011), the Committee asked whether the prohibition of night work applies to all sectors and if not, what the exceptions are. The report indicates that the prohibition of night work for young workers under the age of 18 applies to all enterprises, establishments, organisations as well as workplaces where an employment agreement exists without the establishment of an entity. It applies also to employees performing jobs in their homes using their employer's materials.

The Committee recalls that the situation in practice should be regularly monitored and therefore it asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of night work for young workers under the age of 18.

### *Conclusion*

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

The report indicates that Section 15 of the Law on Protection of Public Health provides that young persons under the age of 18 can be employed in certain occupations only after a medical control and they shall undergo a medical check-up annually at the expense of the employer until they reach the age of 18. The list of occupations that require compulsory check-ups was approved by the Decision of the Collegium of the Ministry of Health. No. 46 of 13 December 2012 on "Improving the compulsory medical check-ups".

The Committee notes that the obligation to carry out a medical examination of young workers under the age of 18 refers only to certain occupations. It asks the next report to specify what occupations require a medical control on recruitment and annual check ups thereafter.

The Committee recalls that the situation in practice should be regularly monitored and asks how the State authorities monitor the observance of the applicable rules in practice. It asks the next report to provide information on the number and nature of violations detected by the monitoring bodies (eg the Labour Inspectorate, health services) as well as on sanctions imposed on employers in practice for breach of the rules concerning the medical examination of young persons under 18 years of age.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

### ***Protection against sexual exploitation***

The Committee recalls that under Article 7§10 of the Charter, an effective policy against commercial sexual exploitation of children should cover primary and interrelated forms: child prostitution, child pornography and trafficking in children.

- child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration;
- child pornography is given an extensive definition and takes account of the fact that new technology has changed the nature of child pornography. It includes the procurement, production, distribution, making available and simple possession of material that visually depicts a child engaged in sexually explicit conduct.
- trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.

Furthermore, States must criminalise the all act of sexual exploitation with all children under 18 years of age irrespective of lower national ages of sexual consent.

In its previous conclusion (Conclusions 2011) the Committee wished to be informed of the legislative basis for prohibition of all forms of sexual exploitation of children as described above.

It notes from the report that the acts of involving children in prostitution, child pornography, child trafficking labour exploitation have been criminalised as distinct forms of crime in the Criminal Code.

The Committee further notes from the replies to the general overview questionnaire under the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse that by the Law 408-IVQD of the Republic of Azerbaijan (2012) that Article 171-1 has been added to the Criminal Code which criminalises advertising, selling, transferring, offering, creating conditions for acquisition, distributing or keeping child pornography. Child Pornography stands for any material or item that visually depicts a minor engaged in sexually explicit conduct or a child's sexual organs for sexual purpose. Article 144 criminalises trafficking of minors.

The Committee asks whether the legislation also criminalises all acts of sexual exploitation of children until the age of 18.

The Committee recalls that child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation. Article 7§10 imposes an obligation of non-prosecution of all children under 18 in the criminal justice system, to ensure that they are treated as victims rather than criminals by the law enforcement and judicial authorities. In this connection it notes that according to the classification given by Article 308 of the Administrative Offences Code, women over 16 but under the age of 18 may be held criminally liable for prostitution. The Committee considers that this situation is not in conformity with the Charter.



### ***Protection against the misuse of information technologies***

In its previous conclusion the Committee wished to receive information concerning supervisory mechanisms and sanctions for sexual exploitation of children through the information technologies. It notes that the report does not provide this information.

The Committee recalls that under Article 7§10 of the Charter in light of the fact that new information technologies have made the sexual exploitation of children easier, States Parties must adopt measures in law and in practice to protect children from their misuse. As for example the internet is becoming one of the most frequently used tools for the spread of child pornography, States parties must take measures to combat this, such as by providing that Internet service providers be responsible for controlling the material they host, encouraging the development and use of the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.).

In the absence of information on this issue, the Committee considers that it has not been established that children are protected against the misuse of information technologies.

### ***Protection from other forms of exploitation***

According to the report, the National Action Plan on Combating Trafficking in human beings 2009-2013 was approved which sets the rules for providing shelters for children, victims of trafficking.

In line with the national Action Plan a memorandum of understanding on cooperation was signed between the Ministry of Internal Affairs and the NGO Coalition to raise awareness of human trafficking and the dangers emanating from it. Public awareness campaigns are organised every year. The Committee takes note of the various events organised by different NGOs with the support of OSCE, Open Society Institute and Save the Children.

According to the report, social shelters and rehabilitation centres were constructed to give specialised assistance, which was rendered to up to 160 children and youth, victims of violence, including family violence, sexual, physical and psychological violence.

In 2010-2013 the Children's Union of Azerbaijan registered 3,765 children and teenagers who are neglected or spend most of their time in the street. The organisation facilitated placement of 135 children in orphanages and boarding schools, 2,341 children were sent to medical facilities. In 2013 overall 462 minors were detected who were involved in begging and street life.

The Committee takes note of the information on the identified cases of trafficking. It notes that in 2010-2013, 7 children were identified as victims of human trafficking.

The Committee takes note of the Recommendation CP(2014)10 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Azerbaijan, which calls for further improvement of the identification of victims of trafficking, in particular by strengthening the involvement of specialised NGOs and other actors in victim identification, and improvement the detection of victims of trafficking among children and irregular migrants. The Committee wishes to be informed of any progress in this respect.

The Committee recalls that under the Charter, the prohibition of all forms of corporal punishment of children is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2(2001)). The

Committee has clearly stated that all forms of corporal punishment must be prohibited in the home, in schools and in institutions and this prohibition must have an explicit legislative basis. The sanctions available must be adequate, dissuasive and proportionate (Complaint No 18/2003, World Organisation against Torture (OMCT) v. Ireland, decision on the merits of 7 December 2004).

Committee recalls that the Charter was conceived as a whole and in some cases its provisions complement each other, as well as overlap in part (Mental Disability Advocacy Center (MDAC) v. Bulgaria; Complaint No. 41/2007; decision on admissibility of 26 June 2007, §8). This is the case with the protection of children from ill-treatment and abuse. The Committee considers that the fact that the right of children and young persons to social, legal and economic protection is guaranteed under Article 17 of the Charter does not exclude the examination of certain relevant issues relating to the protection of children under Article 7§10. In this connection, the Committee recalls having held the scope of the said two provisions to overlap to a large extent (Conclusions XV-2 (2001), Statement of interpretation on Article 7§10).

Therefore, since Azerbaijan has not accepted Article 17§1 of the Charter, the Committee will examine the issue relating to corporal punishment under this provision.

The Committee notes from another source (Global Initiative to end corporal punishment of children) that prohibition is still to be achieved in the home, alternative care settings and day care. There is no defence for the use of corporal punishment enshrined in legislation but there is no explicit prohibition and provisions against violence and abuse are not interpreted as prohibiting corporal punishment in childrearing.

Corporal punishment is lawful in the home. The Law on the Rights of the Child 1998 states in Section 12 that “cruel treatment of children by parents and other persons, the application of mental or physical abuse on children, and violation of children’s rights” is a cause for deprivation of parental rights. Under the Family Code 1999 the child has the right to respect for his/her dignity by the parents (Article 49) and to protection from parental abuse (Article 51). However, none of these provisions are interpreted as prohibiting all corporal punishment in childrearing.

Provisions against violence and abuse in the Criminal Code 1999, the Law on Prevention of Domestic Violence 2010 and the Constitution 2002 are not interpreted as prohibiting all corporal punishment.

There is no prohibition of corporal punishment in alternative care settings. The protections in the Law on the Rights of the Child 1998 apply but neither these nor the Law on Social Protection of Children Without Parents 1999 explicitly prohibit all corporal punishment.

Corporal punishment is considered unlawful under Section 32(3)(11) of the Law on Education 2009, which states that students have the right “to be protected from actions that are degrading to honour and human dignity and violate human rights”. Article 33(3) states that teachers have the obligation “to respect the honour and dignity of students” and “to protect children and youth from all forms of physical and mental abuse”.

The Committee considers that the situation is not in conformity with the Charter as all forms of corporal punishment are not prohibited in the home and in institutions.

### *Conclusion*

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§10 of the Charter on the grounds that:

- children over 16 but under the age of 18 may be held criminally liable for prostitution;
- it has not been established that children are protected against the misuse of information technologies;
- all forms of corporal punishment are not prohibited in the home and in institutions.

## **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 Azerbaijan.

### ***Right to maternity leave***

The Committee previously noted that Article 125 of the Labour Code, which applies both to the private and the public sector, provides for a paid leave of 70 days before childbirth (pregnancy leave) and 56 days afterwards (maternity leave), which can be extended to 70 days in case of multiple births or other complications. Further extensions are provided for women working in the industrial sector.

The Committee previously asked whether there is a period of compulsory postnatal leave and whether part of the leave can be relinquished at the employee's request. It also asked whether part of the pregnancy leave could be postponed after the birth. As the report does not provide any clarifications in this respect, the Committee reiterates these questions and considers that, should the next report fail to answer them, there will be nothing to prove that the situation is in conformity with the Charter on this point.

### ***Right to maternity benefits***

Benefits corresponding to the average monthly pay during the 12 months preceding the birth are paid for the entire period of pregnancy and maternity leave, both in the private and public sector.

In order to be entitled to these benefits, the woman concerned needs to have contributed to the social scheme for at least six months. The Committee asks the next report to clarify how this period of six months is calculated, namely whether the person needs to have contributed during the last six months preceding the period of entitlement to pregnancy leave, whether she needs to have at least six months of contribution over the previous 12 months or what other reference period is considered when assessing the six-months' requirement.

The Committee refers to its Statement of Interpretation on Article 8§1 (Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

The Committee previously found that the criteria applied in assessing the qualifying period to receive maternity benefits were not in conformity with the Charter, on grounds that the periods of unemployment were not taken into account. The report acknowledges that, although draft legislation has been proposed to solve this problem, no changes have been adopted yet. Accordingly, the situation remains not in conformity with Article 8§1 of the Charter on this point.

### ***Conclusion***

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 8§1 of the Charter on the ground that interruptions in the employment record are not taken into account in the assessment of the qualifying period required for entitlement to maternity benefits.

## **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 Azerbaijan.

### ***Prohibition of dismissal***

The Committee previously noted (Conclusions 2011) that Article 79 of the Labour Code prohibits employers from terminating the employment contract of pregnant women and women with children under three years old, except in case of liquidation of the activities of the employer (Article 70(a)) or in the event of the expiry of the term of an employment contract (Article 73).

### ***Redress in case of unlawful dismissal***

Article 195 of the Labour Code provides for the full financial liability of the employer, when the employment contract is illegally terminated and there is a binding court decision. The Committee previously noted that, in such cases, the woman concerned can be reinstated upon instruction of the Labour Inspectorate and that the same regime applies to women employed in the private and public sector.

In response to the Committee's request for details concerning the compensation which may be awarded in such cases, the report confirms that in case of illegal termination of the employment contract the employee is entitled to claim damages under Article 196 of the Labour Code, as well as under Article 9 (right to appeal to a court for protection of the employee's labour rights) and 16(1) (right to appeal to a court in case of discrimination).

The Committee furthermore asked for information as regards the level of the compensation awarded, whether a ceiling applied to it and, if so, whether the ceiling applied both to pecuniary and non-pecuniary damages, whether both types of damages are awarded by the same courts and how long it takes on average for courts to award compensation. Although the report does not provide the information requested, the Committee notes that according to Article 299 of the Labour Code (as available on the ILO database, <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/54131/65184/E99AZE01.htm>) there shall be no limit on the amount of a claim and its collection in an individual labour dispute and that under Article 300 an employee unlawfully dismissed under Article 79 can claim, in addition to reinstatement, a compensation for damage which would take account of the loss of salary during the period of unemployment, the legal and other expenses occurred as well as non-pecuniary damage. It asks the next report to confirm this information and to provide examples of case law showing how these provisions are applied in cases of unlawful dismissal of employees during pregnancy or maternity leave. It also reiterates the other outstanding questions and points out that, should the next report not provide the requested information, there will be nothing to establish that the situation is conformity in this respect. It reserves in the meantime 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 Azerbaijan.

It notes that there have been no changes to the situation which it previously found to be in conformity with the Charter: under Article 244 of the Labour Code, women workers who have a child under the age of one and half year are entitled to nursing breaks, in addition to their regular breaks. The nursing breaks should be taken every three hours and last at least thirty minutes each (one hour in case of more than one child). Upon the employee's request, the nursing breaks can be added to the regular lunch or rest breaks, or they can be taken at the beginning and/or end of the workday. Nursing breaks are considered as part of the working hours and paid as such. The same regime applies to women employed in the public sector.

### *Conclusion*

The Committee concludes that the situation in Azerbaijan 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 Azerbaijan.

It notes that there have been no changes to the situation which it previously found to be in conformity with the Charter: According to Article 242 of the Labour Code, which also applies to women employed in the public sector, night work is prohibited for women who are pregnant or have children under the age of three. As the report does not indicate, in response to the Committee's question, whether there are any exceptions to this rule, the Committee asks the next report explicitly to confirm that this is the case. The Committee furthermore asks the next report to clarify whether the employed women concerned are transferred to daytime work until their child is three years old and what rules apply if such transfer is not possible.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 8§4 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

It previously noted that Article 241 of the Labour Code prohibits to employ women in labour intensive work, in hazardous workplaces, as well as in underground tunnels, mines, and other underground work. The prohibition on underground work for women does not apply to work involving leadership positions where no physical work is needed, as well as in social work, sanitation and medical services, or in cases involving going underground without doing any physical work. The same provision sets limit to the weight which women are allowed to lift and carry in the framework of their professional activity and prohibits such activities for pregnant women and women with children aged under three years old. The same prohibitions and restrictions also apply to women employed in the public sector.

The report mentions a decision of the Cabinet of Ministers of 20 October 1999, No. 170 on the "List of hazardous productions, occupations (duties), as well as underground works where employment of women is prohibited", as well as a draft Law aimed at abrogating the current prohibition to women's employment set out in the abovementioned Article 241 of the Labour Code. The Committee asks the next report to provide updated information on this draft legislation. It notes however that the report does not contain the specific information requested on prohibitions or restrictions on dangerous activities, in particular those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents, for women who are pregnant, have recently given birth or are nursing their infant.

Accordingly, the Committee reiterates its request for a comprehensive, detailed and updated description of the rules aimed at ensuring a high level of protection against all known hazards to the health and safety of women who come within the scope of Article 8, paragraph 5 of the Charter. In particular, it asks whether all the specific risks referred to above (that is, activities involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents) are included in the List of hazardous productions and occupations and are restricted for women during pregnancy, in the period following the birth and during their nursing period. The Committee asks the next report to detail such restrictions. In the meantime, in the absence of the information requested, it considers 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 who are nursing their infant.

The Committee furthermore recalls that national law must make provision for the re-assignment of women who are pregnant or nursing their infant if their work is unsuitable to their condition, with no loss of pay. If this is not possible, such women should be entitled to paid leave and they should retain the right to return to their previous employment. The Committee asks the next report to indicate whether the national law provides for the reassignment of pregnant and nursing employees to work compatible with their condition, without loss of pay, or for paid leave in case such reassignment is not possible. It also asks whether, at the end of the protected period, the concerned women retain the right to return to their previous post. It reserves in the meantime its position on this point and considers that, should the next report not provide the requested information, there will be nothing to establish that the situation is in conformity in this respect.



### *Conclusion*

The Committee concludes that the situation in Azerbaijan 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 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 Azerbaijan.

### ***Social protection of families***

#### ***Housing for families***

The Committee has constantly interpreted the right to economic, legal and social protection of family life provided for in Article 16 as guaranteeing the right to adequate housing for families, which encompasses secure tenure supported by law (Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint 52/2010, decision on the merits of 22 June 2010, § 54).

Under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment. The Committee recalls that this obligation extends to ensuring protection against unlawful eviction (European Roma Rights Center (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24).

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies (administrative review, etc.). Any appeal procedure must be effective (Conclusions 2003 France, Italy Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction

To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards access to adequate housing for the families, the Committee asked in its previous conclusion (Conclusions 2011) for information on all the aforementioned points.

Despite the Committee's request the report provides no information. The Committee therefore reiterates its request. 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 these points.

As regards access to housing for vulnerable families and Roma in particular, the Committee has held that "as a result of their history, the Roma have become a

specific group of disadvantaged group and vulnerable minority. They therefore require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community" Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40).

Despite the Committee's request the report provides no information on access to housing for Roma families. The Committee therefore reiterates its request. 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.

### ***Childcare facilities***

The Committee notes that as Azerbaijan has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

### ***Family counselling services***

The report indicates that the State Committee for Family, Women and Children Affairs performs counselling services. The Committee wishes the next report to indicate how such services are distributed across the country (geographical coverage).

### ***Participation of associations representing families***

The Committee recalls that to ensure that families' views are catered for when family policies are framed, the authorities must consult associations representing families.

Despite the Committee's request the report provides no information on the participation of associations representing families in the framing of family policies. The Committee therefore reiterates its question. 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.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The Committee recalls that in cases of irreparable deterioration in family relations, Article 16 of the Charter requires the provision of legal arrangements to settle marital conflicts and in particular conflicts pertaining to children (care and maintenance, deprivation and limitation of parental rights, custody and access to children when the family breaks up).

Despite the Committee's request the report provides no information on the rights and obligations of spouses in cases of irreparable deterioration in family relations. The Committee therefore reiterates its question. 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.

### ***Mediation services***

The Committee understands that Centres for Supporting Children and Families perform mediation services. It asks for confirmation of that understanding. These centres operate in 11 regions, are financed by the State and provide services free of charge. The report also indicates that in 2013 the centres received 2,222 appeals related mostly to family conflicts, family violence and children in need of special care.

### ***Domestic violence against women***

The Law on Prevention of Domestic Violence of 22 June 2010 identified mechanisms for taking necessary legal, social and other actions for the prevention of domestic violence. Along with the duties related to the prosecution of crimes defined in the relevant legislation, the above-mentioned Law provides that the relevant state entity shall take several actions such as: providing immediate medical care, temporary shelter, psychological rehabilitation, security for the aggrieved person during the examination, issuing a protective order for the aggrieved person, etc. In this regard, 3,500 police officers received special trainings.

In addition, the report mentions activity projects realised in cooperation with the Baku Office of the OSCE, call centre systems, the drafting of the National Strategy for Prevention of Domestic Violence, the organisation of conferences and round tables. It also points out that for the period 2010-2013 a decrease has been observed in the number of crimes involving violence against women and that overall 24% of crimes occur within the family.

### ***Economic protection of families***

#### ***Family benefits***

The Committee recalls that in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of median equivalised income.

The Committee takes note of the data in the report and in MISSCEO concerning the various amounts of the basic family benefits. In order to assess whether child benefit represents an adequate income supplement the Committee asked in its previous conclusion (Conclusions 2011) the median equivalised income. Given that the report provides no such information, the Committee asks the next report to indicate similar indicators, such as the national subsistence level, average income or the national poverty threshold, etc.

#### ***Vulnerable families***

The Committee recalls that States' positive obligations under Article 16 include implementing means to ensure the economic protection of various categories of vulnerable families, including Roma families.

Despite the Committee's request the report provides no information on the economic protection of Roma families. The Committee therefore reiterates its question. 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.

***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The Committee notes that foreigners and stateless persons residing permanently in Azerbaijan are entitled to family benefits on an equal footing with Azerbaijani nationals. In its previous conclusion (Conclusions 2011) the Committee asked to be informed on the requirements to acquire permanent resident status. The report indicates that pursuant to the Migration Code, foreigners and stateless persons temporarily residing at least 2 years in Azerbaijan can submit an application to obtain the permit for permanent residence. The Committee recalls that the period of 1 year before benefiting from family benefits is manifestly excessive (Conclusions XVIII-1 (2006), Denmark). It therefore concludes that the situation is not in conformity with the Charter.

The Committee asks the next report to indicate whether refugees are treated equally with regard to family benefits.

*Conclusion*

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 16 of the Charter on the ground that equal treatment of nationals of States Parties regarding the payment of family benefits is not ensured because the length of residence requirement is excessive.

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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

According to the report the State Employment Service implements active labour market programmes aimed at supporting unemployed persons and those in search of a job, including those who left the job market due to family commitments to reintegrate in the labour market. Job search services, organisation of professional development courses as well as engagement in public works are offered in the framework of these programmes. The preparation of modular training programme was implemented within the project 'development of social protection'. The Ministry of Education approved 43 modular training programmes as basic teaching programmes which were prepared by a group of professional advisors on the basis of the ILO methodology. Each module includes training programme package, training elements, aide-memoires for trainees and trainers.

### ***Conditions of employment, social security***

In reply to the Committee's question in the previous conclusion (Conclusions 2011) the report states that the periods of paid and partially paid social leave granted for caring for children are counted towards the employee's seniority in social insurance, and are taken into account in the calculation of pension entitlement. Other periods are not counted towards the employee's seniority in social insurance, since social insurance contributions are not made during these periods. The Committee wishes to be informed of these other periods and their length.

The Committee asks the next report to describe any working conditions foreseen in legislation that may facilitate the reconciliation of working and private life, such as part-time work, working from home or flexible working hours.

### ***Child day care services and other childcare arrangements***

In its previous conclusion the Committee asked for statistical information on the number of places in crèches, by age group, and the number of applications for places turned down. It notes that the report does not provide this information. Therefore, the Committee considers that it has not been established that there is enough number of places in childcare facilities.

The Committee wishes to receive updated information regarding the numbers of places in kindergartens, by age group and the number of applications for places turned down. It wishes to know whether services are affordable and of high standard (quality being assessed on the basis of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and the amount of the financial contribution parents are asked to make).

### *Conclusion*

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 27§1 of the Charter on the ground that it has not been established that there is enough places in childcare facilities.

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

### *Paragraph 2 - Parental leave*

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

The report states that the right of women parental leave is enshrined in Article 127 of the Labour Code, which provides that a single parent or another family member who is directly caring for a child until it is three years old, shall be eligible for partially-paid social leave. An employee caring for a child may use partially paid social leave completely or in part at his discretion.

The Committee recalls in this connection that under Article 27§2 of the Charter national legislation should entitle men and women to an individual right to parental leave. With a view to promoting equal opportunities and equal treatment between men and women, the leave should be provided to each parent and at least some part of it should be non-transferable.

According to Article 117 of the Labour Code women with two children under the age of 14 shall be eligible for 2 additional calendar days of vacation time, while women with three or more children of this age or with a disabled child under the age of 16 shall be eligible for 5 additional calendar days of vacation time. Fathers raising their children as single parents and adoptive parents shall be eligible for the additional vacation time.

The Committee considers that it has not been established that Articles 117 and 127 provide for an individual, non-transferable right of each parent who are not single parents, to parental leave. Therefore, the situation is not in conformity with the Charter.

All women who having taken social leave for pregnancy or maternity, or partially paid social leave are entitled to return to their places of employment after the end of the leave except for cases set forth in the legislation (e.g. the termination of the term of the labour contract or closing down of the enterprise where the woman worked).

As regards the remuneration of parental leave, according to the report, during the partially paid social leave a monthly benefit in the amount of 30 AZN (€ 25) is paid until the child is one and a half years old. A monthly benefit in the amount of 15 AZN (€ 12) is paid until the child reaches three years.

The Committee recalls that under Article 27§2 of the Charter the States are under a positive obligation to encourage the use of parental leave by either parent. The States shall ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave.

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

The Committee considers that the level of social leave benefit is too low and thus it is inadequate. Therefore, the situation is not in conformity with the Charter.

### *Conclusion*

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 27§2 of the Charter on the grounds that:

- it has not been established that the legislation provides for an individual, non-transferable right to parental leave for each parent, who are not single;
- the level of social leave benefit is inadequate.



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

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

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

Article 79 of the Labour Code prohibits termination of the employment contract of pregnant women and women with children under the age of three or men who raise alone a child under the age of three.

Article 296 of the Labour Code provides that an employee has three months to appeal to the body responsible for reviewing individual labour disputes. An employee may also appeal to a court for the settlement of an individual labour dispute. To resolve labour disputes pertaining to monetary or property claims, as well as disputes pertaining to damages, an employee may appeal to a court within one year.

Article 300 of the Labour Code defines the legal consequences of an employer's failure to comply with the rules for terminating an employment contract. If an employer unlawfully terminates employment relations with an employee, the court will order the reinstatement of the employee by retaining his salary for the period of absence from work or by approving the parties' reconciliation agreement. In its decision, the court can also order the payment of compensation to the employee in the amount of damage that was caused.

The term 'the amount of damage caused' is interpreted as the sum of the average salary of an employee in the period of unemployment due to unlawful dismissal, the amount of all expenses incurred by the employee in the process, as well as the compensation of moral damage.

The Committee understands that the legislation does not impose any ceiling on the overall amount of compensation which can be awarded in unlawful dismissal cases on the ground of family responsibilities. The Committee asks whether this interpretation is correct and also asks for the the relevant domestic case law examples.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Azerbaijan is in conformity with Article 27§3 of the Charter.



January 2016

# **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**BELGIUM**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Belgium which ratified the Charter on 2 March 2004. The deadline for submitting the 9<sup>th</sup> report was 31 October 2014 and Belgium submitted it on 3 November 2014.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns information requested by the Committee in Conclusions 2013 in respect of its conclusions of non-conformity due to a repeated lack of information<sup>1</sup>:

- Right to benefit from social services – Public participation in the establishment and maintenance of social services (Article 14§2).

The Committee adopted a conclusion of conformity on this provision.

The next report by Belgium will deal with the accepted provisions of the thematic group "Employment, training and equal opportunities":

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

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- Right to a fair remuneration – Decent remuneration (Article 4§1)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter)

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<sup>1</sup>Belgium also submitted a report on follow-up to decisions on the merits in collective complaints. The Committee's findings in this respect are available in a separate document.

## **Article 14 - Right to benefit from social services**

### *Paragraph 2 - Public participation in the establishment and maintenance of social services*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Belgium in response to the conclusion that it had not been established that measures were taken to encourage individuals and voluntary organisations to participate in the establishment and running of social welfare services (Conclusions 2013, Belgium).

The Committee recalls that Article 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services (Conclusions 2005, Statement of Interpretation on Article 14§2). This does not imply a uniform model, and States may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The "individuals and voluntary or other organisations" referred to in paragraph 2 include, the voluntary sector (non-governmental organisations and other associations), private individuals, and private firms. Moreover, in order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms, an effective preventive and reparative supervisory system is required.

The Committee further recalls that its previous conclusion of non-conformity was specifically based on the absence of information concerning all the Regions and Communities in Belgium (only information concerning the Flemish Community and the French Community Commission in Brussels was provided).

The Government, referring to its previous description of the situation in Flanders, states that the Walloon Region, the French Community Commission in Brussels as well as the German-speaking Community all provide essentially the same range of social services based on the following key features: public programming and budgeting of social services with delivery of services being carried out by public, semi-public and private providers on the basis of a licensing system (*agrément*s) and specific agreements (*convention*s). All providers are subject to supervision with regular inspections and with the possibility of sanctions in case of failings (for example withdrawal of licenses, cutting of funding or non-renewal of agreements). In all Regions and Communities provision is made for the participation in various forms of users of social services, for example through consultative bodies.

The Government also emphasises that legislation transposing the relevant EU directives ensures that social services are provided without discrimination irrespective of whether the provider is public or private.

The Committee takes note of the detailed information on social services in the Walloon Region and under the auspices of the French Community Commission in Brussels, including on organisational aspects, the different types of measures, the number of beneficiaries, the amount of spending and subsidies, quality norms and supervision mechanisms. The Committee asks that the next report contain similar information in respect of the German-speaking Community.

Finally, the Committee notes the information on the new Flemish Government Agreement for the period 2014-2019 which introduces a number of reforms also pertaining to social services. The Committee asks that the next report contain information about the implementation of this agreement and on the results achieved in encouraging individuals and voluntary or other organisations for the establishment of social services.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 14§2 of the Charter as regards the measures taken to encourage individuals and voluntary organisations to participate in the establishment and running of social services.



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**BOSNIA AND HERZEGOVINA**

*This text may be subject to editorial revision.*





The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Bosnia and Herzegovina which ratified the Charter on 7 October 2008. The deadline for submitting the 5th report was 31 October 2014 and Bosnia and Herzegovina submitted it on 26 May 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

Bosnia and Herzegovina has accepted all provisions from the above-mentioned group except Articles 19, 27 and 31.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Bosnia and Herzegovina concern 18 situations and are as follows:

– 3 conclusions of conformity: Articles 7§7, 7§10, 8§3.

– 13 conclusions of non-conformity: Articles 7§2, 7§3, 7§4, 7§5, 7§6, 7§8, 7§9, 8§1, 8§2, 8§4, 8§5, 16, 17§1.

In respect of the other 2 situations related to Articles 7§1 and 17§2, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Bosnia and Herzegovina under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 8§1**

- In accordance with the Council of Minister's decision, as of 29 September 2010 all employees of the Bosnia and Herzegovina State Institutions, regardless of their place of residence, are entitled to maternity benefits in the amount of the average net salary earned in the last three months before the maternity leave.

- Section 45 of the Brčko District Labour Act was amended on 23 August 2014 and a new Decision on the Conditions and Manners of Payment of Compensation of Salary during Maternity Leave (No. 34-000890/13 of 15 January 2014) entered into force on 22 January 2014.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

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

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

The report indicates that, according to the Labour Law of the Federation of Bosnia and Herzegovina, it is not permitted to conclude an employment contract with persons under the age of 15. The contract concluded in breach of this provision shall be deemed null and void, and thus shall not produce any legal consequences. The report indicates that the labour inspectors did not detect any cases of employment contracts concluded with persons under the age of 15.

In Republika Srpska, an employment contract cannot be concluded with a person under 15 years of age and who does not have the general health ability to work (Section 14 of the Labour Law).

With regard to the Brčko District, the report indicates that it is prohibited to persons under the age of 15 to conclude an employment contract (Section 10 of the Labour Law). A person of 15 years of age may conclude an employment contract only with the consent of one or both parents or the legal guardian, and if a licensed doctor or the competent medical institution have issued a certificate showing that the minor had been examined and that he/she is physically and mentally able to perform the tasks required by the respective job.

The Committee notes from the information provided in the report that the legal provisions which prohibit a person below the age of 15 from concluding an employment contract, apply only to a formal contractual relationship in all entities of Bosnia and Herzegovina. The Committee requests the Government to provide information on the measures taken to ensure that children who are not bound by a formal employment relationship, such as children performing unpaid work, work in the informal sector or work on a self-employed basis, benefit from the protection provided by Article 7§1 of the Charter. The Committee asks what are the measures taken by the authorities (eg labour inspection) to detect cases of children under the age of 15 working on their own account or in the informal economy, outside the scope of an employment contract.

The Committee noted previously that light work is not defined by law in any of the entities of Bosnia and Herzegovina. It asked whether children under 15 are not allowed to perform any kind of work (Conclusions 2011). The report indicates that children under the age of 15 are not permitted to be employed in any work, not even in light work. The Committee takes note from another source of the Government's statement that it will strictly enforce the ban on work by persons under the age of 15 in Republika Srpska, regardless of whether it concerns engagement in light work activities and it has not envisaged to take any measures to allow such work by children under 15 (Direct Request (ILO-CEACR) – adopted 2014, published 104th ILC session (2015), Minimum Age Convention. 1973 (No. 138)).

In its previous conclusion, the Committee asked what the situation in Bosnia Herzegovina was in relation to monitoring of work done at home. The report indicates that the laws of the Federation of Bosnia and Herzegovina and Republika Srpska do not regulate work done at home or outside the employer's premises and, therefore, the competence of the labour inspection is limited to inspections at the seat or registered workstations of the employer. The report adds that the new draft of the Labour Law in the Federation of Bosnia and Herzegovina contains provisions with regard to work done at home. The Labour Law of the Brčko District

provides the possibility of carrying out work outside the premises of the employer. According to the report, the labour inspectors have not performed any inspection for monitoring this type of work yet.

The Committee recalls that work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28).

The Committee recalls that States are required to monitor the conditions under which home work is performed in practice (Conclusions 2006, General Introduction on Article 7§1). The Committee asks how the work done at home is monitored.

The Committee previously asked information on the measures taken by the Labour Inspectorate to detect cases of child labour. The report indicates that according to the labour inspectors' reports, there have been no cases recorded where employers concluded contracts with persons under the age of 15. The report indicates that labour inspectors may impose fines ranging from 1,000 to 7,000 Bosnia and Herzegovina Convertible Marks (KM) (€ 512 to € 3,584). The Committee notes from another source that in both Federation of Bosnia and Herzegovina and Brčko District the legislation does not establish any penalties for the non-observance of the minimum age provisions (Sections 15, respectively Section 10 of the Labour Laws). It also notes that according to the same source, the fine indicated by the Government is provided by the new draft of the Labour Law of FBiH as a penalty for the offences related to concluding contracts with children younger than 15 or employing such persons into any type of job (Direct Request (ILO-CEACR) – adopted 2014, published 104th ILC session (2015), Minimum Age Convention. 1973 (No. 138)). The Committee asks detailed and precise information in the next report on the applicable sanctions in case of non-observance of the prohibition to conclude an employment contract with a person under the age of 15.

The Committee recalls that the situation in practice should be regularly monitored. It asks that the next report provide information on the number and nature of violations detected as well as on sanctions effectively imposed in practice on employers for engaging children under the age of 15 in any type of economic activities.

#### *Conclusion*

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

## **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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

The Committee noted previously that the labour codes in the Federation of Bosnia and Herzegovina, Republika Srpska and the Brčko District provide that young persons cannot work in extremely difficult physical work, underground or under water, nor in a position that might pose risk to his/her life and health, development and morals, taking into account his/her psychological and physical capacities (Conclusions 2011).

The Committee asked whether there exist further specifications in law as to the forms of work or types of risk that would constitute dangerous or unhealthy activity for young persons.

The report indicates that, in the Federation of Bosnia and Herzegovina, according to the Labour Law, the Ministry of Labour and Social Policy shall issue a separate regulation to determine the types of hazardous work prohibited to young persons under 18 years of age. The report indicates that no such regulation defining the hazardous works prohibited to persons under 18 years of age has been adopted. The Committee takes note from another source of the Government statement that it is in the process of adopting a new Labour Law (Direct Request (ILO-CEACR) – adopted 2014, published 104th ILC session (2015), Minimum Age Convention, 1973 (No. 138)). The Committee asks information on any progress made in this regard.

In Republika Srpska, determining the types of hazardous work prohibited to young persons under 18 years of age shall be regulated by the provisions of sectoral or specific collective agreements. The Committee notes from another source the Government's statement that it will, during the future discussions related to the adoption of the new Labour Law, ensure that a provision authorizing the Ministry of Labour to determine hazardous works that are prohibited to children under 18 years, is included in the new Labour Law (Direct Request (ILO-CEACR) – adopted 2014, published 104th ILC session (2015), Minimum Age Convention, 1973 (No. 138)).

With regard to the Brčko District, the report indicates that according to Section 41(2) of the Labour Law, the types of dangerous work prohibited to young persons aged 15-18 years are determined by the collective agreement which BD still does not have. The types of work or types of risks that would represent a risk or an unhealthy influence on the young person are not explicitly listed in BD.

The Committee recalls that in application of Article 7§2 of the Charter, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work (Conclusions 2006, France). The Committee considers that the situation is not in conformity with Article 7§2 of the Charter on the ground that the legislation does not define or provide a list of dangerous activities prohibited to young workers under 18.

The Committee previously asked information on how the Labour Inspectorate monitored the arrangements regarding employment of young persons in hazardous work and what measures

were taken in case of violations (Conclusions 2011). The report does not provide any information on the monitoring activities of the labour inspection.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the monitoring activities and findings of the Labour Inspectorate for the respective reference period in relation to the prohibition of employment under the age of 18 for dangerous or unhealthy activities, including the nature and number of violations detected and sanctions applied in practice. The Committee points out that should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 7§2 of the Charter.

#### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§2 of the Charter on the ground that the legislation does not define or provide a list of dangerous or unhealthy activities prohibited to young workers under 18.

## **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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

The Committee noted previously that primary education starts at the age of 6 years old and continues for a period of eight or nine years. It noted the Government's statement that as of June 2013, the age of completion of compulsory education was 15 (Conclusions 2011). The Committee notes that the age of completion of compulsory education coincides with the minimum age of employment. It refers to its observations on light work under its conclusion on Article 7§1.

The Committee noted previously that labour and education law in Bosnia and Herzegovina do not allow for the possibility of employment of children during holidays, nor do they define any types of works that may be performed (Conclusions 2011). The Committee asked clarification on whether there are any categories of work where children under 15 and subject to compulsory education may be employed. The report indicates that there are no legal provisions regulating work during holidays of children subject to compulsory education since there is a general ban on employment of children under the age of 15. There are no data indicating the employment of children under 15 years of age.

The report does not provide any information on the situation in practice. The Committee notes from other sources that 8.9% of children aged between 5 and 14 were engaged in an economic activity (Direct Request (ILO-CEACR) – adopted 2010, published 100th ILC session (2011), Minimum Age Convention. 1973 (No. 138)). The Government does not provide any statistics/data from the labour inspection demonstrating that children who are still subject to compulsory education do not perform work which prevent them to fully benefit from their education.

The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide information on the number and nature of violations detected as well as on measures taken/sanctions imposed on employers for breach of the regulations regarding prohibition of employment of children subject to compulsory education. Meanwhile, it concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§3 of the Charter on the ground that it has not been established that the effective protection against employment of children subject to compulsory education is ensured in practice.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§3 of the Charter on the ground that it has not been established that the effective protection against employment of children subject to compulsory education is ensured in practice.

## **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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

The Committee noted previously that young persons under 18 are allowed to work up to 40 hours per week. It concluded that the situation was not in conformity with Article 7§4 of the Charter on the ground that the limit of 40 hours of work per week for young workers under the age of 16 is excessive (Conclusions 2011).

The Committee notes from the information provided in the report that the legal framework has not changed during the reference period. It recalls that under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice. For persons under 16 years of age, a limit of 8 hours a day or 40 hours a week is contrary to the article. The Committee therefore maintains its conclusion of non-conformity on this point.

The report further indicates that in the Federation of Bosnia and Herzegovina the new draft of the Labour Law provides a limit of 35 hours of work per week for young workers under 18. However, the report indicates that the new Labour Law has not been adopted yet. The Committee asks to be informed of any progress made in this respect.

The report does not provide any information on the situation in practice. The Committee recalls that the situation in practice should be regularly monitored. It therefore asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed on employers for breach of the regulations regarding the working time for young workers under the age of 18 who are no longer subject to compulsory schooling.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§4 of the Charter on the ground that the limit of 40 hours' work per week 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 Bosnia and Herzegovina.

The Committee asked previously information on the net minimum wage and the net average wage in order to assess the situation under Article 7§5. The report provides data on the net average wage and the lowest wage in each of the entities of Bosnia and Herzegovina, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

### **Young workers**

The report indicates that in the Federation of Bosnia and Herzegovina (FBiH), salaries are established by the collective agreements of the specific branch/activity. There is no difference between the amount of young persons' wage and adults' wage. The amount of the minimum wage in FBiH as established by the General Collective Agreement has not changed since October 2008. The report indicates that the lowest net hourly wage cannot be less than 1.95 Convertible Marka (KM) and the lowest net monthly wage is 343 KM (175 €). The average net wage in 2013 was of 835 KM (427 €). The Committee notes that the lowest net wage represents only 41% of the net average wage in the Federation of Bosnia and Herzegovina.

In Republika Srpska, young workers are paid at the same level as adults. The lowest net salary was of 370 KM (189 €) in 2010 and it has not been changed, while the average net monthly salary was 808 KM (413 €) in 2013. The Committee notes that the lowest net wage represents only 45% of the net average wage in Republika Srpska.

With regard to Brčko District, the report provides information on the net and gross average wage for the main branches/activities during the reference period, as well as the amount of the lowest net salaries. For example, the average net salary in 2013 was 817 KM (417 €), while the lowest net salary was established in the field of hotels and catering at 437 KM (223 €). The Committee notes that the lowest net wage represents 53% of the net average wage.

The Committee recalls that young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. 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%. 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 cannot be considered fair.

In the present case, since Bosnia and Herzegovina has not accepted Article 4§1 of the Charter, the Committee makes its own assessment on the adequacy of young workers wage under Article 7§5. For this purpose, the ratio between net minimum wage/lowest wage and net average wage is taken into account. The Committee notes that the monthly minimum wage corresponds to less than 50% of the average wage in the Federation of Bosnia and Herzegovina and Republika Srpska, which is too low to secure a decent standard of living. Therefore, the Committee considers that the right to a fair pay of young workers is not guaranteed since the reference wage itself (the minimum wage of adult workers) is too low to secure a decent standard of living.

## ***Apprentices***

In its previous conclusion, the Committee noted that apprentices have the right to an allowance amounting to at least 80% of the lowest salary paid by the employer. The Committee asked whether by "lowest salary" is meant the minimum wage.

The report indicates that in the Federation of Bosnia and Herzegovina, the reference salary could be the minimum salary for the corresponding position with the employer that the apprentice is being trained for or the lowest salary in the Federation of Bosnia and Herzegovina. The employer shall determine the basis on which he/she will calculate 80% for the apprentice's allowance.

As regards Republika Srpska, the Labour Law provides that an apprentice is entitled to 80% of the salary of an adult worker who performs the same work (Section 29 (2)). The report adds that all collective agreements for workers in the real sector and the laws governing the amount of salaries of civil servants and other persons who are paid from the Republika Srpska budget stipulate that an intern is entitled to remuneration in the amount of 80% on the one he/she would receive if he/she had passed the professional exam.

The report indicates that Section 19 of the Labour Law of Brčko District provides that an employer may conclude an employment contract with an apprentice during the training period prescribed for the profession to which it relates. During the internship, the apprentice is entitled to 80% of the salary of the workplace to which he/she is employed. The lowest salary does not mean the minimum wage and the intern is entitled to 80% of the salary of the workplace to which he/she is employed, rather than the minimum wage.

The Committee asks how the labour inspectorate monitors the situation with regard to the apprentices' allowances in practice.

## ***Conclusion***

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

## **Article 7 - Right of children and young persons to protection**

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

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

In its previous conclusion, the Committee concluded that the situation was not in conformity with Article 7§6 of the Charter on the ground that the legislative framework did not provide for time spent at the training with the consent of employer, to be included in normal working time and remunerated as such.

The Committee notes from the information provided in the report that there has been no progress during the reference period in this regard. It therefore maintains its conclusion of non-conformity on this point.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§6 of the Charter on the ground that the legislative framework does not provide for time spent at the training with the consent of employer to be included in normal working time and remunerated as such.

## **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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

The Committee noted previously that the labour laws in the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District provide that young persons under 18 years of age are entitled to 24 working days annual leave with pay. It asked whether young workers have the option of giving-up their annual holiday with pay and whether young workers have the possibility to take the leave lost at some other time in the event of illness or accident during the holidays.

The report indicates that, in the Federation of Bosnia and Herzegovina, the young employees exercise their right to annual leave with pay in the same conditions as the adult employees. An employee cannot waive the right to annual leave nor may it be denied to him, nor may any compensation be paid in lieu of unused annual leave (Article 45 of the Labour Law). The annual leave can be divided in two parts, one of which should be taken without interruption for at least 12 days, while the remainder can be taken until 30 June next year (Article 44 of the Labour Code). The report adds that the duration of the annual leave does not include the period of temporary incapacity for work due to illness or injury and that the employees may take the leave once the circumstances causing the interruption have ceased.

In Republika Srpska, in case the leave is interrupted due to a temporary incapacity to work such as illness or accident, the employee has the right to benefit of the leave at another time, once the circumstances which caused the inability to work have ceased.

With regard to the Brčko District, the report indicates that Section 36 of the Labor Law provides that an employee cannot waive the right to annual leave or be denied the right to annual leave, nor may he be paid compensation in lieu of annual leave. As an exception, compensation for the unused leave may be provided in the event of termination of the employment contract with the mutual agreement of the employer and employee. An employee may take the leave lost due to a temporary incapacity to work at another time, once the circumstances which caused the inability to work have ceased.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the monitoring activities and findings of the Labour Inspectorate for the respective reference period in relation to the paid annual holidays of young workers under 18 years of age, including the nature and number of violations detected and sanctions applied in practice.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Bosnia and Herzegovina 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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

The Committee noted previously that Section 36 of the Labour Law of the Federation of Bosnia and Herzegovina, Section 51§1 of the Labour Law of the Republika Srpska and Section 32 of the Labour Law of the Brčko District restrict the night work of the minor employees. For young workers employed in industry, work between 7:00 p.m. and 7:00 a.m. is considered night work. While for young workers employed in other sectors than industry, work between 8:00 p.m. and 6:00 a.m. is considered night work (Conclusions 2011).

The Committee noted previously the applicable sanctions in cases of violation of prohibition of night work for young workers and asked for information on the activity of the Labour Inspectorate concerning the supervision of the situation in practice (Conclusions 2011). The report does not provide the requested information.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It recalls that the situation in practice should be regularly monitored and that the labour inspection has a decisive role to play in effectively implementing Article 7 of the Charter (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32). In the absence of any data on the supervision activity of the Labour Inspectorate, the Committee considers that the situation is not in conformity with Article 7§8 of the Charter on the ground that it has not been established that the regulations regarding prohibition of night work of young persons under 18 years of age are implemented in practice.

The Committee asks that the next report provide information on the activities and findings of the Labour Inspectorate for the respective reference period in relation to the prohibition of night work for young workers under the age of 18, including the nature and number of violations detected and sanctions applied.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§8 of the Charter on the ground that it has not been established that the regulations regarding prohibition of night work for young persons under 18 years of age are implemented in practice.

## **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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and in the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

In its previous conclusion, the Committee found the situation to be not in conformity with Article 7§9 of the Charter on the ground that there is no requirement for regular medical check-ups for young workers (Conclusions 2011).

The Committee noted previously that the legislative framework provided only for mandatory medical exams for young workers at recruitment, but there was no requirement for regular check-ups thereafter. The Committee notes from the information provided in the report that there have been no changes to the legal framework and, therefore, the young workers are still not guaranteed regular check-ups during employment until they reach the age of 18.

The Committee recalls that, in application of Article 7§9, domestic law must provide for compulsory regular medical check-ups for under-eighteen year olds employed in occupations specified by national laws or regulations. The obligation 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.

The report indicates that in the Federation of Bosnia and Herzegovina, the draft of the new Labour Law prescribes that a young worker under 18 shall be entitled to a medical examination at least once every two years and the cost of such medical examination shall be borne by the employer. The Committee notes from the report that the Labour Law has not been adopted yet. It asks that the next report provide information on any progress made in this regard.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§9 of the Charter on the ground that legislation does not provide for compulsory regular medical examinations for young workers under 18 years of age employed in occupations prescribed by national laws or regulations.

## **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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

The Committee notes that Bosnia and Herzegovina ratified the Council of Europe Convention on the protection of Children against Sexual Exploitation and Sexual Abuse in 2012.

### ***Protection against sexual exploitation***

According to the report, on 13 July 2013 the Council of Ministers adopted the 2011-2014 Action Plan for Children. This Action Plan defines the measures to be taken to protect children from sale, child prostitution, child pornography and trafficking of children. The Council of Ministers adopts annual reports on the state of human trafficking and illegal immigration. The Committee wishes to be kept informed of the implementation of the 2011-2014 and any new Action Plans.

In its previous conclusion (Conclusions 2011) the Committee took note of the legislative framework governing sexual exploitation of children in all entities. The Committee asked whether all criminal codes provide for criminalisation of all acts relating to child pornography, including procurement, production, distribution, making available and simple possession of child pornography, until the age of 18.

According to the report, at the beginning of 2010, the Parliamentary Assembly adopted the Law on Amendments to the Criminal Code. According to the report, by these amendments Article 186 relating to human trafficking is in compliance with the Council of Europe Convention on Action against Trafficking in Human Beings.

The Committee notes from the report as well as from the replies to the general overview questionnaire concerning the implementation of the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse that the fundamental ground for the protection of children against sexual exploitation and abuse is contained in the framework of the Criminal Codes of the entities. The State Criminal code, in the group of criminal offences against humanity and values protected by international law, prescribes certain criminal offences containing sexual exploitation of children, that is the ones in which persons under the age of 18 appear as damaged parties, such as establishment of slavery, trafficking in persons, and international procuring in prostitution.

In the Criminal Codes of entities in chapters "criminal offences against sexual integrity and moral" and "criminal offences against marriage and family", a list of criminal offences having elements of sexual abuse and sexual exploitation of children (persons younger than 14 years of age) and juveniles (persons younger than 18 years of age), are being indicated, such as sexual intercourse with a child, luring in offering sexual services, trafficking of juveniles, exploitation of a child or a juvenile for pornography, including production, possession and transmitting of children pornography.

The Committee asks whether the Criminal Codes of all entities criminalise all acts of sexual exploitation of juveniles (i.e. persons below 18 years of age), including simple possession of child pornography.

### ***Protection against the misuse of information technologies***

According to the report, the Council of Ministers on 26 March 2013 adopted the 2013 -2015 Strategy for fight against trafficking in human beings on the basis of which an Action plan to protect children and prevent violence against children through information and communication technologies for the period 2014 -2015 was adopted.

The Action plan was prepared by the Ministry of Security in cooperation with all relevant institutions. This action plan is focused on improving the system of protection against child pornography. It contains more than 40 activities to be implemented by the authorities by the end of 2015 in order to ensure an efficient mechanism of protection against child pornography and other forms of sexual exploitation and abuse of children through information and communication technologies.

The Action Plan envisages measures to be taken for *prevention* (awareness raising, production of promotional videos and involvement into the "Safer Internet Day), *cooperation* (further development and advancement of the existing capacities together with and in cooperation with internet service providers) and *support to victims* (rehabilitation and re-integration with a view to providing the victims with emergency and comprehensive assistance).

The Committee wishes to be informed of the implementation of the Action Plan.

### ***Protection from other forms of exploitation***

According to the report, child begging in the streets, in most cities, represents a socio – pathological problem. In the area of human trafficking prevention and suppression of begging, this problem has always been given some attention, primarily through the establishment of certain facilities in the form of day care centers for children working in the streets.

The Committee notes from the report that day centres and reception centres have been set up in some cities, such as Sarajevo and Mostar, with a view to protecting and assisting children living in the streets.

Day care centers provide shelter and professional assistance to children who live or work on the streets and who are at risk of trafficking, and various forms of exploitation. The users of these centers are children aged 5-18 years from socially vulnerable families, prone to begging, with problems of discipline, children at risk of abuse, trafficking, prostitution, begging, and all the negative effects of the street.

Protocols on cooperation were signed in most municipalities according to which institutions which perform harboring of children living and working in the street coordinate and work with parents and other institutions. According to the report, the number of children living and working on the street has been reduced.

The Committee wishes to be kept informed of the number of children identified as living in the streets and measures taken to curb this phenomenon so that the rights of the Charter are guaranteed for these children.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Bosnia and Herzegovina is in conformity with Article 7§10 of the Charter.



## **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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

### ***Right to maternity leave***

The report recalls that the Labour Law in the Institutions of Bosnia and Herzegovina (Official Gazette 26/04, 7/05, 48/05, 60/10, 32/13), Section 4, sub-paragraph a) regulates the protection of women and maternity in public institutions, public enterprises, associations and foundations, cross-entity corporations and other institutions performing additional responsibilities of Bosnia and Herzegovina; in conformity with Article 45 of the Law on Civil Service in the Institutions of Bosnia and Herzegovina (Official Gazette 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10) the same rules apply to civil servants in ministries, independent administrative organisations and administrative organisations in ministries, as well as other institutions established by special laws or entrusted with administration operations by special laws. The Committee notes from the information provided by the representative of Bosnia and Herzegovina to the Governmental Committee (Report concerning Conclusions 2011, §281) that Article 36§1 of the Law on Salaries in Bosnia and Herzegovina Institutions (Official Gazette 50/08) provides for a pregnancy, childbirth and child care leave of twelve consecutive months, including a mandatory postnatal leave of 42 days.

As regards the provisions applying to the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District, the Committee had previously noted that they all provided for an overall pregnancy, maternity and parental leave of twelve consecutive months, which can be extended to 18 months in case of multiple births and includes a compulsory postnatal leave of 42 days in Federation of Bosnia and Herzegovina and Brčko District and of 60 days in Republika Srpska (Conclusions 2011).

### ***Right to maternity benefits***

As regards public sector employees of State institutions, the report refers to a Decision issued in November 2010 by the Council of Ministers (Decision on the Manner and Procedure of Exercising the Right to Maternity Benefits in the Institutions of Bosnia and Herzegovina, Official Gazette 95/10) as a follow-up to a Constitutional Court's judgment of 28 September 2010, which abrogated a provision allowing for different conditions and amount of maternity benefits to be paid to state employees depending on their place of residence. In accordance with the Council of Minister's decision, as of 29 September 2010 all employees of the Bosnia and Herzegovina State Institutions, regardless of their place of residence, are entitled to maternity benefits in the amount of the average net salary earned in the last three months before the maternity leave. The Committee refers to its Statement of Interpretation on Article 8§1 in the General Introduction and asks what are the conditions for entitlement to maternity benefits and to what extent interruptions in the employment record are taken into account in this respect. It furthermore asks whether the minimum rate of compensation corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value. It reserves in the meantime its position on this issue.

In the Federation of Bosnia and Herzegovina, the same rules on maternity benefits apply to employees in the private as in the public sector but the conditions for entitlement and the level of the benefits are regulated at canton level. In this connection, the Committee had previously found that, contrary to the Charter's requirement, some of the cantons did not provide for maternity benefits or the benefits' level was inadequate. The report acknowledges that, while new legislation is being prepared to bring the situation in conformity with the Charter, no change has occurred yet. As a result, two cantons do not provide yet for maternity benefits while in some others the level of benefits is below 70% of the employee's salary or is based on the average salary in the canton rather than the employee's salary. Accordingly, the Committee reiterates its finding of non-conformity with Article 8§1 of the Charter. It asks the next report to provide updated information on this point and to specify what are the conditions for entitlement to benefits in the different cantons, on what basis they are calculated and what is their level, with regard to the employee's previous salary and with regard to the poverty threshold (see above).

In the Republika Srpska, the same rules on maternity benefits apply to employees in the private as in the public sector. In particular, pursuant to Section 84 of the Labour Act the employee is entitled to compensation amounting to her average salary over the last three months preceding the maternity leave. If the employee has not received a salary over each of the last six months, the compensation shall be paid in accordance with the collective agreement for the months preceding the month preceding the maternity leave. Section 94§2 of the Labour Act provides that the salary compensation shall not be lower than 50% of the employee's average salary in the reference period or the average salary which she would have earned if she had been working. The Republika Srpska laws provide that salary compensation paid during maternity leave amounts to 100% of the determined base. The Committee asks the next report to clarify what are the criteria for entitlement to maternity benefits and under what circumstances, if any, salary compensation corresponding to 50% of the employee's average salary can be paid in respect of maternity benefits. It furthermore asks whether the minimum rate of compensation corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value. It reserves in the meantime its position on this point.

As regards the Brčko District, the Committee notes from the information provided by the representative of Bosnia and Herzegovina to the Governmental Committee (Report concerning Conclusions 2011, §281) that Section 45§1 of the Labour Act of Brčko District provides for a compensation of salary during maternity leave, provided that contributions were paid in pension and health care schemes. The compensation of salary shall amount to 100% of the base salary, calculated over a period of 12 months. According to Article 2, 3, 4 and 5 of the Decision on Conditions and Manner of Payment of Compensation to Employees During Maternity Leave, issued on the basis of Section 45 of the Brčko District Labour Act and Brčko District Child Care Act (consolidated text), an employee is entitled to compensation during maternity leave, for the period determined in the Labour Act. In the determination of the entitlement, the employer shall issue a decision establishing the right to maternity leave, the duration and amount of compensation for salary to be paid to the employee. During maternity leave an employee is entitled to a compensation for salary equal to the average net salary which was earned during the last three months prior to the maternity leave. The calculation of wages, payment of contributions and payment of compensation are done by the employer. The Committee notes from the report that Section 45 of the Brčko District Labour Act was amended on 23 August 2014 and a new Decision on the Conditions and Manners of Payment of Compensation of Salary during Maternity Leave (No. 34-000890/13 of 15 January 2014) entered into force on 22

January 2014, out of the reference period. The Committee recalls that under Article 8§1 of the Charter, the right to benefit may be subject to conditions such as a minimum period of contribution and/or employment as long as these conditions are reasonable; in particular, if qualifying periods are required, they should allow for some interruptions in the employment record (Statement of Interpretation, Conclusions 2015). It accordingly asks the next report to clarify what are the conditions for entitlement to salary compensation during maternity leave, in particular what is the length of the contributory period required, whether interruptions in the employment record are taken into account and whether the salary compensation is calculated on the basis of the average salary of the employee during her last three or twelve months before the leave. It furthermore asks whether the minimum rate of compensation corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value. It reserves in the meantime its position on this point.

#### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§1 of the Charter on the ground that maternity benefits are not adequate or not provided for in certain parts of the country.

## **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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

### ***Prohibition of dismissal***

According to the report, the labour codes in the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District expressly provide that the employer cannot terminate an employment contract or assign an employee to another job because of her pregnancy or because she is on maternity leave, unless the transferral is justified by medical grounds.

In the Federation of Bosnia and Herzegovina, the dismissal of a pregnant employee is prohibited under Section 53 of the Labour Act when the dismissal is related to the employee's pregnancy, but it is allowed for other reasons, for example when economic, technical or organisational reasons justify such a dismissal or when the employee is responsible for serious misconduct or gross violation of obligations under the employment contract. The Committee recalls that Article 8, paragraph 2 of the Charter allows, as an exception, the dismissal of pregnant women and women on maternity leave in certain cases such as misconduct which justifies breaking off the employment relationship, if the undertaking ceases to operate or if the period prescribed in the employment contract expires. Exceptions are however strictly interpreted by the Committee. It asks the next report to clarify, by providing relevant examples, under what circumstances an employee who is pregnant or in maternity leave may be dismissed in the Federation of Bosnia and Herzegovina and whether the same rules apply to employees in the private and in the public sector. It considers in the meantime that the situation is not in conformity with Article 8§2 of the Charter on grounds that there is no adequate protection against dismissal of employees during pregnancy or maternity leave.

In the Republika Srpska, Section 77 of the Labour Act prohibits the dismissal of any employee, in the private as in the public sector, during pregnancy and maternity leave. Pursuant to Section 132 of the Labour Act, the employer cannot terminate an employment contract for economic, organisational or technological reasons during pregnancy, maternity leave, parental leave and part-time work in order to take care of a child.

As regards the Brčko District, the report states that employees are protected against dismissal not only during pregnancy but also until the end of maternity leave, but that there are no specific provisions governing unlawful dismissal of pregnant women and new mothers. The Committee had however previously noted (Conclusions 2011) that under Section 43 of the Labour Act of Brčko District the dismissal was prohibited for reason of pregnancy or maternity leave. It asks the next report to clarify whether the law explicitly provides for the prohibition to terminate the employment contract of an employee who is pregnant or in maternity leave and under what circumstances, if any, the dismissal of an employee during pregnancy or maternity leave is possible under Brčko District legislation. It furthermore notes from the report that, as regards employees in the public sector, Section 128 of the Civil Service Act of Brčko District prohibits the dismissal of an employee because of her pregnancy. The Committee asks the next report to specify on what grounds, not related to pregnancy, the dismissal of an employee is allowed by this Act during pregnancy or maternity leave. It reserves in the meantime its position on these

issues and considers that, should the next report fail to provide information on the questions raised, there will be nothing to establish that the situation is in conformity with Article 8§2 of the Charter in respect of the Brčko District.

The Committee asks the next report to clarify whether the employees of Bosnia and Herzegovina institutions are adequately protected from dismissal during pregnancy and maternity leave under the Labour Law in the Institutions of Bosnia and Herzegovina, the Law on Civil Service in the Institutions of Bosnia and Herzegovina, or any other relevant legislation, and what exceptions, if any, apply to this protection.

### ***Redress in case of unlawful dismissal***

The Committee previously noted (Conclusions 2011) that in the Federation of Bosnia and Herzegovina, pursuant to Section 103 of the Labour Act, the employee may contest her dismissal before the courts within one year. If the courts find the dismissal unlawful, the employer can be ordered to reinstate the employee and pay her compensation of salary for the period during which she did not work, as well as a compensation for damage suffered, severance pay and other benefits to which the employee is entitled by law, collective agreement, and the employment contract. The Committee underlines that domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal. It therefore asks whether there is a ceiling on compensation for unlawful dismissals. If so, it asks whether this upper limit covers compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation. It furthermore asks whether the same rules apply to employees in the private as in the public sector. Should the next report not provide the requested information, there will be nothing to establish that the situation is in conformity in this respect.

In the Republika Srpska, Section 118 of the Labour Act provides for the employee's right to bring a claim before a court within three years from the violation; in case of unlawful dismissal, the court can order the employee's reinstatement. The same rules apply to employees in the private as in the public sector. The Committee previously asked whether an adequate compensation is also available, in particular in case the reinstatement is impossible. The report refers to the unemployment benefits available to the employee, to the fines which can be imposed on the employer and to the fact that no case law is available concerning the unlawful dismissal of employees during pregnancy or maternity leave, but it does not clarify what compensation is available in addition to reinstatement or instead of it to women unlawfully dismissed during pregnancy or maternity leave. The Committee accordingly reiterates its request for detailed information, in the light of any relevant case law, and considers in the meantime that it has not been established that adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave.

In the District of Brčko, the employee can request the employer to ensure the exercise of her rights, in conformity with Section 88 of the Labour Act, but such request does not prevent the employee from filing a claim before a court (within three years) under Section 81 of the Labour Act, which governs illegal dismissal in general. If a court finds that a dismissal is unlawful, it shall order the employer to reinstate the employee to her initial post and to pay compensation for the damage suffered in respect of the loss of salary and contributions. If the employee does not wish to be reinstated, she can claim damages in the amount of up to 18 salaries that she

would have received if she had worked, severance pay and other benefits in accordance with the law, collective agreement or employment contract. The amount of compensation depends on the time spent on the job, the age of the employee and the number of dependants. If the employer does not wish to have the employee reinstated, despite the finding of the court, the employee is entitled to double compensation. Women in the private and public sector are equally protected. 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). In light thereof, the Committee finds that the situation is not in conformity with the Charter because adequate compensation is not provided for in cases of unlawful dismissal during pregnancy or maternity leave.

The Committee asks the next report to clarify whether the employees of Bosnia and Herzegovina institutions have adequate means of redress in case of unlawful dismissal during pregnancy and maternity leave under the Labour Law in the Institutions of Bosnia and Herzegovina, the Law on Civil Service in the Institutions of Bosnia and Herzegovina, or any other relevant legislation. It asks in particular whether reinstatement is the rule and, if no reinstatement is possible, whether the employee can claim not only the pecuniary compensation related to the loss of salary but also a compensation for non-pecuniary damage suffered, without any upper limit. Should the next report not provide the requested information, there will be nothing to establish that the situation is conformity in this respect.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§2 of the Charter on the grounds that:

- in the Federation of Bosnia and Herzegovina there is no adequate protection against dismissal of employees during pregnancy or maternity leave;
- in the Republika Srpska, it has not been established that adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave;
- in the District of Brčko, adequate compensation is not provided for in cases of unlawful dismissal during pregnancy or maternity leave.

## **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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

According to the report, in the Federation of Bosnia and Herzegovina, on the basis of a medical certificate, a woman working full-time after her maternity leave is entitled to two one-hour nursing breaks per day, which are counted as working hours and paid as such (Section 59§1 of the Labour Act of the Federation of Bosnia and Herzegovina). The same rules apply in the Brčko District (Section 49 of the Brčko District Labour Act) both in respect of employees in the private as in the public sector. In the Republika Srpska, on the other hand, a one-hour daily nursing break is provided if a woman returns to work before the end of her maternity leave (i.e. before her child is one year old).

The Committee asks the next report to clarify whether the same regime applies to women employed in the public sector at state level (Bosnia and Herzegovina), in the Federation of Bosnia and Herzegovina and in Republika Srpska. It furthermore asks what rules apply to women working part-time, in particular whether women working two full working days twice a week are entitled to paid nursing breaks.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Bosnia and Herzegovina 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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and in the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District:

- In Bosnia and Herzegovina, according to the report, women employed in the private and public sectors are equally protected when it comes to night-work. In particular, although night-work as such is not prohibited, a woman who is pregnant or nursing may be assigned to another job, for health reasons, as established by a medical certificate and with her consent, without loss of salary. If such reassignment is not possible, the employee is entitled to paid absence from work (Section 45 of the Law on Civil Service in the institutions of Bosnia and Herzegovina and Section 35 of the Labour Act in institutions of Bosnia and Herzegovina). The Committee asks the next report to clarify whether these provisions concern specifically night-work or, more generally, any activity considered to be heavy or dangerous.
- In the Federation of Bosnia and Herzegovina, according to the report there is no specific prohibition to perform night-work for women who are pregnant, have recently given birth or are breast-feeding. On the other hand, the report refers to the Occupational Safety Act, which requires protection measures at work and identifies the conditions under which night-work is allowed. The same rules apply to employees in the private as in the public sector, under Article 47 of the Law on Civil Service of the Federation of Bosnia and Herzegovina, according to the information provided by the representative of Bosnia and Herzegovina to the Governmental Committee (Report concerning Conclusions 2011, §321). The Committee recalls that Article 8§4 does not require states to prohibit night work for pregnant women, women who have recently given birth and women nursing their infants, but to regulate it in order to limit the adverse effects on the health of women. The regulations must lay down conditions for night work of pregnant women, women who have recently given birth and women nursing their infants, e.g. prior authorisation by the Labour Inspectorate (where applicable), prescribed working hours, breaks, rest days following periods of night work, the right to be transferred to daytime work in case of health problems linked to night work, etc. In the light of these criteria, the Committee asks the next report to provide further details of the relevant regulations in the Federation of Bosnia and Herzegovina and considers in the meantime that the information provided is insufficient to establish that night-work is adequately regulated for women who are pregnant, have recently given birth or are breast-feeding.
- In the Republika Srpska, Section 52 of the Labour Act prohibits night work for women as from the 6th month of pregnancy and for one year after the birth. The same regime applies to employees in the public sector (Section 9 of the Civil Servants Act). The protection is increased in some branch collective agreements, including the Special Collective Agreement for Employees in the field of Home Affairs, where night work is prohibited for three years after childbirth. The Committee asks the next report to clarify whether the employed women concerned are transferred to daytime work and what rules apply if such transfer is not possible.
- As regards the Brčko District, the report acknowledges that there have been no changes to the situation which the Committee had previously found not to be in



conformity with Article 8§4 of the Charter, insofar as night work of pregnant women, women having recently given birth and women who are nursing their infant is not regulated. The same situation concerns employees in the private as in the public sector. The report indicates that legislative amendments are envisaged in order to bring the situation in conformity with the Charter. The Committee refers to the Charter's requirements under Article 8§4 (see above), it asks the next report to provide updated and comprehensive information on the situation and reiterates in the meantime its finding of non-conformity with Article 8§4.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§4 of the Charter on the grounds that:

- it has not been established that night work of pregnant women, women having recently given birth and women who are nursing their infant is adequately regulated in the Federation of Bosnia and Herzegovina;
- night work of pregnant women, women having recently given birth and women who are nursing their infant is not adequately regulated in the District of Brčko.

## **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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District:

It previously noted (Conclusions 2011) that the situation was in conformity with the Charter as regards the prohibition to employ women who are pregnant, have recently given birth or are nursing their infant in underground mines in the Federation of Bosnia and Herzegovina (Section 52 of the Federation of Bosnia and Herzegovina Labour Act), Republika Srpska (Section 76 of the Republika Srpska Labour Act) and Brčko District (Section 42 of the Brčko District Labour Act). It asks the next report to confirm that similar rules apply in respect of Bosnia and Herzegovina.

The Committee had also noted that the legislation in the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District provided that pregnant or nursing women could be reassigned to other posts for health reasons, as determined by a medical doctor and with the employee's consent, without loss of salary or could be entitled to paid leave, if no reassignment was possible (Section 54 of the Federation of Bosnia and Herzegovina Labour Act, Section 78 of the Republika Srpska Labour Act; Section 44 of the Brčko District Labour Act). The report confirms that these provisions still apply and that similar rules also exist in Bosnia and Herzegovina (Section 35 of the Employment in Bosnia and Herzegovina Institutions Act). The Committee asks the next report to indicate whether, in case of temporary transfert to another post the woman concerned retains the right to return to her previous employment at the end of the protected period.

The Committee had however found that the situation was not in conformity with Article 8§5 of the Charter insofar as the abovementioned legislation was too general to protect adequately women covered by Article 8 in respect of dangerous, unhealthy and arduous work. The Committee had indeed noted that no specific protection existed to prohibit or strictly regulate the employment of the women concerned in dangerous activities such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents. It notes from the report that, although some amendments are planned at least as regards the Federation of Bosnia and Herzegovina to increase maternity protection in conformity with the Charter, during the reference period there have been no changes to the situation which the Committee had previously found not to be in conformity with the Charter. It accordingly reiterates its finding of non-conformity on grounds that there are no adequate regulations on dangerous, unhealthy and arduous work in respect of pregnant women, women who have recently given birth or who are nursing their infant.

### *Conclusion*

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§5 of the Charter on the ground that there are no adequate regulations on dangerous, unhealthy and arduous work in respect of pregnant women, women who have recently given birth or 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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

### ***Social protection of families***

#### ***Housing for families***

In its previous conclusion (Conclusions 2011) the Committee recalled that under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity).

As regards the provision of an adequate supply of housing for families, the Committee notes that in the Republica Srpska the Ministry of Family, Youth and Sports has implemented a project on interest rate subsidies in respect of housing loans for young people and young couples, where the Ministry subsidises 1% of the interest. According to the report, in the period 2010-2013 1,343 young people and couples were supported through this project. Moreover, by Government Decision No. 04/1-012/754/08 BAM 8.5 (€4.3 million) were allocated for the provision of housing to families with five or more children to improve their living conditions. The project was implemented in 29 municipalities and provided housing to 97 families and 512 children.

The Committee notes from the report that housing policies, housing needs of the population and thereby ensuring funds for and allocation of social housing, especially for persons with low income and marginalised groups is the responsibilities of entities. The Committee wishes therefore, to be informed of the measures taken in all entities to promote the provision of an adequate supply of housing for families.

The Committee recalls that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies. Any appeal procedure must be effective (Conclusions 2003 France, Italy, Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France). As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden).

The Committee notes from the report that Bosnia and Herzegovina has no specific law which would define the legal protection of occupants and tenants. The legal protection is regulated in the Law of Obligations of the Federation of Bosnia and Herzegovina and the Republica Srpska.

The Law of Obligations determines that a contract of lease shall be concluded between the owner of an apartment as a lessor and an occupant/tenant of the apartment as a lessee. Cancellation of a contract of lease shall be made in writing with an indication of notice period,

which may not be less than 30 days. The Committee notes that disputes regarding the cancellation of lease are decided by the competent court.

The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include an obligation to consult the parties affected, an obligation to fix a reasonable notice period before eviction and accessibility to legal remedies and legal aid, as well as compensation in case of unlawful eviction.

The Committee asks the next report to provide information on these points and holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity.

The Committee has previously considered that it had not been established that the living conditions of Roma families in housing were adequate.

It notes from the report in this regard that Bosnia and Herzegovina has continued to make progress in solving the housing problems of Roma in the period 2010-2014. The Ministry for Human Rights and Refugees has allocated €1.5 million each year for Roma issues, of which €1 million is assigned to housing. According to the report, a number of housing projects proposals have been financed in the period of 2010-2014, with municipalities, cities, entities, local and international organisations and donors participating as implementing entities. A total of €8,2 million has been spent on projects in the period of 2009-2013, consisting of budgetary allocations as well as co-funding. A total of 600 housing units were constructed, with additional 100 housing units to be completed in 2015. More than 400 Roma families were the beneficiaries of infrastructure projects.

The Committee notes from the report of the Governmental Committee of 2012 that bearing in mind that Bosnia and Herzegovina is a country in transition facing even a large number of unsolved housing problems of internally displaced people accommodated in collective centres, the country has made considerable progress in solving the housing problems of Roma, and thus improving the overall socio-economic situation of the Roma population.

The Committee notes from Third Opinion on Bosnia and Herzegovina adopted on 7 March 2013 by the Advisory Committee on the Framework Convention for the Protection of National Minorities that flaws in the design and operation of the measures foreseen as part of Bosnia and Herzegovina's participation in the Decade of Roma Inclusion reduce their effectiveness, and Roma continue to experience marginalisation and discrimination in the fields of access to employment, health and housing. Roma living in informal settlements in particular face substandard living conditions and remain vulnerable to forced evictions.

The Committee wishes to be informed of measures taken to improve living conditions of Roma families and limit forced evictions. In the meantime, it reserves its position on this point.

### ***Childcare facilities***

In its previous conclusion the Committee asked for a detailed list of the number of places in crèches and day nurseries, by age group, and the number of applications for places turned down. It also asked what measures are planned to monitor the quality of such services.

The Committee notes that in 2012/2013 there was a total of 243 preschool educational institutions. Out of a total of 18,817 children 2,403 were not accepted because of lack of places (around 12%). Monitoring of the services is carried out by the Parents' Council who gives their suggestions and comments and prepares regular analysis of services.

### ***Family counselling services***

According to the report, as provided for in the Law on Social Protection, Protection of Civilian War Victims and Families with Children of the Federation of Bosnia and Herzegovina in addition to the centres for social work family counselling can be provided by non-governmental organisations. In the Federation of Bosnia and Herzegovina there are 79 centres for social work. In the Republika Srpska the Law on Social Protection defines the right to counselling, which, among others means helping families as a whole to develop, maintain and improve their own social well-being.

### ***Participation of associations representing families***

The Committee asks for information in the next report on the participation of relevant associations representing families in the framing of family policies.

The Committee notes that in the Federation of Bosnia and Herzegovina when making public policies relating to social protection and protection of families with children, the Federation Ministry of Labour and Social Policy seeks to include representatives of civil society (NGOs, citizens' associations etc.) by appointing their members in working groups.

In the Republika Srpska, the Ministry of Family, Youth and Sports announces invitations to tender for support to be provided in projects of associations and organisations in their work to improve the position of family in the Republika Srpska.

In the Brčko District, associations representing families are citizens' associations engaged in addressing the needs of its members with a view to improving their situation. The associations attach great importance to the issue of improving the attitude of authorities and institutions towards the problem for which they were founded.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The Committee notes that there have been no changes to the situation which it has previously considered to be in conformity with the Charter.

#### ***Mediation services***

In its previous conclusion the Committee asked for information in the next report on access to such services, whether they are free of charge, how they are distributed across the country and how effective they are. It notes from the report that there are 12 individuals and legal entities selected and authorised to mediate between marital partners before initiating divorce proceedings which operate in the territory of 10 cantons in the Federation of Bosnia and Herzegovina. In the Republika Srpska mediation services for families are free.

The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided. The Committee asks the next report to indicate what assistance is available for families in the Federation of Bosnia and Herzegovina and the Brčko District in case of need.

### ***Domestic violence against women***

In its previous conclusion the Committee took note of the legislative framework protecting women against violence. It asked the next report to provide information on the application of this framework as well as on the measures taken to combat domestic violence against women (measures in law and practice, data, judicial decisions).

The Committee notes from the report that Bosnia and Herzegovina institutions and entities have adopted a series of policies in the form of strategic documents which are focused exclusively or indirectly on the prevention of violence against women, such as the Strategy for the Implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and the Entity Strategy for the Prevention and Combating of Domestic Violence of Federation of Bosnia and Herzegovina and the Strategy for Combating Domestic Violence of the Republika Srpska, which define the course of action to prevent violence and protect victims and prosecute perpetrators.

According to the report, the Judicial and Prosecutorial Training Centres conducted training in gender equality, non-discrimination and combating violence against women and domestic violence for judges and prosecutors as part topics related to criminal law, family rights and human rights.

The Committee notes from the report that the Government is working on the establishment of referral mechanisms for providing protection to victims of domestic violence. The multidisciplinary approach involves joint interventions of different institutions and professions in solving the problem of domestic violence.

In the territory of Bosnia and Herzegovina there are nine safe houses with 173 available places. In the territory of the Federation of Bosnia and Herzegovina there are six shelters with 126 places available to accommodate victims of domestic violence operated by non-governmental organisations.

The statistics submitted to the Agency for Gender Equality indicate that domestic violence is the most common offense of all criminal acts of violence against women prosecuted by courts in 2012.

The Manual for the Review of Domestic Violence Cases was made in 2014 by a judicial panel of nine judges. The recommendations of the panel of judges were later revised by legal experts and practitioners, as well as the institutions responsible for providing continuing training for judges and prosecutors. The Manual on domestic violence was developed.

In the Federation of Bosnia and Herzegovina the new Law on Protection against Domestic Violence ("FBiH Official Gazette" 20/13) was adopted to introduce some novelties regarding the precise definition of domestic violence, prescribing emergency procedure in the imposition of protection orders in view of their purpose to protect victims of violence, prescribing other forms of protection of victims of violence.

The Federation Ministry of Labour and Social Policy has taken a series of activities aimed at improving and enhancing the social and child protection, i.e. the protection of victims of domestic violence in the Federation, as well as activities related to the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and Strategies for Prevention and Combating Domestic Violence 2013-2017.

In the Republika Srpska the General Protocol for Procedures in Domestic Violence Cases was signed. The Law on Protection from Domestic Violence afford more efficient, faster and more complete protection of victims.

In 2012, a survey of the prevalence of violence against women, with particular emphasis on domestic violence, was carried out and it was coordinated by the Gender Centre of the Republica Srpska and the Republican Institute of Statistics. The survey was carried out in cooperation with the Gender Agency of Bosnia and Herzegovina, the Gender Centre of the Federation of Bosnia and Herzegovina and Statistical Institutes (Entity Statistical Institutes and the Agency for Statistics).

According to the report, good practices show that better effects have been brought about through the co-operation of authorities from the Ministry of the Interior, judiciary, social welfare and health institutions, educational institutions and non-governmental organisations and other relevant institutions and social partners.

By the end of 2013, protocol for procedures in domestic violence cases and multisectoral cooperation at the local level was signed in 36 municipalities in the Republika Srpska.

### ***Economic protection of families***

#### ***Family benefits***

In its previous conclusion the Committee asked the next report to contain sufficient information regarding the amounts of child allowances in the entities as well as the amount of the median equivalised income.

The Committee notes from the report that the family benefit in the Federation of Bosnia and Herzegovina is income-tested and provided to families whose total income is below the subsistence level. The amount ranges between BAM 10.85 to 50 per month (€5.5 – €25). As regards the coverage of the child benefit, the Committee notes that in the Federation of Bosnia and Herzegovina benefit is only granted to families whose total income is below the subsistence level. The Committee finds that the situation is not in conformity with the Charter as child benefit is not granted to a significant number of families and therefore, its coverage is not sufficient.

In the the Republika Srpska the Child Protection Public Fund provides child allowance for the second, third and fourth child on the basis of a means test. The Committee notes that the amount of allowance has gone down from BAM 45 (€ 23) for the second child and BAM 100 (€51) for the third child in 2010 to BAM 35 (€17) for the second child and BAM 70 (€35) for the third child in 2013. The Committee notes that there is no entitlement to benefit for the first child. It asks whether, like in the case of the Federation of Bosnia and Herzegovina, child benefit is also paid to families whose total income is below the subsistence level. As regards the Republika Srpska, the Committee reserves its position as to the adequacy of coverage.

In the Brčko District the universal system is financed by the Budget of the Brčko District providing a flat rate benefit to all residents whose children reside in the Brcko District and whose total monthly income per family member is no higher than 15% of average earnings in the the Brčko District. As regards the amount of child benefit, it corresponds to 10% of the average earnings. According to MISSCEO, the average earnings were equal to BAM 683,33 (€350) per month in 2012, so the amount of benefit was fixed at BAM 68,33 (€34) per month. The Committee asks what is the percentage of families that receive benefits.

The Committee recalls that under Article 16 the States of required to ensure the economic protection of the family by appropriate means. The primary means should be family or child benefits provided as part of social security, available either universally or subject to a means-test. Child benefit must constitute an adequate income supplement, which is the case when it

represents an adequate percentage of median equivalised income, for a significant number of families (Conclusions 2006, Statement of Interpretation on Article 16).

As regards the amount of child benefit, the Committee notes that it represents 10% of the average earnings in the Brčko District which it considers to be adequate. However, as regards the Federation of Bosnia and Herzegovina and the Republika Srpska, in the absence of information on the median equivalised income, the Committee finds that it has not been established that child benefit constitutes an adequate income supplement and therefore, the situation is not in conformity with the Charter. The Committee asks the next report to provide information on the amounts of benefit as well as on the median income in all entities.

### ***Vulnerable families***

In its previous conclusion the Committee asked what measures were taken to ensure the economic protection of Roma families and other vulnerable families, such as single parent families. The Committee reiterates this question.

### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

In its previous conclusion the Committee noted that in the three entities a permanent residence requirement applied for the granting of family benefits. The Committee wished to know the conditions for awarding permanent residence. It notes that the report does not provide this information.

The Committee notes that Section 51, paragraph 5 of the Law on Movement and Stay of Aliens and Asylum provides that permanent residence is the right of stay of aliens in Bosnia and Herzegovina for an indefinite period of time. Article 59, paragraph 1 of the Law provides that a permanent residence permit shall be issued to an alien who has resided in the territory on the basis of a temporary residence permit for at least five years uninterruptedly.

The Committee recalls that the proportionality of length of residence requirement is examined on case-by-case basis. The Committee has held that the period of one year is acceptable but that 3-5 years is manifestly excessive and therefore, in violation of Article 16 (Conclusions XVIII-1 (2006), Denmark). Therefore, the Committee considers that the situation is not in conformity with the Charter on this ground.

The Committee asks the next report to indicate whether stateless persons are treated equally with regard to family benefits.

### ***Conclusion***

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

- family benefits do not cover a significant number of families in the Federation of Bosnia and Herzegovina;
- it has not been established that the child benefit in the Federation of Bosnia and Herzegovina and the Republika Srpska constitutes an adequate income supplement;
- equal treatment of foreign nationals of other States Parties who are lawfully resident or regularly working with respect to family benefits is not ensured.



## **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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

### ***The legal status of the child***

The Committee notes that according to the Family Law of the Federation of Bosnia and Herzegovina a child has the right to know that he/she was adopted and he/she shall be allowed to review the adoption file when he/she reaches the age of majority. The inheritance and maintenance rights of children are the same for children born in or outside the marriage.

As regards the Republika Srpska, according to the report the Family Law does not specifically provide for the child's right to know his/her origin, so the cases when it can be restricted are not provided for either. According to Article 8 the rights and obligation of the parents and other relatives towards their children are equal regardless of whether children are born within marriage or outside the marriage.

In the Brčko District Section 77 of the Family Law provides that a child has the right to know that he/she was adopted. The Family Law provides for cohabitation (Article 5), and considers it to be equal to marriage as regards rights to mutual maintenance and other property issues. Therefore, according to the report, the rights of children born within marriage and outside marriage are fully equal.

### ***Protection from ill-treatment and abuse***

In its previous conclusion (Conclusions 2011) the Committee considered that there is no explicit prohibition of corporal punishment in the home in the Federation of Bosnia and Herzegovina and the Brčko District.

The Committee notes from the Global Initiative to End Corporal Punishment that the law reform has not yet fully prohibited corporal punishment in the home throughout Bosnia and Herzegovina. Corporal punishment is unlawful in schools.

The Committee takes note of the legislation in all entities prohibiting domestic violence against children. Nevertheless, the Committee notes that the Family Law of the Federation of Bosnia and Herzegovina and the Brčko District do not prohibit all forms of corporal punishment.

As regards the Republika Srpska, the Law on Protection against Domestic Violence in RS prohibits different forms of violence, such as physical, emotional or psychological violence. Physical violence is interpreted as behaviour involving physical force intended to cause certain, even smallest pain and/or discomfort, which leads to real or potential harm to the child.

The Committee considers that corporal punishment is not explicitly prohibited in the Federation of Bosnia and Herzegovina and the Brčko District in the home. Therefore, the situation is not in conformity with the Charter.

The Committee asks whether corporal punishment is prohibited in all entities in childcare institutions.

### ***Rights of children in public care***

In its previous conclusion the Committee asked what were the criteria for the restriction of custody or parental rights. It also asked what were the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances.

The Committee notes from the report that according to the Family Law of the Federation of Bosnia and Herzegovina at the request of both or one parent the guardianship authority may decide on the placement of the child in an institution if it is necessary for the protection of the best interests of a child. The law provides for the circumstances in which a parent can be deprived of the right to live with a child, i.e. of parental care. The parents may file a request the 'cessation of fostering' and if it is not satisfied, they may initiate a law suit in order to decide on the further care of the child. The Court shall restore the right of a parent to live with the child when it is in the interest of the child.

The Law on Social Welfare of the Republica Srbska provides for the conditions under which a child is entitled to be placed in an institution or foster family. Any limitation or restriction upon the rights of parents to have custody of child is based on the criteria set forth in legislation and does not go beyond the limits necessary to protect the best interests of the child and family rehabilitation.

In the Brčko District the restriction and deprivation of parental custody may be ordered by the competent authority for the reason and in the manner as prescribed by the Family Law. At request of the parent who was deprived of this right the court shall decide whether to reinstate the right of parents to live with the child. The procedure shall be urgent.

In its previous conclusion the Committee noted that the Government was developing its policies with regard to measures to be taken to transform institutional care, develop alternative services, strengthen the capacity of centres for social work and develop legal framework for protection of families and children. The Committee asked what is the maximum number of children that can be accommodated in a single institution.

The Committee notes from the report in this respect that the Rulebook on general, technical and professional requirements for the establishment and operation of social care institutions in the Federation of Bosnia and Herzegovina of 2013 defines the minimum standards of services in social care institutions which may be further expanded by cantonal regulations. This Rulebook defines that the capacity of an institution for children without parental care shall be up to 40 children.

The Committee recalls that a unit in a child welfare institution must resemble the home environment and not be larger than 10 children (Conclusions 2011, Hungary). The Committee asks what is the maximum size of a single institution.

The Committee notes from the report that in 2014, the Government of the Federation of Bosnia and Herzegovina adopted a Strategy on De-Institutionalisation and Transformation of Social Care Institutions (2014-2020). The Strategy represents the commitment by the Government to continue, with the support of cantonal governments, its engagement to improve quality of the life of children

According to the report, in 2013 1,670 children were placed in institutions of whom 587 were in foster families.

The Committee notes from the Concluding observations on the consolidated second to fourth periodic reports of Bosnia and Herzegovina, adopted by the Committee at its sixty-first session

(17 September–5 October 2012) that children may be placed in institutions on the sole basis of family economic hardship.

In this connection, the Committee recalls that that placement must be an exceptional measure and is only justified when it is based on the needs of the child. The financial conditions or material circumstances of the family should not be the sole reason for placement (Conclusions 2011, Statement of Interpretation on Articles 16 and 17). The Committee also refers to the judgements of the European Court of Human Rights where the latter held that separating the family completely on the sole grounds of their material difficulties has been an unduly drastic measure and amounted to a violation of Article 8 of the European Convention on Human Rights (*Wallova and Walla v. the Czech Republic*, No. 23848/04).

The Committee asks whether children may be removed from their families on the basis of poor material circumstances of the family.

### ***Right to education***

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

### ***Young offenders***

According to the report, following the latest trends and international legal standards in the field of juvenile justice, the Federation of Bosnia and Herzegovina adopted the Law on Protection and Treatment of Children and Juveniles in Criminal Procedure in January 2014 (outside the reference period). The Committee wishes to be informed of the implementation of this law.

In its previous conclusion the Committee asked whether juvenile offenders serving sentences have the legal right to education. It notes in this respect that that Article 151 of the Law on the Protection and Treatment of Children and Juveniles in the Criminal Procedure provides that a juvenile serving a custodial measure is entitled to attend school outside the establishment if the establishment does not organise certain type of school or courses and if justified by previous achievements and performance of the juvenile, provided that this does not harm the execution of correctional measure.

As regards the Brčko District, the Committee notes that the Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings was enacted in 2011, which defines the requirements governing the conditions, manner and duration of detention of juveniles as well as the execution of institutional correctional measures and juvenile imprisonment.

In its previous conclusion the Committee asked what was the maximum length of pre-trial detention and prison sentence. It notes that according to Article 100 of the above mentioned law following the decision of the judge custody may not exceed thirty days from the day of arrest, and may be extended to up to two months.

According to Article 103 a juvenile in custody is separated from adults. During the execution of criminal sanctions a juvenile should be treated in a manner appropriate to his age, level of maturity and other characteristics of personality.

The term of imprisonment that can be imposed on a juvenile offender cannot be longer than five years. For a criminal offense for which a punishment of long term imprisonment or for concurrence of at least two offenses for which a punishment of imprisonment is longer than 10 years, juvenile imprisonment may last up to 10 years.

The Committee asks whether the maximum pre-trial detention of two months and the maximum prison sentence of 10 years also applies in other entities.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in an irregular situation to protect them against negligence, violence or exploitation.

### ***Conclusion***

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 17§1 of the Charter on the ground that all forms of corporal punishment are not prohibited in the home in the Federation of Bosnia and Herzegovina and the Brčko District.

## **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 Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

### ***Children with disabilities***

As Bosnia and Herzegovina has not accepted Article 15§1, the Committee considers the issues relating to the integration of children with disabilities into mainstream education under Article 17§2.

In its previous conclusion the Committee asked whether there was legislation explicitly protecting persons with disabilities from discrimination in education and training and whether measures were in place to facilitate the integration of children with disabilities into mainstream education.

According to the report, there are no specific laws which protect persons with disabilities against discrimination in education but laws on education at all levels forbid discrimination on any ground including disability and guarantee to every child the right to equal access to education and equal treatment without discrimination on any grounds.

The Committee notes that social inclusion in schools is improved by applying the inclusion index as a means of self-evaluation. Categories, identification procedures, planning and working methods, profile, training, professional development of personnel working with children and youth with special needs, as well as other issues, are regulated more closely by entities and cantons.

Article 21 of the Framework Law on Preschool Upbringing and Education provides that special training programmes for the personnel, pedagogues, teachers of special needs education, speech pathologists and school headmasters will be in the obligatory programmes of training. Such programmes are established by educational authorities in the entities, in accordance with the principles and standards defined by this law.

According to Article 19 of the Framework Law, children with special needs shall be educated in regular schools and according to programmes adapted to their possibilities.

In the Brčko District the Law on Primary and Secondary Education regulates enrolment, identification procedure, education and rehabilitation of children with mental disabilities. This Law prohibits any form of discrimination in education and training of the students and ensures equal conditions for all applying principles and norms established by this Law.

In the Federation of Bosnia and Herzegovina individual and adapted curricula are in use for children with special needs. These curricula are developed in cooperation between teachers and mobile teams composed of experts for certain areas (pedagogues, psychologists, special education teachers, therapists etc)

The Committee notes from the report that that in 2013/2014 there were 138 children with disabilities in the pre-school institutions in the Republika Srpska, 1057 in regular primary education and 403 in regular secondary education.

The Committee recalls that persons with disabilities must be integrated into mainstream facilities. Education and training must be made available within the framework of ordinary schemes and only where this is not possible, through special schools. States do not have a wide margin of appreciation and shall provide evidence that this is the case or at least that substantial efforts are being made to achieve this (Conclusions 2008, Andorra).

The Committee asks the next report to provide information about the overall number of children with disabilities in general and those who are enrolled in the mainstream education and in special schools, in each of the entities. In the meantime, the Committee reserves its position on this issue.

### ***Roma children***

The Committee recalls in this connection that the States have positive obligations to ensure equal access to education for all children. In this respect particular attention should be paid to vulnerable groups, such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, etc.

As regards education of children of Roma origin, even though educational policies for Roma children may be accompanied by flexible structures to meet the diversity of the group and may take into account the fact some groups lead an itinerant or semi-itinerant lifestyle, there should be no separate schools for Roma children. Special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group (Conclusions 2011, Slovak Republic).

In its previous conclusion the Committee wished to be informed about the measures taken to improve access to education for Roma children in the mainstream education. The Committee also requested information on Roma children, including their enrolment rates in primary and secondary education as well as the rate of absenteeism.

The Committee notes from the report that the Council of Ministers adopted the Revised Action Plan on Educational Needs of Roma on 14 July 2010 with recommendations and proposals agreed at the 16th meeting of the International Steering Committee of the Program of Decade of Roma Inclusion.

According to the report, in 2011 there was an increase in enrolment of Roma children in primary, secondary and higher schools. 49 Roma children were enrolled in compulsory preschool upbringing and education, 3024 Roma children attended primary school, 243 Roma children attended secondary school, 17 Roma children were included in higher education and 939 children were not covered by primary or secondary education.

In addition to the percentage of Roma children attending primary education it is important to consider the data on the percentage of Roma children who complete their primary education. According to data from Multiple Indicator Cluster Survey on Roma Population in 2011-2012, percentage of children who enter the first grade and reach last grade of primary school is 75%. This number includes children that repeat grades of primary school.

According to the report, as possible reasons for irregular attendance, the competent cantonal ministries identified the following factors: socio-economics reasons, unemployment of parents, adverse family situation, attitudes of parents, etc.

As regards the inclusion of Roma children, according to the report the Republica Srpska Ministry of Education and Culture regularly observes implementation of the Revised Action Plan on Educational Needs of Roma, as follows:

- schools have meetings with parents of Roma children aimed to inform them that primary education is mandatory. NGOs take part in those activities. 21 meetings were held in the 2011/2012 school year in seven schools and four municipalities. 676 students were enrolled in primary schools in 2011/2012 school year;
- encouraging measures are undertaken in order to improve regular attendance of schools – permanent contacts with Roma Associations and Roma communities, Social Welfare Centres and Roma families.
- all students who reside over 4 km away from school are provided with free transportation; Bijeljina municipality provides meals for Roma children in primary schools.

In the Brčko District, the Law on Education in Primary and Secondary Schools requires that all children have an equal right to education. Article 6, paragraph b) of the Law prohibits discrimination or favouritism based on ethnic, religious, sexual, political, social or any other basis.

The Committee notes that the education system of the Brčko District has no special schools or classrooms for Roma children. They are integrated into regular classes with other students instead. The Brčko District primary schools include 107 Roma students and 16 Roma students are in secondary schools. The legislation gives equal rights to all students but problems of Roma students caused by family and social circumstances are evident.

According to the report, schools help these students through organising targeted activities for them, in cooperation with local communities and NGOs with a view to providing necessary conditions for education. Professional teams in school consisting of an educator, psychologist, special education teachers, social workers, social educators face the challenge of poor school attendance of Roma students, which they try to resolve in cooperation with parents and by working on changing the attitudes of parents towards the education of their children.

The Committee considers that the measures have been taken to improve access of Roma children to pre-school, as well as primary and secondary education, which have resulted in better overall better enrolment rates. The Committee also notes that there are no separate schools for Roma children in none of the entities.

The Committee wishes to be kept informed of the results of the measures taken, such as the most accurate information about the enrolment, drop-out and absenteeism rates of Roma children in all entities.

### ***Measures to increase enrolment in secondary school***

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as it had not been established that the measures to increase the enrolment rate in the secondary education were adequate.

In this connection, it notes from the report that in the Federation of Bosnia and Herzegovina secondary education (up to the age of 18) is not mandatory but enrolment ratio is almost 100% because students are provided with free transportation if distance between school and place of residence is more than 3 kilometres. In the Republika Srpska, where the secondary school is mandatory, the enrollment rate is 97%.

The Committee notes from the UNDP that the primary school enrolment rate has remained continually high since 2000, at over 97%.

The Committee wishes to be kept informed of the enrolment rate in compulsory education in all entities.

*Conclusion*

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





January 2015

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**BULGARIA**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Bulgaria which ratified the Charter on 7 June 2000. The deadline for submitting the 13<sup>th</sup> report was 31 October 2014 and Bulgaria submitted it on 4 December 2014.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns information requested by the Committee in Conclusions 2013 in respect of its conclusions of non-conformity due to a repeated lack of information<sup>1</sup>:

- Right to protection of health – Prevention of diseases and accidents (Article 11§3)
- Right to benefit from social services – Promotion or provision of social services (Article 14§1)

The Committee adopted one conclusion of conformity (Article 11§3) and one conclusion was deferred (Article 14§1).

The next report by Bulgaria will deal with the accepted provisions of the thematic group "Employment, training and equal opportunities":

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

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- Right to bargain collectively – Joint consultation (Article 6§1)
- Right of workers to take part in the determination and improvement of working conditions and working environment (Article 22)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter)

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<sup>1</sup>Bulgaria also submitted a report on follow-up to decisions on the merits in collective complaints. The Committee's findings in this respect are available in a separate document.

## **Article 11 - Right to protection of health**

### *Paragraph 3 - Prevention of diseases and accidents*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information contained in the report submitted by Bulgaria in response to the conclusion that it had not been established that there were adequate measures in force for the prevention of road and domestic accidents (Conclusions 2013, Bulgaria).

The Committee recalls that States must take steps to prevent accidents. The main sorts of accident covered are road accidents, domestic accidents, accidents at school, accidents during leisure time, including those caused by animals (Conclusions 2005, Republic of Moldova).

With respect to road accidents, the report provides detailed information on measures being taken both in the short term and in the medium and long term in order to bring down the number of accidents. These measures comprise legislative amendments on technical means to ensure traffic safety, strengthened control and surveillance measures as well as a wide range of information and awareness-raising campaigns to improve road safety, especially aimed at children and young people. Among the measures taken the Committee notes in particular an increase in the control activity targeting the most frequent road safety violations (excessive speed, reckless overtaking, driving under the influence of alcohol and drugs, etc.).

From another source (EU Road Safety Country Overview) the Committee observes that the fatality rate – fatalities per million inhabitants – in Bulgaria due to road accidents is still the third-highest in Europe, although the rate has been decreasing over the last decade. It asks that the next report contain up-dated information on the number of road accidents and fatalities and on the impact of the above-mentioned measures.

As regards domestic accidents (household injuries) the Government refers to a project, "Informed and Healthy", implemented during the period 2009-2013, the aim of which was to promote a healthy workforce by increasing knowledge, skills and motivation for a healthy way of life. The Committee notes that within the framework of this project a variety of information has been produced, including brochures and videos on how to prevent and avoid risks and dangers in the domestic environment.

The Committee asks that the next report contain information on the results achieved by the above-mentioned project and on any other measures taken to reduce the number of domestic accidents.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Bulgaria is in conformity with Article 11§3 of the Charter as regards the prevention of road and domestic accidents.

## **Article 14 - Right to benefit from social services**

### *Paragraph 1 - Promotion or provision of social services*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Bulgaria in response to the conclusion that it had not been established that the number of social services staff was adequate to users' needs (Conclusions 2013, Bulgaria).

The Committee recalls that social services must have resources that match their responsibilities and the changing needs of users, which implies, *inter alia*, that staff shall be qualified and in sufficient numbers (Statement of interpretation on Article 14§1, Conclusions 2005, Bulgaria).

The report explains that management of social services in Bulgaria has been decentralised to the municipal level. Where municipal activity is concerned, the number of social services staff is thus determined by the mayor in each municipality on the basis of general standards for social services adopted by the Council of Ministers and taking into account guidelines approved by the Minister of Labour and Social Policy.

The Committee recalls in this respect that States may decide either to exercise certain powers or to delegate them to local authorities or the social partners. However, such a delegation does not relieve them from the obligations entered into under international agreements (Conclusions 2006, General Introduction). Concerning Article 14§1 it further recalls that there must be mechanisms for supervising the adequacy of services, public or private, whether central or decentralised.

The Committee notes the detailed statistics emanating from the Social Assistance Agency according to which the number of staff in social services was 12,208 in 2008 and increased to 13,234 in 2011. During the same period the number of beneficiaries of services grew from 29,506 to 34,046.

The Government emphasises that the figures are not comprehensive as no data are available for users and staff in municipal services (municipal activity according to the information provided) as well as in services delegated to private providers. The Committee requests clarification as to the distribution of staff between the state and the municipal level and it asks that the next report contain estimates (or examples) of the number of staff involved in social services provision as part of municipal activity and with private providers.

### *Conclusion*

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



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**CYPRUS**

*This text may be subject to editorial revision.*



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Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Cyprus which ratified the Charter on 27 September 2000. The deadline for submitting the 12th report was 31 October 2014 and Cyprus submitted it on 27 February 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

Cyprus has accepted all provisions from the above-mentioned group except Articles 7§5, 7§9, 8§4, 16, 17, 27§1 and 31.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Cyprus concern 26 situations and are as follows:

– 14 conclusions of conformity: Articles 7§2, 7§3, 7§4, 7§7, 7§8, 8§1, 8§2, 8§3, 8§5, 19§3, 19§5, 19§9, 19§11 and 27§2

– 7 conclusions of non-conformity: Articles 7§1, 7§2, 19§4, 19§6, 19§7, 19§10 and 27§3

In respect of the other 5 situations related to Articles 7§10, 19§1, 19§2, 19§8 and 19§12, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Cyprus under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 7§10**

- New legislation, L. 91(I)/2014, which revises the legal framework for the prevention and combating sexual abuse and sexual exploitation of children and child pornography was adopted. It provides for a holistic approach to combating sexual offences committed against children and also addresses specifically offences committed online.

- Clause 6 of Section 54 of the Children Law that made reference to corporal punishment has been repealed (Government Gazette 21/6/2013).

#### **Article 8§1**

The Maternity Protection Legislation (L. 100(I)/1997) was amended in 2011 to enhance the protection given to pregnant workers. Pregnant workers are entitled to a maternity leave of 18 weeks in total, including 2 weeks compulsory leave before the expected birth and 9 weeks compulsory leave after the birth, upon presentation of a medical certificate stating the estimated date of delivery. Additional maternity leave is provided for in certain cases. All



pregnant workers are entitled to a maternity leave, regardless of the time for which they have been working for a specific employer.

The next report to be submitted by Cyprus was to be a simplified report dealing with the follow up given to decisions on the merits of collective complaints in which the Committee found a violation. However, since there are at present no such decisions in respect of Cyprus no report is required. The next report is therefore due only by 31 October 2017 and will concern the accepted provisions belonging to thematic group 3 "Labour rights".

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 Cyprus.

The report indicates that the relevant legislation was amended during the reference period. Thus, the Law No. 15(I)/2012 amended the Law on Protection of Young People at Work (Law No. 48(I)/2001) so that to include provisions related to children under the age of 15 working with cultural undertakings. Furthermore, the Protection of Young Persons Regulations (Regulation No. 78/2012) laid down the application procedure for granting permits for children under the age of 15 years to participate in cultural and related activities.

The report underlines that the Law on Protection of Young Persons at Work (as amended by Law No. 15(I) of 2012), prohibits the employment of any person under the age of 15. The Regulations No. 77/2012 and No. 78/2012 specify that a person under 15 may participate in cultural, artistic, athletic, or promotional/advertising activities subject to a permit issued by the Director of the Department of Labour after consultation with representatives of the Department of Labour Inspection and the Social Welfare Services of the Ministry of Labour, Welfare and Social Insurance.

The report indicates that according to the amendments brought through by the Law No. 15(I) of 2012, the number of hours of participation in artistic or cultural activities shall not exceed: two hours a day for children up to 6 years old; three hours a day for children between the ages of 7 to 12 years; and four hours a day for children between the ages of 14 to 15 years.

In its previous conclusion (Conclusions 2011), the Committee found that the situation was not in conformity with the Charter on the ground that the prohibition on the employment of under 15-year olds did not apply to children employed in occasional or short-term domestic work. The Committee notes that Section 3 of Law No. 48(I)/2001 on Protection of Young People at Work has been amended by the Law No. 15(I)/2012, thereby extending its application to occasional or short-term domestic work in private households. Therefore, the Law prohibits the employment of children under 15 even in occasional or short-term domestic work. The Committee considers that the situation is now in conformity with the Charter on this point. It asks that the next report provides information on the activity of the Labour Inspection of monitoring domestic work performed by children under 15 years of age.

As regards the implementation in practice, the report indicates that during the period March 2012 – June 2014, permits were issued in 18 cases where children under 15 years of age were allowed to perform in TV productions, theatre or similar activities, after an application was submitted to the Department of Labour. In case of children engaged in general, vocational or technical education, or in any other training institutions, in addition to the requirements defined by the Department of Labour, the employer/training institution or the director/event organiser must ensure that a suitable written risk assessment is in place to safeguard the safety and health of children involved.

The report indicates that according to the Law on Protection of Young Persons at Work, no child can participate in cultural, artistic, athletic activities for more than seven hours and 15 minutes a day or more than 36 hours per week. The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015). The Committee considers that 7 hours and 15 minutes a

day and 36 hours per week of light work may have negative repercussions on the education and development of children. It therefore considers that the situation is not in conformity with Article 7§3 of the Charter on the ground that the duration of light work on non-school days is excessive.

In its previous conclusions (Conclusions 2011 and Conclusions 2006), the Committee repeatedly asked the Government how the conditions under which work at home is performed were supervised in practice. The Committee recalls that work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28).

The Committee recalls that States are required to monitor the conditions under which work done at home is performed in practice (Statement of interpretation on Article 7§1, Conclusions 2006). It therefore asks how work done at home is monitored.

The report does not provide information on the activity of the Labour Inspection of monitoring the prohibition of employment under the age of 15. 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 Inspection has a decisive role to play in this respect. The Committee asks the next report to provide information on the number and nature of violations detected and sanctions imposed by the Labour Inspection in relation to the prohibition of employment under the age of 15. The Committee underlines that should the next report not provide the information requested, there would be nothing to establish that the situation is in conformity with Article 7§1 of the Charter.

#### *Conclusion*

The Committee concludes that the situation in Cyprus is not in conformity with Article 7§1 of the Charter on the ground that the duration of light work during non-school days is excessive.

## **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 Cyprus.

The report indicates that the relevant legislation was amended during the reference period. The Safety and Health at Work (Protection of Young People) Regulation of 2012 (No. 77/2012) was adopted in order to harmonise the national legislation on Occupational Safety and Health with EU Directive 94/33/EC which lays down the minimum requirements for the protection of young people at work.

The Committee notes that the Safety and Health at Work Regulation No. 77/2012 specifically prohibits young persons under the age of 18 years from performing:

- work which is objectively beyond their physical or psychological capacity;
- work involving harmful exposure to agents which are toxic, carcinogenic, cause heritable genetic damage, or harm to the unborn child or which in any other way chronically affect human health;
- work involving harmful exposure to radiation;
- work involving the risk of accidents which cannot be recognised or avoided by young persons due to their insufficient attention to safety or lack of experience or training;
- work in which there is a risk to health from extreme cold or heat, or from noise or vibration.

The report adds that the employer shall carry out a written risk assessment before the commencement of work by young persons, in order to protect young persons from risks regarding their safety and health.

The Committee notes from another source that Section 8(5) of the Safety and Health at Work Regulation No. 77/2012 provides for exceptions to young persons of at least 16 years of age to carry out hazardous types of work on conditions that their health and safety are fully protected and that they receive adequate training and supervision (Observation (CEACR) – adopted 2014, published 104th ILC session (2015), Minimum Age Convention, 1973 (No. 138) – Cyprus (Ratification: 1997)). The Committee recalls that the Appendix to Article 7§2 also permits exceptions in cases where young persons under the age of 18 have completed their training for performing dangerous tasks and, thus, received the necessary information. The Labour Inspectorate must monitor these arrangements (Conclusions 2006, Portugal). The Committee asks information on the activity of the Labour Inspection of monitoring the above mentioned situations.

Moreover, the report indicates that by the Safety and Health at Work (Amendment) Law of 2011 (Law No. 33(I)/2011) the penalties (both monetary fines and prison sentences) were increased. In cases of breaches of safety and health regulations, the employer may be subject to a maximum fine of € 80.000 (previously € 17.000) or a four year imprisonment (previously 2 year imprisonment) or to both penalties.

The report indicates that during the reference period, inspectors of the Department of Labour Inspection carried out a total of 6030 occupational, safety and health inspections in 2010, 7198 in 2011, 4642 in 2012 and 4094 in 2013. During each of these inspections, employers were required to have a written risk assessment for all employed persons. Moreover, employers were required to include preventive and protective measures in the risk assessment for young workers. The report provides statistics showing that during the reference period, a number of 32 accidents causing the absence from work for more than 3 days to young workers, have been recorded. None of these accidents resulted in a fatality.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the number and nature of violations detected by the Labour Inspection as well as on sanctions imposed for breach of the regulations

regarding prohibition of employment under the age of 18 for dangerous or unhealthy activities.

*Conclusion*

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

In its previous conclusion (Conclusions 2011), the Committee found that the situation was not in conformity with the Charter on the ground that the prohibition of employment of children subject to compulsory education did not apply to children employed in occasional or short-term domestic work. The Committee refers to its Conclusion on Article 7§1 where it noted that the Law on Protection of Young Persons at Work was amended, thereby extending its scope to occasional or short-term domestic work in private households. The Committee considers that the situation is now in conformity with the Charter on this point.

According to the amendments brought by the Law No.15(I)/2012 to the Law on Protection of Young Persons at Work, children under the age of 15 may participate in cultural, artistic, athletic, or promotional/advertising activities for a maximum duration of:

- 2 hours per day for children up to 6 years old;
- 3 hours per day for children between the ages of 7 to 12 years;
- 4 hours per day for children between the ages of 13 to 15 years.

The report indicates that in any case, children are not allowed to participate/perform artistic activities within the hours of school.

In its previous conclusion (Conclusions 2011), the Committee considered that four hours of light work per day during the school term for children aged 13-15 was excessive, and therefore concluded that the situation was not in conformity with Article 7§3 of the Charter. Noting that the situation has not changed, the Committee maintains its conclusion of non conformity on this ground.

The report indicates that according to the Law on Protection of Young Persons at Work, no child can participate in cultural, artistic, athletic activities for more than 7 hours and 15 minutes a day or more than 36 hours per week. The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015). The Committee considers that 7 hours and 15 minutes a day and 36 hours per week of light work may have negative repercussions on the education and development of children. It therefore considers that the situation is not in conformity with Article 7§3 of the Charter on the ground that the duration of light work for children subject to compulsory education on non-school days is excessive.

As regards work during school holidays, the Committee referred previously to its Statement of Interpretation on Article 7§3 in the General Introduction of Conclusions 2011. It asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. It also asks what are the rest periods during the other school holidays. The report does not provide the requested information. The Committee reiterates its question. The Committee points out that if the next report does not provide the requested information, there will be nothing to establish that the situation is in conformity with the Charter on this point.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. The supervision required of states must concern not just the Labour Inspectorate but also the

educational and social services (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28-32). The Committee asks the next report to provide information on the supervision exercised by the authorities with respect to employment of children subject to compulsory education, including on the violations detected and sanctions imposed in practice.

### *Conclusion*

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

- the duration of light work during school term for children aged 13-15 is excessive;
- the duration of light work for children subject to compulsory education on non-school days is excessive.

## **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 Cyprus.

The report states that there have been no changes to the situation which the Committee, in its previous conclusion, found to be in conformity with Article 7§4 of the Charter.

The Committee recalls that although there may have been no legislative developments, the situation in practice should be regularly monitored. It asks that the next report provide information on the monitoring activity (violations detected and sanctions applied) of the Labour Inspection in relation to working time of young persons under 18 who are no longer subject to compulsory school.

### *Conclusion*

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



**Article 7 - Right of children and young persons to protection**

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

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

The report states that there have been no changes to the situation which the Committee, in its previous conclusion, found to be in conformity with Article 7§6 of the Charter.

The Committee recalls that although there may have been no legislative developments, the situation in practice should be regularly monitored and information on the activity of the Labour Inspection should have been provided in the report. It asks that the next report provide such information.

*Conclusion*

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

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.

The report indicates that young workers under 18 years of age are entitled to minimum four weeks' annual holiday with pay, with the same arrangements as those applicable to the annual paid holidays of adults. The report adds that the Law on Annual Holidays with Pay (Law No. 8 of 1967) covers all persons employed in the private and the public sectors, including apprentices. According to the Law, each employee who has worked 48 weeks within one year is entitled to an annual leave with pay of four weeks. Employees, who work 5 days a week, are entitled to an annual leave of 20 working days, whereas employees who work 6 days a week are entitled to a annual leave of 24 working days. The Committee asks confirmation that the above mentioned provisions apply to young workers under 18 years of age as well.

The report also indicates that temporary absence from work due to an accident, sickness, maternity, parental leave or leave on grounds of force majeure, is considered as working time. The Committee asks whether in the event of illness or accident during the holidays, young workers have the right to take the leave lost at some other time. It also asks whether young workers are allowed to waive their right to annual leave in return for increased remuneration.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It recalls that the situation in practice should be regularly monitored and asks that the next report provide 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.

### *Conclusion*

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

The report indicates that young workers between 15 to 18 years old are, in general, not allowed to work between 11 pm and 7 am. As an exception, under the new Law No. 15(I)/2012, which amended the Law on Protection of Young People at Work, night work for young workers of at least 16 years of age will be allowed in certain sectors/activities given that:

- the following day is not a school day if the young worker attends school;
- the number of nights that the young worker works does not exceed 3 per week;
- the young worker is informed at least with 48 hours in advance;
- if the young worker cannot work at night for a reasonable cause, then the employer shall make arrangements to exempt him/her from night work.

The report further indicates that, however, no work is allowed between 12 pm and 4 am for young workers between 15 to 18 years of age.

The report adds that night work for young workers of at least 16 years of age is allowed only in the following employment sectors if there is no adult available for the respective job and if the education and training of the young worker is not affected:•

- shipping or fishing;
- hospitals, homes for the elderly, similar services;
- cultural, sports and advertising activities;
- hotels, restaurants, cafeterias and bakeries;
- post offices or newspaper distribution.

The Committee requests information on the proportion of young workers not covered by the ban on night work, including on the number of young workers employed in the above-mentioned sectors. It recalls that 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 Committee requests information showing that these exceptions are necessary for a proper functioning of the relevant economic sector and that the number of young workers concerned is low.

The report indicates that there are no information available with regard to the implementation in practice. The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the monitoring activity of the Labour Inspection, its findings and applicable sanctions in relation to possible illegal involvement of young workers under 18 in night work. It also asks information on the activity of the Labour Inspection of supervising the above mentioned derogations for young workers of at least 16 years of age in practice.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

### ***Protection against sexual exploitation***

The Committee recalls that under Article 7§10 of the Charter, 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. The following are the minimum obligations:

- as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised. In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts. Furthermore, States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.
- a national action plan combating the sexual exploitation of children should be adopted.

An effective policy against commercial sexual exploitation of children should cover primary and interrelated forms: child prostitution, child pornography and trafficking in children.

- child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration;
- child pornography is given an extensive definition and takes account of the fact that new technology has changed the nature of child pornography. It includes the procurement, production, distribution, making available and possession of material that visually depicts a child engaged in sexually explicit conduct.
- trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.

According to the report, a new legislation, L. 91(I)/2014, which revises the legal framework for the prevention and combating sexual abuse and sexual exploitation of children and child pornography has been adopted. It provides for a holistic approach to combating sexual offences committed against children and also addresses specifically offences committed online.

The Committee notes that the above mentioned legislation criminalises sexual abuse and sexual exploitation of children, child pornography, invitation to a child for sexual purposes and dissemination of material which propounds opportunities to commit offences of such nature (sexual tourism against children). Furthermore, it provides for increased penalties, special protection measures for victims, Court orders for the restriction of access, notice and taking down of websites containing illegal material at any stage of the proceedings, the creation of a register of convicted persons.

The Committee notes from Replies to the General Overview Questionnaire to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse that the Law for Combating Trafficking and Exploitation of Human Beings and for the Protection of Victims [L.87(I)/2007], came into force on 13/07/2007. This Law has special provisions for children (Sections 36, 37, 38 and 39), including unaccompanied minors and provisions against child pornography. It further provides for a national coordinator and for the establishment of a multidisciplinary group with the task to take all necessary measures for combating trafficking and exploitation of human beings and to protect.

The Committee asks the next report to indicate whether the legislation provides protection against all forms of sexual exploitation of children, as outlined above, including simple

possession of child pornography, until 18 years of age. In the meantime, the Committee reserves its position on this point.

### ***Protection against the misuse of information technologies***

According to the report, Law 91(I)/2014 creates a legal obligation for internet service providers to restrict access to websites containing child pornography, even without a Court Order, if they are duly informed by a competent authority or otherwise gain knowledge.

The Committee notes that the legislation was adopted outside the reference period. It wishes to be informed about its implementation.

### ***Protection from other forms of exploitation***

The Committee recalls that under the Charter, the prohibition of all forms of corporal punishment of children is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2). The Committee has clearly stated that all forms of corporal punishment must be prohibited in the home, in schools and in institutions and this prohibition must have an explicit legislative basis. The sanctions available must be adequate, dissuasive and proportionate (Complaint No 18/2003, World Organisation against Torture (OMCT) v. Ireland, decision on the merits of 7 December 2004).

Committee also recalls that the Charter was conceived as a whole and in some cases its provisions complement each other, as well as overlap in part (*Mental Disability Advocacy Center (MDAC) v. Bulgaria*; Complaint No. 41/2007; decision on admissibility of 26 June 2007, §8). This is the case with the protection of children from ill-treatment and abuse. The Committee considers that the fact that the right of children and young persons to social, legal and economic protection is guaranteed under Article 17 of the Charter does not exclude the examination of certain relevant issues relating to the protection of children under Article 7§10. In this connection, the Committee recalls having held the scope of the said two provisions to overlap to a large extent (Conclusions XV-2 volume 1, Statement of interpretation on Article 7§10).

Therefore, since Cyprus has not accepted Article 17§1 of the Charter, the Committee will examine the issue relating to corporal punishment under this provision.

The Committee notes from the Global Initiative to End Corporal Punishment of Children that corporal punishment was made unlawful in the home in 1994, in the Violence in the Family (Prevention and Protection of Victims) Law 1994.

However, in the Government's response to the questionnaire of the UN Study on Violence against Children in 2005, it came to light that the provision for "the right of any parent, teacher or other person having the lawful control or charge of the child to administer punishment to him" in Section 54(6) of the Children's Law 1956 was still on the statute books.

In its Decision to strike out (of 12 May 2014) the Complaint No 97/2013 Association for the Protection of All Children (APPROACH) v. Cyprus, the Committee decided to assess the national situation as regards prohibition of all forms of corporal punishment in the reporting system (on the basis of the report submitted by Cyprus in 2014).

The Committee notes that Clause 6 of Section 54 of the Children Law that made reference to corporal punishment has been repealed (Government Gazette 21/6/2013). Therefore, the situation has been brought into conformity with the Charter.

Corporal punishment is unlawful in alternative care settings. Corporal punishment has been considered unlawful in schools since 1967.

The Committee notes from the Report submitted by the Cypriot authorities on measures taken to comply with the Recommendation CP(2011)2 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings that in order to conform to the suggestions of the Group of Experts on Action against Trafficking in Human Beings (GRETA) to pursue plans to develop a specific National Action Plan for child victims of trafficking, specific provisions for child victims will be included in the Manual of Interdepartmental Procedures for the Handling of Cases of Victims of Trafficking, which is currently in the process of being amended. These provisions are based on the already adopted policy concerning the children in need of protection and care, such as trafficked children. These children are taken under the care of the Director of the Social Welfare Services, and are either placed in foster care or residential care. An individual care plan for each child is prepared with the participation of the child and all involved services / NGOs.

The Committee notes from the Replies to the General Overview Questionnaire to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse that there exists no specific national strategy and/or Action Plan to combat sexual exploitation and sexual abuse of children. However the National Action Plan on the Prevention and Combating of Domestic Violence (2010-2013) and the Action Plan for Combating Trafficking in Human Beings 2013-2015 include provisions for child victims.

The Committee wishes to be informed of the implementation of measures for protection of child victims. It also wishes to be informed of the measures taken to support street children.

#### *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 Cyprus.

### ***Right to maternity leave***

The report indicates that the Maternity Protection Legislation (L. 100(I)/1997) was amended in 2011 to enhance the protection given to pregnant workers. Pregnant workers are entitled to a maternity leave of 18 weeks in total, including 2 weeks compulsory leave before the expected birth and 9 weeks compulsory leave after the birth, upon presentation of a medical certificate stating the estimated date of delivery. Additional maternity leave is provided for in certain cases. All pregnant workers are entitled to a maternity leave, regardless of the time for which they have been working for a specific employer. The report confirms that there is no distinction between women employed in the public sector and those employed in the private sector.

### ***Right to maternity benefits***

According to the Social Insurance Law, as amended in 2012, maternity allowance is payable to insured women for a period of 18 consecutive weeks starting between 9 and 2 weeks before the expected delivery, upon presentation of a medical certificate establishing the expected date of delivery. Are entitled to the payment of maternity allowance the insured women who:

- are on maternity leave and do not receive their whole salary or wages from the employer;
- have been ensured for at least 26 weeks and have paid, up to the day of maternity allowance, contributions on insurable earning not lower than 26 times the weekly amount of the basic insurable earnings;
- have paid or have been credited with insurable earnings, in the previous contribution year not lower than 20 times the weekly amount of the basic insurable earnings.

The amount of maternity allowance is determined according to the weekly amount of paid and credited insurable earnings of the insured woman in the previous contribution year. Maternity benefit is composed of the basic and the supplementary benefit. As from 2012, the weekly rate of the basic benefit is equal to 72% of the weekly average of the basic insurable earnings of the claimant in the previous contribution year. The weekly amount of the basic benefit is increased to 80% if she has one dependant, to 90% if she has two dependants and to 100% if she has three dependants. The report confirms that the same regime applies both to women employed in the private as in the public sector.

The Committee recalls that the right to benefit may be subject to conditions such as a minimum period of contribution and/or employment. However, these conditions must be reasonable; in particular, if qualifying periods are required, they should allow for some interruptions in the employment record (Statement of Interpretation, Conclusions 2015). It accordingly asks the next report to clarify whether interruptions in the employment record are taken into account in the calculation of the qualifying period for entitlement to maternity allowance and whether the minimum rate of such allowance corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

The Committee furthermore notes that maternity allowance is still based on the wages earned in the previous insurance contribution year, instead of those earned in the months closer to maternity leave. In this respect, the Committee asks the next report to provide information on the situation of employed women who do not qualify for maternity allowance.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Cyprus is in conformity with Article 8§1 of the Charter.



## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

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

### ***Prohibition of dismissal***

The report indicates that the Maternity Protection Legislation (L. 100(I)/1997) was amended in 2011 to enhance the protection given to pregnant workers. Upon written notification of the pregnancy, an employee is protected from dismissal from the beginning of the pregnancy until three months after the end of maternity leave. The report confirms that this applies both to women employed in the public sector as in the private sector.

Exceptions to this rule apply:

when the employed woman is found guilty of a serious offence or behaviour justifying termination of the employment relationship,

when the undertaking ceases its activities,

when the contract period has come to an end and its non-renewal is not connected with the employee's pregnancy.

In response to the Committee's question, the report explains that the notion of "behaviour justifying termination of the employment relationship" covers the situations in which an employee would commit:

- serious misconduct in the performance her duties;
- a criminal offense in the performance of her duties, without the express or implied consent of the employer;
- indecent behaviour during the execution of her tasks;
- serious or repeated violation or disregards of labour regulations or other regulations with respect to employment.

The Committee takes note of the report's statement that there is no example of how the courts interpret the abovementioned notion because no such case was filed during the reference period. It reiterates nevertheless its request for relevant examples of case law, if any, to be provided in the next report.

### ***Redress in case of unlawful dismissal***

The Committee notes from another source (European Network of Legal Experts in the field of Gender Equality, Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood – The application of EU and national law in practice in 33 European countries, 2012) that employees wishing to contest their dismissal for reasons related to maternity are entitled to seek compensation, including reinstatement, either through the District Court or through the Industrial Disputes Tribunal.

In this respect, the Committee previously noted (Conclusions 2011) that under the Termination of Employment Act, the reinstatement of unlawfully dismissed employees was only possible in enterprises with more than twenty employees. However, the Equal Treatment of Men and Women in Employment and in Vocational Training Act No. 205(I) of 2002, whose provisions prevail on the Termination of Employment Act (according to Section 33 of the abovementioned Equal Treatment Act), allows such reinstatement in all cases.

The Committee had furthermore noted that Law No. 61(I) of 1994 limited the level of compensation to two years' wages but that, according to the report, the employees concerned could claim higher compensations before the civil courts, under Section 3§1 of the Termination of Employment Act.

According to the report, although the abovementioned restrictions, which are in contrast with the Charter, have not been formally amended, it remains possible for employees to request

reinstatement for unlawful dismissal in enterprises with less than twenty employees and to claim unlimited compensation. However, no relevant example of case law in this sense has been provided because, according to the report, no such case was filed during the reference period. The Committee takes note of that, it requests clarifications as to the legal basis allowing to claim for unlimited compensation and reiterates its request for the next report to provide relevant examples of case law, if any, concerning unlawful dismissal of employees during pregnancy or maternity leave.

The report furthermore confirms that the same rules apply both to employees in the private as in the public sector.

#### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

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

In accordance with the Maternity Protection Act 100(I) of 2007, as amended in 2011, employees are entitled to have their daily working time reduced by one hour until the child is nine months old, whether they are nursing their infant or not. This time is considered as working time and is remunerated as such. The report confirms that the same provisions apply to all employees, in the private as in the public sector.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

The report refers to the Protection of Maternity (Safety and Health at Work) Regulations of 2002 (Regulation 255/2002), which were issued under Articles 13(8) and 38 of the Safety and Health at Work Laws of 1996 to 2011 and Article 6 of the Maternity Protection Legislation. These regulations, according to the report, partially harmonize Cyprus legislation with the provisions of the European Union Directive 92/85/EEC on the application of measures to improve the safety and health at work of pregnant workers, workers who have recently given birth or are nursing their infant.

According to the above mentioned Regulations (P.I. 255/2002), and the related Safety and Health at Work Laws of 1996 to 2011, every employer must undertake a written risk assessment of the health and safety risks involved by following the General Principles of Prevention (Article 13(3)). The employer is obliged to suitably revise the risk assessment whenever changes to the workplaces occur and when the assessment no longer applies. Additionally, every employer is obliged to consult with and train employed persons in Occupational Safety and Health (OSH), based on the results of the risk assessment. Also, Regulation 3 of the Protection of Maternity (Safety and Health at Work) Regulations of 2002 (Reg. 255/2002) requires the employer to suitably inform women workers who are pregnant, or who have recently given birth or who are nursing, of the results of the risk assessment and of the preventive and protective measures taken as a result, to ensure their safety and health at work.

Also, according to the above Regulation (No. 3 in Reg. 255/2002), in cases where the application by the employer of the results of the risk assessment described above does not avoid risks to the safety and health of employed women who are pregnant, who have recently given birth or who are nursing, the employer must take all necessary measures to avoid those risks by changing the working conditions or the working time arrangements for the women workers involved. In case these changes are not feasible in practice, the employer must relieve the concerned worker of her work and assign different work to her which does not involve risks to her safety and health for as long as this is required. If the above is still not feasible, and so long as this is duly justified, then the woman involved must be relieved of her work duties for as long as this is required to safeguard her safety and health without adversely affecting any of her rights, including salary. Additionally, employers may not allow employed women who are pregnant, who have recently given birth or who are nursing to carry out work duties defined in Annex II (Section A for pregnant women and Section B for nursing women).

In addition to the written risk assessment, which must be carried out by every employer and the preventive and protective measures which must be taken to safeguard employed persons' safety and health (as imposed by the Safety and Health at Work Laws of 1996 to 2011), every employer must include in the risk assessment, an assessment of the risks to women who are pregnant, who have recently given birth or who are nursing. This assessment must take into account work processes, work conditions, any physical, biological, chemical or ergonomic factors including specific factors which are listed in the two Annexes of the said Regulations. These are entitled non-exhaustive list of agents, processes and working conditions (Annex I) and non-exhaustive list of agents and working conditions (Annex II). They are a transcription of the corresponding Annexes of European Directive 92/85/EEC (of 19 October 1992) on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are nursing their infant (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).

The Committee asks the next report to confirm that the abovementioned legislation applies to all employed women, whether in the private or in the public sector. As regards the

possibility for the concerned employees to be temporarily transferred to another work or exempted from their duties while the risk persists, the Committee asks whether they maintain a right to reinstatement to their post when their condition permits it.

It furthermore asks the next report to provide a copy (in English or French) of the abovementioned annexes, identifying specific hazards. It recalls in this respect that Article 8§5 of the Charter requires national law to prohibit the employment of pregnant women, women who have recently given birth and women nursing their infants in underground work in mines (with the exception of women who occupy managerial posts and do not perform manual work; work in health and welfare services or spend brief training periods in underground sections of mines). National law should also ensure a high level of protection against all known hazards to the health and safety of women who come within the scope of Article 8§5, in particular as regards activities involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents. The Committee asks the next report to indicate whether underground work in mines is prohibited and how the dangerous activities involving exposure to the specific risks mentioned above are regulated for the group of women concerned.

#### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Cyprus is in conformity with Article 8§5 of the Charter.

## **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 Cyprus.

### **Migration trends**

According to the Migration and Integration Policy Index (MIPEX) 2015, Cyprus has been a country of immigration since the mid-1980s. Eurostat migration data shows that in 2013, 11,500 foreign citizens migrated to Cyprus, of whom 6,700 arrived from other EU states, and 4,800 came from non-EU countries. In total there were 43,839 third country nationals in Cyprus in 2010, which increased to 64,098 in 2012, but has fallen since, totalling 57,489 in 2013.

Non-EU citizens made up 7.3% of the population in 2012, though this decreased during the country's economic crisis to 5.6% of the population in 2014, a reduction of around 15,000 people.

Two thirds of resident non-EU citizens are ordinary labour migrants, most of whom come from medium-developed countries. During the period 2010-2014, unemployment rates nearly doubled, and the number of labour migrants and students with legal permits halved.

According to MIPEX 2015, non-EU-born men and women with university degrees are twice as likely to work in jobs not requiring a university degree than Cypriot nationals (for men, 52% of non-EU-born vs. 23% for Cyprus-born, and for women 60% of non-EU-Born vs. 31% for Cyprus-born).

The three main flows of irregular migration to Cyprus come from Asia, Eastern Europe and the Middle East. These flows concern economic migrants, most of whom are unskilled.

### **Change in policy and the legal framework**

The 2012 Annual Policy Report submitted by Cyprus to the European Migration Network (EMN) states that in 2012, there were no major changes influencing migration and asylum policies in Cyprus.

The abovementioned report to the EMN specifies that the current Aliens and Immigration Act derives from Article 32 of the Cyprus Constitution. In 1972, Regulations were issued for the better interpretation and implementation of the Act.

In the fourth report of the European Commission against Racism and Intolerance (ECRI) (2011), the authorities make clear that "immigration in Cyprus is intrinsically linked to the needs of the labour market". In the early 1990s migrants were granted short-term work and residence permits to work in specific sectors for a maximum period of four years. No integration policy was developed because immigration was intended to be a short term solution. However, the authorities now state that they recognise the need to develop such a policy.

The abovementioned 2012 report to the EMN also states that recent legislative developments in the area of migration and asylum included the transposition of the EU Directive 2009/52/EC of June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals in the Aliens and Immigration Act. Additionally, the amendment of the Cyprus Refugee Act was promoted and also the amending Law against trafficking in human beings came into force.

As regards the Integration Fund actions in 2012, local authorities had an important role to fulfil by implementing programmes both general as well as targeted for specific nationalities. These activities also included child care for the afternoon hours. Other actions included Greek language programmes, a documentary production and other multicultural events.

According to the EMN Country Report 2012, due to the economic crisis affecting Cyprus, the policy for the employment of third country nationals has been adjusted so as to introduce restrictions in admissions for specific occupations such as nurses, bakers, unskilled workers in wholesale, etc. Steps have also been taken to reinforce the measures implemented to combat illegal employment. The abovementioned measures resulted in a reduction of 6% (from 6,657 to 6,231) of the number of foreign workers approved by the Ministry of Labour and Social Insurance.

The MIPEX 2015 outlines the fact that hardly any targeted support is organised for non-EU citizens' employment, training, health or political participation, with a few exceptions (recognition of foreign qualifications, zoning for disadvantaged schools, the Ombudsman for nationality discrimination). Although Cyprus spends EU funds on ad hoc integration policies, its restrictive policies and limited support discourage immigrants and local communities from investing in their integration.

### ***Free services and information for migrant workers***

The report states that the Labour Department supports and assists job-seekers to find appropriate work, and there is a network of Public Employment Services which is spread all over the country.

According to the report, job-seekers who are applying for assistance to the Public Employment Services are migrants who have free access to the labour market, such as recognized refugees and persons with subsidiary protection status, as well as asylum seekers who are entitled to employment. For all these categories of the labour force the Labour Department provides up-to-date information about existing employment opportunities, as well as the terms and conditions for employing foreign workers. The Committee notes that these categories do not include migrant workers with a work permit tied to a particular employer, who it considers may nevertheless require the services of an employment agency to understand their rights and get other vital information. The Committee previously asked for an up-to-date description of the initiatives taken to maintain adequate and free services to assist migrant workers, including those who are not EU nationals (Conclusions 2011). The Committee recalls from its previous conclusions that EU nationals have access to the EURES Portal. The current report, however, does not give any details of the assistance accessible provided for non-EU migrant workers in person except for those with refugee status.

Informative leaflets are produced by the Ministry of Labour, Welfare and Social Insurance, and the Ministry of Interior. These are available at Labour Department branches (in 14 offices of the Public Employment Service) in various languages such as English, Arabic, Sri-Lankan, Russian, Romanian and Greek. These leaflets contain accurate information on employment related issues, such as basic provisions of Labour Legislation concerning terms of employment, equality in employment, termination of employment, the rights and obligations of a foreign employee etc. Leaflets produced by the Ministry of Interior, which is the competent authority for the right implementation of the legislation regulating the issue of immigration, contain detailed and accurate information on issues such as health care and social insurance, banking, basic human rights and obligations, visa and entry requirements and employment and labour relations issues. These informative leaflets have been disseminated to NGOs dealing with migration issues as well as the Private Employment Agencies in order to provide the right information to foreigners who are interested in taking up employment in Cyprus.

According to the report, the Labour Department is also promoting the translation of the model contract of employment used in the broad sector of agriculture in languages other than English.

Under the Private Employment Agency Act the Labour Department, as the responsible authority for its implementation, organizes every year training courses for the representatives

of the Private Employment Agencies on various issues related to residence and employment of migrants.

With the aim of integrating persons who have settled and permanently live in Cyprus, those entitled to international protection, as well as asylum seekers, the Government has launched several programmes, co-financed by the European Refugees Fund (ERF) and the Integration Fund, including Greek language tuition programmes for refugees; an orientation programme to help refugees and persons under subsidiary protection understand life in Cyprus and their statutory right; and informational campaigns on various issues of concern to foreigners.

Given the lack of clear information provided regarding the services and assistance available to migrant workers in categories other than refugees or recipients of subsidiary protection, the Committee defers its conclusion on the provision of adequate and free services to assist migrant workers.

### ***Measures against misleading propaganda relating to emigration and immigration***

The MIPEX 2015 reveals that anti-immigrant attitudes are higher in Cyprus than on average in the EU, with only a minority in 2012 believing that immigrants enrich Cyprus economically and culturally (23%) and should have equal rights as Cypriot citizens (39%). The Committee also notes from the fourth report of ECRI that the results of a survey reported in the press in July 2010 revealed that more than half of school pupils considered migrants to be “dirty”, “dangerous” and “uncivilised”.

The report states that in its attempt to combat racism and xenophobia, the Government of Cyprus has launched several actions, under programmes co-financed by the European Refugees Fund (ERF) and the Integration Fund, namely:

- Campaigns to raise the awareness of and inform the public in Cyprus on issues relating to beneficiaries of international protection, especially within the local authorities and local communities;
- Information campaigns on various issues in concern to foreign residents;
- Activities encouraging mutual interaction and cultural exchange;
- Training seminars for stakeholders;
- Conferences on the improvement of the integration procedures;
- Establishment of multilateral networks with Mediterranean countries;
- Research (investigation of the attitudes and perception of teachers dealing with Third Country Nationals immigrants and suggestion on how to improve their integration );
- Training seminars for journalists .

The Committee asks for further details on the contents of some of these actions and action undertaken in the future, such as encouragement of cultural exchange, and information campaigns.

It notes from the MIPEX 2015 that public awareness and judicial/legal training courses are usually run not by the state but with limited means by the Ombudsman and NGOs.

According to the 2013 EMN Country Report, local authorities also organised forums with the participation of migrant representatives and provided psychosocial support to foreign citizens.

The fourth report of ECRI states that there has been a marked effort to train the police and raise awareness about racism through training courses and seminars at the Cyprus Police Academy. The Human Rights Office has also been created in the police force, which has already produced a code of ethics. The Independent Authority for the Investigation of Complaints and Allegations concerning the Police was established by law in 2006. It has competence to investigate complaints relating to police misconduct, including bribery, corruption, unlawful financial gain, violations of human rights, and abuse of power,



preferential treatment, and conduct undermining the reputation of the police. It also has the power to initiate its own investigations.

The fourth report of ECRI explains that the Equality Body deals with employment issues, while the Anti-Discrimination Body deals with discrimination in other fields. Thus, the Ombudsman acting under the remit of the Anti-Discrimination Body investigates complaints of maladministration and discrimination from public bodies towards individuals; and in her capacity as the national equality body, she investigates complaints in both the private and the public sector. Since its establishment, more than 800 complaints have been lodged with the Anti-Discrimination Body. The great majority of the complaints (89%) concerned discrimination on the grounds of racial, ethnic or national origin.

The Committee notes the concerns of ECRI that according to various unofficial sources, there is a rise in xenophobia in Cyprus and “raw” racist attitudes are expressed more openly than in the past. The main targets of racism in public discourse are migrants, asylum seekers and refugees. The portrayal of asylum seekers, in particular, as “scroungers” dependent on welfare benefits fuels negative attitudes towards them. In its report, ECRI also notes that there is wide publication in Cyprus of xenophobic articles and sensationalism continues to be common in the media.

The Committee notes that a code of ethics for the media was drafted following consultation with journalists. The code states that the media should avoid references to minorities, religion and ethnic origin in reporting.

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (*Centre on Housing Rights and Evictions (COHRE) v Italy*, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information, and of deterring the promulgation of discriminatory views. It considers 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. Committee asks whether such a system exists in Cyprus, and if so it requests detailed information on its activities.

The Committee notes the existence of a number of bodies competent to deal with complaints of discrimination, and to investigate issues of negative propaganda relating to migration. It also notes the training sessions undertaken for the police and other stakeholders, and the information campaigns concerning migration and integration. It considers that considerable steps have been taken to combat misleading propaganda relating to immigration and emigration, and accordingly finds these measures to conform with Article 19§1 of the Charter.

The Committee recalls that States have an obligation to take measures or undertake programmes to prevent the dissemination of false information to departing nationals, as well as to prevent the misinformation of foreigners wishing to enter the country. Authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (*Conclusions 2006, Slovenia*). It asks for complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings.

### *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 Cyprus.

***Departure, journey and reception of migrant workers***

The report states that there have been no changes to the legal framework which it previously found to be in conformity with the Charter (Conclusions 2011).

The Committee recalls that reception 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 Committee asks that the next report provide a complete and up to date description of the circumstances under which help may be given to migrants upon reception when they suffer these difficulties.

It recalls from its previous conclusion (Conclusions 2011) that under the criteria regulating the employment of foreign workers, the transport expenses of migrants between their country of origin and Cyprus should be paid by the employer, and that this was integrated into the 2008 Governmental Strategy relating to the employment of foreign workforce. The Committee asks what steps have been taken to enforce these regulations.

The report states that before third country nationals arrive in Cyprus, they are obliged to undergo medical examinations in the country of origin, and demonstrate that they do not suffer from HIV, Syphilis, Hepatitis B and C or Tuberculosis (TB). The Committee recalls from its previous conclusion (Conclusions 2011) that according to the regulations on the employment of foreign workers, costs regarding this medical examination should also be paid by the employer. The Committee asks how it is ensured that migrant workers do not bear the cost of medical examinations.

The report states that the employer must issue a certificate of health insurance for both inpatient and outpatient care, and also must demonstrate that it possesses liability insurance.

The Committee notes from the 2011 report of the European Commission against Racism and Intolerance (ECRI) on Cyprus that “healthcare is free of charge for those whose salaries are below a certain threshold. However, reports indicate that the standard policy is to refuse migrants free healthcare even if their salary is below that threshold.” The Committee asks whether it is the case that migrants or other residents of Cyprus have been refused financial assistance with healthcare, and requests that the next report provide disaggregated statistical information concerning the number of patients having applied for subsidised healthcare provision, and the number of applications accepted or refused.

It also notes, from the Country Report on Cyprus 2013 of the European network of legal experts in gender equality and non-discrimination, that in 2005 the Equality Body ruled that the refusal to issue a health card (which entitles the holder to free treatment in hospital) to asylum-seekers due to the fact that they did not have their residence permit was discriminatory (File No. A/P 1339/05). The Ministry of Health then issued a circular to hospitals requiring them to issue health cards to asylum seekers even in the absence of residence permits, where there is an emergency (N. File YY11.23.03, 12 December 2005). The Committee asks whether this decision also applies to other migrants. It asks what measures are in place to ensure that all residents have access to emergency healthcare.

The Committee notes from the European Migration Network Country Factsheet 2013 that legislative amendments to the Refugee Law Regulations for Reception Conditions entered into force from 2013, which provided for the replacement of public subsistence to asylum-seekers with monthly vouchers to ensure their basic needs, include food, clothing, rent and utilities. It notes that in 2013 the amount of such vouchers was set at €40 monthly for each

applicant plus €10 for every dependent living with the main applicant. The Committee asks for more information on the impact of this change, and whether further assistance is available if circumstances demand.

***Services for health, medical attention and hygienic conditions during 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 requests details of any measures taken in regard of collective recruitment, should it occur.

*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 Cyprus.

The report states that the situation, which it previously found to be in conformity with the Charter (Conclusions 2011), has not changed.

The Committee previously requested information on the existence of private or public social services in Cyprus. It notes that the report refers to 'Social Welfare Services' and requests a description of the operation of these services.

The report further states that the Social Welfare Services have on numerous occasions cooperated with social services of other states, usually through the International Social Services for issues related to safeguarding the best interests of children. The Committee asks for examples of such cooperation and any other contacts between Cypriot authorities and social services in other Parties. The Committee asks whether other contacts are established to facilitate communication on behalf of migrant workers with problems other than those related to the safeguarding of children.

Common situations in which co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (Conclusions XV-1 (2000), Finland).

The Committee recalls that 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. 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. (Conclusions XV-1 (2000), Belgium).

Whilst it considers that collaboration among social services can be adapted in the light of the size of migratory movements (Conclusions XIV-1 (1998), Norway), it holds that there must still be established links or methods for such collaboration to take place.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Cyprus is in conformity with Article 19§3 of the Charter.

## **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 Cyprus.

### ***Remuneration and other employment and working conditions***

The Ministry of Labour and Social Insurance (MLSI) safeguards equal treatment of non-EU national workers as regards terms and conditions of employment (hours of work, salary and other benefits, holidays, overtime pay, duties etc.) through written contracts signed by the employer and the foreign employee. Terms and conditions of employment are in accordance with the terms of the relevant collective agreements signed by employers' and workers' organisations.

The report states that complaint resolution procedures have been established by the MLSI for the protection of workers' rights. A mechanism for resolving complaints is established at each District Labour Relations Office especially for migrant workers, where complaints regarding violations of their employment contract are examined. Each complaint is examined within three weeks from the date that it was received. The employee can also complain to the Labour Disputes Court.

An inspection mechanism has also been set up to safeguard the enforcement of Equality Laws. The inspections fall under the umbrella of the inspection units for undeclared and illegal work. The Committee notes from the fourth report of the European Commission against Racism and Intolerance (ECRI) (2011) that migrant agricultural workers "are particularly vulnerable as there is little effective monitoring of employment in this sector." The Committee asks for further data concerning the activities of the monitoring and inspection bodies.

The Committee further notes that it has been "generally admitted by all interested parties that there is exploitation of foreign labour force in Cyprus and especially on subjects such as pay, labour/industrial relations, and working conditions." (Presentation of Preliminary Results of a Research, 2006: European Mobility Year in an Enlarged Europe, on behalf of the Labour Department of the Ministry of Labour, Lefkosia, 2006). The Committee asks what remedies, such as compensation, are available for migrant workers in such situations, and what sanctions may be imposed on employers by the inspectors or other competent bodies.

The Committee notes from the third report of ECRI (2005) that "the close link still existing between employment with a specific employer and the residence permit" continues to be an important factor and as a result "domestic and other foreign workers are still reported to endure serious situations of exploitation and abuse in order to avoid deportation." The Committee asks for further information and statistics concerning complaints of mistreatment submitted to the competent bodies.

The report states that in July 2012, the Private Employment Agency Law 126(I)/2012, regulating the establishment and operation of private employment agencies, came into force. The new law sets the conditions and the qualifications that need to be fulfilled in relation to such agencies. The criminal record of the applicant is examined, and offences such as sexual exploitation, trafficking in human beings, or any other serious criminal offence are grounds for refusal of an operating licence.

The Committee notes the criticisms of the Migration and Integration Policy Index (MIPEX) in its 2011 report, where it is stated that Cyprus has the least favourable rights for migrant workers of all 31 MIPEX countries, with Cyprus alone denying migrants both equal working conditions and social security. The Committee further notes that in its 2015 report MIPEX still finds that "Cyprus denies non-EU workers equal working conditions and social security", and "hardly any working-age non-EU citizens in Cyprus can benefit from training". The Committee notes from the response to a Eurofound study on the occupational promotion of migrant workers (2009) that "as regards training, education and retraining of employees by

the employer and trade union organisations in work-related subjects, participation by migrants has been practically non-existent, since educational programmes are offered only in the Greek language”. It also notes that “as regards opportunities for career development, according to the Cyprus Labour Institute (INEK) study on the employment conditions of migrants, the opportunities for education and further education, or even for learning the Greek language, are contingent upon acquisition of Cypriot nationality.”

In this respect, the Committee recalls that States are obliged to take proactive steps to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion. The provision applies also to vocational training (Conclusions VII (1981), United-Kingdom). The Committee asks whether vocational training with a view to improving the skills of workers and their opportunities is available in Cyprus on the same basis for migrants and nationals.

The Committee notes from the report to Eurofound concerning Employment and Working Conditions of Migrants (2009) that “Non-EU migrants, for example, who are graduates of higher education, face direct but mainly indirect forms of discrimination, since they have fewer opportunities for promotion and success than Cypriots, whereas their qualifications, achievements and abilities are not given the proper recognition.” The Committee notes the introduction of the Recognition of Professional Qualifications Act 2008 and asks for further information on how non-EU migrants can have their qualifications recognised.

The Committee considers that in general, despite the applicable legal framework, there is considerable evidence of exploitation of migrant workers in Cyprus, who also have little access to training and promotional opportunities and do not enjoy the guarantee of equal rights in practice – as noted in particular in the MIPEX, Eurofound and ECRI reports referenced above. The Committee therefore concludes that the situation is not in conformity with Article 19§4 of the Charter.

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

The report states that Trade Union Laws of 1968 to 1996 apply to all workers who work in Cyprus irrespective of their nationality. Consequently, migrant workers and their families have the same right with respect to trade union membership and collective bargaining like Cypriot nationals. No special measures, programmes and action plans are being taken for migrant workers and their families since they have the same rights like Cypriots. The Committee asks for any available statistics concerning the number of migrants who are members of trade unions or other employment organisations.

The Committee notes from the abovementioned report ‘Labour Integration of Migrant Workers in Cyprus: A Critical Appraisal’, that there are no formal prohibitions of membership in parties and organizations, self-organization, participation in public rallies, etc. although there have been cases where the contract of employment of migrants in certain sectors prohibited involvement in political activity. The Committee asks what redress migrants may seek if they are prevented from exercising their rights to trade union membership. In the meantime, it reserves its position on this issue.

The Committee refers to its Statement of Interpretation (General Introduction, Conclusions 2015) and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

### ***Accommodation***

The Committee found in its previous conclusion (Conclusions 2011) that it had not been established that migrant workers enjoy treatment which is not less favourable than that of nationals with respect to access to housing.

According to the information provided to the Governmental Committee (Report concerning Conclusions 2011), the employer is obliged to offer suitable accommodation to the foreign worker who is a third country national, and in this case the employer is allowed to deduct up to 10% from the employee's wages. The report specifies that the foreign worker has the option of staying at a place of his own choosing instead of the housing provided by the employer. The Committee also notes that the Government provides Housing Schemes to Cypriot Citizens and EU nationals, which are not extended to third country nationals legally residing in Cyprus.

The Committee recalls that "the undertaking of States under this sub-heading is to 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; Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§145-147). There must be no legal or *de facto* restrictions on home-buying access to subsidised housing or housing aids, such as loans or other allowances" (Conclusions IV (1975), Norway – Conclusions III (1973), Italy).

The Committee considers that the fact that the Government provides Housing Schemes to Cypriot Citizens and EU nationals, which are not extended to third country nationals legally residing in Cyprus shows that the situation is not in conformity with Article 19§4 c) of the Charter on the ground that migrant workers do not enjoy treatment which is not less favourable than that of nationals with respect to housing assistance.

#### *Conclusion*

The Committee concludes that the situation in Cyprus is not in conformity with Article 19§4 of the Charter on the grounds that treatment not less favourable than that of nationals is not ensured for migrant workers with respect to:

- remuneration and working conditions;
- housing assistance.

## **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 Cyprus.

The report states that the situation, which the Committee previously found to be in conformity with the Charter, has not changed.

In addition to the information previously noted, the report states that the “Social Insurance Scheme covers compulsorily every person gainfully occupied in Cyprus either as an employed person, or as a self-employed person and does not make any discrimination between nationals and non-nationals. All insured persons have the same rights and obligations.”

The insurance scheme is financed by contributions payable by the employers, the insured persons and the State. The current contribution rates for employed persons are 13.6% of insurable earnings, shared equally between the employer and the employee; and for the self-employed 12.6% of insurable notional income.

The Committee requests that the next report provide a full and up to date description of any changes to the legal framework of taxes and contributions relating to employment of migrant workers.

### *Conclusion*

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



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

### *Paragraph 6 - Family reunion*

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

#### **Scope**

According to the report, pursuant to the Aliens and Immigration Act, Cap 105 as revised until 2014, entry and residence for family reunification purposes is allowed, subject to a number of preconditions, for the following family members:

- The sponsor's spouse, provided that the marriage took place at least one year before the submission of the application for family reunification;
- Minor children (i.e. unmarried and under 18 years of age) of the sponsor and of his/her spouse, including the sponsor's or the spouse's adopted children, as well as adopted children of the sponsor who are exclusively dependent on him or her;
- Minor children including adopted children of the sponsor and the children of the spouse, where the spouse has custody and the children are exclusively dependent on him or her.

The Committee notes that under Section 18LV of the Immigration Act, the sponsor must have remained legally in the government-controlled areas of the Republic for a period of at least two years. The Committee recalls that states may require a certain length of residence of migrant workers before their family can join them. A period of one year is acceptable under the Charter, but a longer period is considered excessive (Conclusion 2011, Statement of interpretation on Article 19§6). Thus a period of two years is not in conformity with this provision of the Charter (Conclusions 2011, Cyprus).

The report states that the legislation concerning the right of third country nationals working in Cyprus to family reunification is in line with Article 8 of Directive 2003/86/EC. With respect to the Community Law, the Committee recalls that the EU Directive 2003/86/EC is without prejudice to more favourable provisions of instruments, including the 1961 Charter (Art. 3§4(b) of the above-mentioned directive), and that this principle was upheld by the European Court of Justice in its judgment of the Court of 27 June 2006, Case C-540/03, Parliament v. Council (2006) ECR, I-576.

The Committee also notes that under 18L(5) the Director shall not permit entry into the Republic to the spouse for family reunification purposes, if he/she has not attained the age of twenty-one years. The Committee notes that for some couples this could entail a wait of greater than one year. It considers that the maximum period of one year laid down in its case-law (Conclusions I (1969), II (1971), Germany) must apply without discrimination to all migrants and their families regardless of their specific situations, save for legitimate intervention in cases of forced marriage and fraudulent abuse of immigration rules. The Committee considers that such an age threshold does not allow for sufficient consideration of the individual merits of an application, and is an undue hindrance to family reunion. The Committee considers that the maximum generally applicable age limit permissible under Article 19§6 for the family reunion of spouses is the age at which a marriage may be legally recognised in the host state, as any higher age requirement hinders rather than facilitates family reunion.

The legislation provides for more favourable provisions on family reunification, for foreign family sponsors who are employed by foreign companies or who are holders of a long term permit in the Republic. These categories have either already obtained permanent residency or have the prospect of obtaining the right of permanent residency, since there is no restriction on the maximum duration of their stay in the Republic of Cyprus. In these cases, family members have the right to arrive in Cyprus either at the same time as the third country national, or at any time after his/her arrival.

Children who have come of age and the spouse of the sponsor who have completed five years residence in the Republic have the right to an autonomous residence permit which will be independent from the sponsor.

### ***Conditions governing family reunion***

The report states that for the family members of EU nationals, the provisions of the Law on the right of citizens of the Union and their family members to move and reside freely within the territory of the Republic, as amended until 2013, with which directive 2004/38/EC was transposed into the national legislation, apply.

With regard to non-EU nationals, the Committee notes that under Section 18LZ the Director “may reject an application for entry and stay or revoke or not renew a residence permit for family members on grounds of public policy, public security or public health” and therefore has considerable discretion in the decision making process. The Committee asks for more information on the procedure and what may count as a public policy ground for refusal.

With respect to means and accommodation requirements, the report states that all cases are examined on their own merit and efforts are always made to overcome such obstacles, especially in cases where minors are involved. These situations are very limited and, in almost all cases, solutions were found and the right to family reunification was exercised.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances. The Committee asks for further details on the accommodation requirement applied in Cyprus.

The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of interpretation on Article 19§6). The report specifies that unemployment benefits can be counted towards the income means of the sponsor; however in practice this is very limited in application. The Committee asks what level of means is required in order to exercise the right to family reunion.

With respect to health requirements, health may provide a ground for refusal of entry and therefore of family reunion under Article 18LZ(1). 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). These are the diseases requiring quarantine which are stipulated in the World Health Organisation’s International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis. Very serious drug addiction or mental illness may justify refusal of family reunion, but only where the authorities establish, on a case-by-case basis, that the illness or condition constitutes a threat to public order or security (Conclusions XV-1 (2000), Finland). The Committee asks whether the scope of health requirements which can lead to refusal is restricted to the conditions permissible under the Charter. In the meantime, it defers its conclusion on this matter.

However, the Committee notes that under Section 18LZ(3) the Director shall not refuse to renew the residence permit or ordering the expulsion of a family member on the sole ground

that the family member is suffering from sickness or disability that arose after the issuing of the first residence permit.

The Migration and Integration Policy Index (MIPEX) 2011 states that since 2009, migrants must pass a new language test (level A2) for permanent residence. They must also demonstrate knowledge of the current political and social situation in Cyprus. With little support provided, these integration measures are more of a barrier than an incentive. However migrants working in international companies need not fulfil the integration requirements when they apply for the status (and then, just for the first renewal). The Committee acknowledges that States may take measures to encourage the integration of migrant workers and their family members. It notes the importance of such measures in promoting economic and social cohesion. However, the Committee considers that requirements that family members pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may impede rather than facilitate family reunion and therefore are contrary to Article 19§6 of the Charter where they have the potential effect of denying entry or the right to remain to family members of a migrant worker, or otherwise deprive the right guaranteed under Article 19§6 of its substance, such as by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments (Statement of interpretation on Article 19§6, General introduction to Conclusions 2015).

It asks whether a migrant or their family member who fails to pass the test for permanent residence may remain in the country, for example with a temporary residence permit. In the meantime, it defers its conclusion on this matter.

MIPEX 2015 identifies the fact that “no other country keeps as many transnational families separated as Cyprus”. On average in Europe, 5-7% of non-EU citizen adults were not living with their spouse or partner. In Cyprus, over one in three (34%) non-EU citizen adult residents were separated from their spouse. The Committee asks the next report to explain these figures, in light of Cyprus’ obligation under Article 19§6 to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory.

MIPEX 2015 also identifies that reunited family members have limited access to employment and social benefits. It also states that passing the hurdles to become eligible for reunification does not bring full security, as permits can be lost on wide grounds, including where original conditions no longer apply. The Committee notes that under Section 18LST(1) the Director may reject an application, withdraw or refuse to renew the residence permit of a family member, where the conditions for exercising the right to family reunification of Articles 18LV, 18LG and 18LZ are no longer met. Pursuant to Section 18LST(3) The Director may revoke or refuse to renew the residence permit of a family member of the sponsor where the sponsor’s residence permit is terminated and the family member does not yet have an independent right of residence under Article 18LE. The Committee notes that family members often face serious delays (5 years) and obstacles to becoming autonomous residents in Cyprus. Before satisfying those conditions, vulnerable families in need of protection (e.g. death, domestic/sexual violence) can only rely on discretionary access to autonomous permits. The Committee recalls that migrant worker’s family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these family members must have an independent right to stay in the territory (Conclusions XVI-1 (2002), Netherlands). Accordingly, the possibility in Cyprus of revoking or refusing the residence permit of a family member where the sponsor no longer retains a permit is not in conformity with the Charter.

The Committee considers 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. The Committee notes that pursuant to section 18Lzdis there is an appeal process to the Minister of the Interior. Such an appeal renders the

decision unenforceable until the resolution of the appeal. Furthermore, under section 18LI, any Director's decision to reject the application, revocation or non-renewal of the residence permit for family members may be challenged in proceedings before the Supreme Court under Article 146 of the Constitution.

### *Conclusion*

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

- sponsors must be resident in the host State for a minimum of two years prior to being granted family reunion;
- spouses must be over the age of 21 years prior to being eligible for family reunion;
- the residence permit of a family member of the sponsor may be revoked where the sponsor's residence permit is terminated and the family member does not yet have an independent right of residence.

## **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 Cyprus.

The Committee recalls that under the Legal Aid Law of 2002 (Law No. 165(I)/2002), as amended, all forms of legal aid assistance available to nationals of Cyprus are also available to migrant workers and their families. The right to free legal aid covers advice, help and representation. The Committee asks that the next report describe the conditions which are applied to determine eligibility for legal aid.

The report states that in 2009 the Legal Aid Law was amended and expanded the legal aid scheme, under certain conditions, to refugees and asylum seekers, with respect to court proceedings under Article 146 of the Constitution against a decision rejecting their application for asylum. In 2011 the Legal Aid Law was again amended so as to cover judicial procedures in Cyprus for returning illegally staying third-country nationals when lodging recourse before the Supreme Court of Cyprus according to Article 146 of the Constitution against a return decision, a removal decision and a decision on entry ban. The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid assistance.

The Committee recalls that 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. (Conclusions 2011, Statement of Interpretation on Article 19§7). The Committee previously asked whether migrant workers had the right to the free assistance of an interpreter. It reiterates its question, considering that if the information is not provided in the next report, there will be nothing to demonstrate that the situation is in conformity with the Charter.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Cyprus is in conformity with Article 19§7 of the Charter.

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

### *Paragraph 8 - Guarantees concerning deportation*

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

The report states that deportations of migrant workers are governed by the Aliens and Immigration Act, Cap 105 as amended until 2014.

The Aliens and Immigration Act, as amended, provides that a third country national may enter and reside in the Republic of Cyprus for employment purposes, provided that he/she does not constitute a threat to public health (Article 18UST(i)). The only diseases that may justify the refusal of entering and residing of such persons in the Republic are those specified in the active rulings of the World Health Organisation, as well as other infectious or contagious parasitic diseases that may constitute a danger to public health (18KB(2)).

Section 18KST(4) of the Act provides that “until the third-country national with long-term resident status in the first Member State acquires the status of long-term resident in the Republic [...], the Minister may decide to expel a third-country national from the territory on serious grounds of public policy or public security. Paragraph (5) provides that the above decision is taken by the Minister after consultation with the competent authorities of the first Member State which provided all the necessary information on the implementation of the decision to expel that person.

Pursuant to Section 18IST of the Immigration Act, the competent Minister may decide to expel the long-term resident third country when he/she constitutes an actual and sufficiently serious threat to public policy or public security. The Minister must take into account the following factors:

1. the duration of residence in the Republic;
2. the age of the person concerned;
3. the consequences for the person concerned and family members;
4. links with the Republic or the absence of links with the country of origin.

The Committee further notes that under Section 18ID(1), the status of long term resident third country nationals will be withdrawn in case of: a. detection of fraudulent acquisition; b. adoption of an expulsion measure under the conditions provided for in Article 18IST of this Law; c. the long-term resident, in view of the seriousness of the offence he/she has committed, being a threat to the public interest.

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

The Committee understands that the relevant sections of the Aliens and Immigration Act referred to above permit the relevant Minister to expel a third country national from the territory on serious grounds of public policy or public security. It asks whether the Minister is

required to consider the individual circumstances of the person when making a decision to expel a foreigner.

With regard to expulsion on the grounds of health, the Committee notes that a migrant may not be refused the renewal of his/her residence permit if they contracted a disease after the provision of the original permit.

The Committee notes that temporary work migrants are required to retain the same job and employer. In case their employment relationship is terminated due to the fault of the employer, the report states that they shall be allowed a limited time to search for another position. The Committee asks how long this period may be, and whether they can be expelled following the end of this period.

The Committee recalls that States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake (Conclusions V (1977), United Kingdom). It asks whether such an appeal exists and what is the procedure.

#### *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 Cyprus.

The Committee recalls that the Capital Movement Law 115(I)/2003, abolished all transfer restrictions previously applicable to migrant workers.

The report states that during the reference period the Cypriot government imposed temporary restrictive measures on capital movements and payments, by virtue of a newly enacted law on 27 March 2013.

Initially, all personal transfers were subject to authorisation by a Commission established for the purpose, except payments up to €5000 by credit/debit/prepaid card. The export of banknotes was limited to €1000 per person, per journey. It is specified in the report, however, that migrant workers could still remit earnings and savings abroad through payment institutions, which had been granted a licence under the Payment Services Laws (2009 and 2010). On 14 April 2013 the temporary restrictive measures were relaxed, and personal transfers abroad up to €2000 per month, per person, from each credit institution, were allowed, without any authorisation requirements.

Very few applications were in fact received by the institution. The Cyprus government continued to relieve the limits, and the Committee notes that all capital controls were lifted in April 2015 (out of the reference period).

It states that the measures were taken against the background of lack of liquidity and a significant risk of uncontrollable deposit outflows which could destabilize the financial system, with severe consequences on the economy and society as a whole. In these exceptional circumstances, the restrictive measures were justified on grounds of public policy and for overriding reasons of general public interest.

The Committee considers that the measures implemented by the Cypriot government are justified by the necessity of preventing large-scale capital flight in the midst of the economic crisis. It considers that the measures taken were proportionate and necessary for the protection of the public interest, and were adequately prescribed by law. Therefore the action of the government of Cyprus complies with the requirements of Article G and is within the margin of appreciation of the State.

With reference to its Statement of Interpretation on Article 19§9 (Conclusions 2011), the Committee asks whether there are any restrictions on the transfer of the movable property of migrant workers.

### *Conclusion*

The Committee concludes that the situation in Cyprus is in conformity with Article 19§9 of the Charter.



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

### *Paragraph 10 - Equal treatment for the self-employed*

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

The Committee notes that the government requests further clarification of the reasons of non-conformity under this paragraph; the differentiation between employed and self-employed migrants and nationals; and the link between this and other paragraphs of Article 19.

Article 19§10 requires that States parties afford the protection guaranteed by their acceptance of other paragraphs of Article 19 to migrant workers of other States Parties who are defined as self-employed. Therefore the State must not deny or fail to provide such protection to migrants on the grounds that they are not employed by another under contract or otherwise.

The Committee clarifies that Article 19§10 applies to those migrants who move to another country to carry out their business as self-employed. The Committee does not draw a difference between a national and a migrant worker who is self-employed (or employed), and therefore the status rests upon the domestic legal system's definitions of employment. As a general principle, however, there should be no discrimination between a migrant and a national; therefore it is not possible for a country to define activities differently depending upon the origin of the person carrying them out.

The Committee notes the following explanation in the report of the European Network of Legal Experts in Non-discrimination: “[in Cyprus] there is a sharp distinction in terms of employment rights between ‘employees’ and ‘self-employed’/ independent contractors. Employees are subject to direction and control and there is an ‘employment relationship’ between the employee and the employer, which is one of a contract of employment, with all the rights provided for by the law. Employees are generally supervised and directed by others; they have a place and time of work, receive wages and have a contract of employment. Part-timers are employees and enjoy the same rights as other full-time employees based on the principle of ‘proportionality’ [Law N. 76(I)/2002 (14/06/2002) which transposed Directive 1997/81].

The Committee recalls that “a finding of non-conformity under paragraphs 1 to 9, 11 and/or 12 of Article 19 may lead to a finding of non-conformity under paragraph 10.” This follows from the fact that where the situation in a State Party is found to violate one of these paragraphs of the Charter because of the treatment of employed migrant workers, unless there is a difference in law or in practice as relates to self-employed workers which allows them to enjoy the rights otherwise denied to employed migrants, the same ground for non-conformity will apply to the self-employed as well.

To illustrate the operation of this principle: where for example the requirements for assistance with housing are based upon nationality this constitutes a discriminatory treatment of migrant workers from other States Parties, and is contrary to Article 19§4(c). The discrimination affects employed and self-employed migrants equally, and therefore this also constitutes a violation of Article 19§10, which requires that States Parties “extend the protection and assistance provided for in this Article [19] to self-employed migrants insofar as such measures apply”.

A situation in which the protection and assistance provided for in other paragraphs may not apply may be where there is a failure to guarantee equal treatment of migrant workers and nationals with regard to conditions in the workplace. Since a self-employed worker is largely responsible for his own working conditions, it is plausible that the situation which does not conform with Article 19§4(a) is inapplicable to him or her, and if that is the case then the non-conformity would not carry over to Article 19§10.

Therefore, where a situation is not in conformity with one of the paragraphs of Article 19, and this also affects self-employed workers, the Committee considers that this shall constitute a violation of Article 19§10 and therefore the situation will be found not to be in conformity with this paragraph.

With regard to Cyprus, the Committee has found non-conformities under Article 19 paragraphs 4 and 6. The Committee finds that there is no consistent difference in treatment between self-employed and employed migrant workers. Accordingly it considers that the grounds for non-conformity in the other paragraphs of Article 19, except those relating to paragraph 19§4(a) and working conditions, are equally applicable to the self-employed, and thus lead to a conclusion of non-conformity under Article 19§10.

#### *Conclusion*

The Committee concludes that the situation in Cyprus is not in conformity with Article 19§10 of the Charter as the grounds of non-conformity under Articles 19§4(c) and 19§6 apply also to self-employed migrants.

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

### *Paragraph 11 - Teaching language of host state*

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

Article 20 of the Constitution of the Republic of Cyprus safeguards the right to education for all pupils, not only Cypriot children but also children of migrants. The report states that the Ministry of Education and Culture (MoEC) offers free and accessible education to all pupils at all educational levels (primary, secondary general, secondary technical and vocational education) without prejudice. The Committee asks for any statistics concerning the number and percentage of migrant children who have access to the education system.

The report states that the MoEC has continued the implementation of its policy with regards to multicultural education, aiming at the inclusion of pupils from EU member states and third countries. Foreign language speaking pupils currently participate in the classrooms along with native Greek-speaking pupils. A flexible system of intervention within the ordinary timetable exists, although the Committee notes that the Migration and Integration Policy Index (MIPEX) 2015 indicates that there is little opportunity for adaptation of the curriculum in practice.

The report states that the Council of Ministers has approved the "Policy Report of the Ministry of Education for Multicultural Education". Within the framework of the creation of a school that will incorporate and include all pupils, the following measures that aim to the inclusion of foreign language speaking pupils to the school system and the Cyprus society, are being implemented:

- Parallel classes for fast acquisition of the Greek language through intensive instruction.
- In-service training seminars for teachers teaching Greek as a second language organised by the Pedagogical Institute.
- An induction guide for the new coming foreign language speaking pupils which has been translated in eight languages, with basic information for the pupils and their parents regarding the Cyprus Educational System. The languages are: English, Turkish, Russian, Georgian, Bulgarian, Romanian, Ukrainian and Arabic.

With regard to the system of parallel classes, in 2010/11 there were 3733 foreign language speaking pupils in primary education, and 2293 extra teaching periods were allocated for learning Greek during school hours. In 2011/12 the number of students rose to 4054, and accordingly the number of extra teaching periods rose to 2501. In 2013/14, 4088 pupils required additional assistance and 2411 extra periods were provided.

According to the report, a similar program is in place in secondary education as well, where foreign language speaking pupils learn Greek as a second language, during the school timetable. In 2010/11 the number of students requiring language classes was 1253, and 700 periods were allocated. In 2013/14 the number of such students declined to 777, and 505 periods continued to be provided. The Committee asks what caused the precipitous decline in students deemed to require additional language assistance at secondary school, and whether all children who were provided with language assistance at primary school continue to be afforded special assistance at secondary school level.

The report confirms that Zones of Educational Priority continue to be piloted, providing special assistance to schools in areas of economic and social need, including for improved language teaching provision.

The MoEC is developing and implementing programs for the education of foreign language speaking pupils, such as:

- Provision of bilingual teachers who facilitate the communication between teachers, pupils and parents.

- Provision of special support and attention to migrant, refugee and asylum seekers from the Educational Psychology Service and the Social Welfare Services.
- Organising of a number of intercultural activities and events.

The report states that the Adult Education Centres of the MoEC offer classes for learning Greek to migrant pupils that are free of charge and their duration is 25 meetings for 90-minutes each, which enable their better integration in the school and social environment of Cyprus.

In response to the question of the Committee in its previous conclusion (Conclusions 2011), the MoEC confirms in the report that these classes are in addition to the special language classes that are offered during the morning school timetable and are free of charge.

The State Institutes for Further Education, functioning under the auspices of secondary education, also offer a similar programme where migrant pupils can learn Greek in the afternoon, though they must pay fees. The Institutes help low income families and offer scholarships to pupils who excel in their exams.

The report states that the MoEC also encourages several cultural measures to promote multicultural awareness. It has provided all schools with educational material, which includes books for the teaching of the Greek language, activity and exercise books, as well as books for teachers with methodological instructions and a variety of suggestions for activities.

The Committee notes from MIPEX 2015 that immigrant pupils are not specifically supported to access or complete vocational or higher education. The Committee asks for information concerning the provision of assistance and/or language classes to migrant children who require it at the post-secondary stage of education.

The report states that the European Social Fund co-finances the project titled "Programme for Greek language teaching, applicable to migrants and other foreign language speaking residents of Cyprus", under the Adult Education Centre's administration. The project is specially targeted for teaching the Greek language to migrants. The Committee recalls from its previous conclusion (Conclusions 2011) that language classes are available to migrants who are legally resident in Cyprus. In response to the question of the Committee, the report affirms that there is no waiting period for access and the language classes are offered free of charge.

The lessons for the school years 2010-2013 were held twice a week, for 90-minutes per lesson, in total 50 meetings. Whereas for the school year 2013-2014, the lessons were held twice a week for 180-minutes per lesson, in total 25 meetings. In 2010/11, 3023 migrants took part in the project, 3694 took part in 2011/12, 2759 in 2012/2013, and only 1324 in 2013/14. The Committee asks why the number of participants declined so considerably in the latter years of the reference period, in the context of fairly steady flows of migration.

In light of the information at its disposal, the Committee concludes that the steps taken to promote the teaching of the national language to migrant workers and their families satisfy the requirements of Article 19§11.

#### *Conclusion*

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

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

### *Paragraph 12 - Teaching mother tongue of migrant*

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

The report states that any natural or legal person of a Cypriot nationality, citizens of other EU member states and non-EU citizens can set up and manage a private school with any language of instruction, upon the approval of the Minister of Education and Culture (MoEC).

Such private schools are usually run on a for-profit basis and are fully self-financed, through the fees parents pay. All private schools need to register with the Ministry and are supervised and inspected by officers of the MOEC. The Committee asks whether there are any funds available to assist migrant children whose families cannot afford to pay such fees for their education.

The report also states that in the case of some private foreign language schools, support is provided by overseas governments or organisations.

The Government contributes to the functioning of private establishments through financial support, and private educational establishments can obtain books used by the public educational institutions as part of the national curriculum free of charge from the Store of the MoEC.

The report states that in secondary education migrant pupils in grades 11 and 12 may choose among the following foreign languages, like their Greek language speaking peers: English, French, Italian, Spanish, German, Russian and Turkish. The Committee asks how many schools offer a full choice of languages, and whether they are accessible to all migrants who would wish to take advantage of these optional language classes. The Committee asks whether there is any provision of foreign language education in the state system at primary school and early secondary school.

According to the report the same languages are also offered up to the level B1 or B2 of the Common European Framework for Languages during the afternoon by the State Institutes for Further Education. Pupils must pay fees for these courses. It is specified that special rates apply for vulnerable groups of pupils, and all pupils whose parents receive public allowances from the Social Welfare Services are exempted from paying fees. The Committee asks whether migrants are specifically given reduced fees, and what the criteria are for such reductions. It notes from the Migration Integration Policy Index (MIPEX) 2015 that few migrants are eligible for Social Welfare allowances due to the restrictions on assistance and access to nationality. The Committee also asks whether these courses are run in addition to ordinary school hours, or whether afternoon education needs to be disrupted for children to take part.

The report states that any request coming from an individual or an organized group for using school premises for language classes in any mother tongue is satisfied by the Government. For example, the report relates that in the past school premises have been given for teaching Iranian and Polish languages, and for the period under review school premises were provided for the teaching of Romanian, Bulgarian and Norwegian to the children of migrant workers. Such classes were organized in Lefkosia, Lemesos, Larnaka, Paphos, Dali and Paralimni.

The report states that adult migrants, refugees and asylum seekers as well as their children above fifteen years of age have access to all programmes of non-formal education in Cyprus. These courses include informal vocational education and training and life skills for participants' further personal, professional and social development. The Education Centres offer 13 different languages. Currently the Education Centres offer the following foreign languages: English, Arabic, Armenian, Bulgarian, French, German, Hebrew, Spanish, Italian, Chinese, Romanian, Russian and Turkish. For the courses offered, which focus mainly on the teaching of foreign languages, culture, arts and crafts, health and other issues of general

interest, migrants, refugees and asylum seekers have to pay a symbolic fee. The Committee asks what the level of fees is for such programmes, and whether assistance is available to those without the means to pay.

*Conclusion*

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

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

### *Paragraph 2 - Parental leave*

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

The Committee recalls that the focus of Article 27§2 are parental leave arrangements which are distinct from maternity leave and come into play after the latter. National regulations related to maternity or paternity leave fall under the scope of Article 8§1 and are examined under that provision. The States should provide the possibility for either parent to obtain parental leave.

Consultations between social partners throughout Europe show that an important element for the reconciliation of professional, private and family life are parental leave arrangements for taking care of a child. Whilst recognising that the duration and conditions of parental leave should be determined by States Parties, the Committee considers important that national regulations should entitle men and women to an *individual right* to parental leave on the grounds of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided to each parent and at least some part of it should be non-transferable.

The Committee notes from the report that according to the Parental Leave and Leave on Grounds of Force Majeure Law of 2012, every eligible employee, man or woman, who has completed a continuous period of employment of at least six months with the same employer, is entitled to unpaid parental leave of up to 18 weeks for each child independently, until the child reaches the age of 8. As regards widowed parents, the total duration of the parental leave increases to 23 weeks.

Parental Leave can be taken for a minimum period of 1 week and a maximum period of 5 weeks, per calendar year, in the cases of one or two children, and 7 weeks in the cases of three or more children.

The right is individual and non-transferable but in the cases where one parent has taken parental leave of minimum 2 weeks he/she is allowed to transfer to the other parent 2 weeks from the rest of the total duration of his/her leave.

According to the report, a study on the use of parental leave was carried out in 2011 in the context of the project line "Actions to reduce the pay-gap between men and women" of the Operational Programme "Employment, Human Capital, and Social Cohesion 2007-2013". The findings from the field research showed that 89% of the parents that used the right to parental leave were women and only 11% were men.

The Committee recalls that the remuneration of parental leave (be in continuation of pay or via social assistance/social security benefits) plays a vital role in the take up of childcare leave, in particular for fathers or lone parents. The Committee asks whether parental leave is remunerated.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Cyprus is in conformity with Article 27§2 of the Charter.

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

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

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

### ***Protection against dismissal***

The Committee notes from the report that the Termination of Employment Law provides that the dismissal of an employee while on leave due to urgent family reasons does not constitute a valid reason of legal termination of employment.

The Committee considers that the situation which it has previously found to be in conformity with the Charter has not changed.

### ***Effective remedies***

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with the Charter as courts could only order reinstatement of an unlawfully dismissed employee in cases where the enterprise concerned had more than 20 employees.

According to the report, when unlawful dismissal takes place the Labour Disputes Court may order reinstatement only in case where a business occupies more than 20 employees. This provision was included in the Legislation due to the fact that in Cyprus most companies which occupy less than 20 employees are family businesses and as a consequence the relations between employers and employees are less formal. For this reason the reinstatement of an employee in such a business is likely to cause some tensions between the dismissed employee and his employer.

The employee may take a case of unlawful dismissal before the district court. The District Court may order reinstatement in the case of workplaces with less than 20 employees. However, bearing in mind that the majority of employers in Cyprus are family enterprises, reinstatement is not something the victim of an unlawful dismissal seeks since the employer-employee relationship is broken.

The Committee notes that in most cases the disputants reach a settlement before the court rules its decision. Therefore the civil courts have not used this provision so far.

The Committee considers that the situation which it has previously found to be in conformity with the Charter has not changed. It reiterates its previous finding of non-conformity on the ground that courts can only order reinstatement of an unlawfully dismissed employee in cases where the enterprise concerned has more than 20 employees.

### ***Conclusion***

The Committee concludes that the situation in Cyprus is not in conformity with Article 27§3 of the Charter on the ground that courts can only order reinstatement of an unlawfully dismissed employee in cases where the enterprise concerned has more than 20 employees.





January 2016

# **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**ESTONIA**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Estonia which ratified the Charter on 11 September 2000. The deadline for submitting the 12th report was 31 October 2014 and Estonia submitted it on 30 October 2014.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

Estonia has accepted all provisions from the above-mentioned group except Articles 7§5, 7§6 and 31.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Estonia concern 31 situations and are as follows:

– 23 conclusions of conformity: Articles 7§2, 7§4, 7§7, 7§8, 8§1, 8§2, 8§3, 8§4, 8§5, 17§1, 17§2, 19§1, 19§2, 19§3, 19§4, 19§5, 19§7, 19§8, 19§9, 19§11, 19§12, 27§1 and 27§3

– 7 conclusions of non-conformity: Articles 7§1, 7§3, 7§9, 7§10, 16, 19§6 and 19§10

In respect of the remaining situation related to Article 27§2, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Estonia under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 7§10**

The new Child Protection Act of 2014 (in force between 23/12/2013 and 31/12/2015) provides in its Section 178 (Manufacture of works involving child pornography or making child pornography available) that manufacture, acquisition or storing, handing over, displaying or making available to another person in any other manner of pictures, writings or other works or reproductions of works depicting a person of less than 18 years of age in a pornographic situation, or a person of less than 14 years of age in a pornographic or erotic situation, is punishable by a pecuniary punishment or up to three years' imprisonment.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),

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

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to organise (Article 5)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 Estonia.

In its previous conclusion (Conclusions 2011), the Committee noted that Section 7(1) of the Employment Contracts Act (the ECA) prohibits employers from entering into employment contracts with or permitting children under 15 or who are obliged to attend school to work, except in cases provided by legislation where children are permitted to perform work to a limited extent and with a moderate level of effort. The Committee took note of the types of light work permitted to children and asked what is the length of working time for children performing light work.

The report indicates that according to Section 43(4) of the ECA, unless the employer and the employee have agreed on a shorter working time, reduced working time means:

- in the case of a child who is 7–12 years of age – 3 hours a day and 15 hours over a period of seven days;
- in the case of a child who is 13–14 years of age or subject to compulsory school attendance – 4 hours a day and 20 hours over a period of seven days;
- in the case of a young person who is 15 years of age and not subject to compulsory school attendance – 6 hours a day and 30 hours over a period of seven days;
- in the case of a young person who is 16 years of age and not subject to compulsory school attendance, and an employee who is 17 years of age – 7 hours a day and 35 hours over a period of seven days.

The Committee recalls that Article 7§1 of the Charter 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. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work”, especially the maximum permitted duration and the prescribed rest periods so as to allow supervision by the competent services. The Committee has considered that a situation in which a child under the age of 15 years works for between 20 and 25 hours per week during school term (Conclusions II, p. 32), or three hours per school day is contrary to the Charter (Conclusions IV, p. 54) (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §§29-31). It has also concluded that four hours light work per day during the school term for children aged 13-15 is excessive (Conclusions 2011, Cyprus).

The Committee therefore considers that the situation is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.

The report indicates that according to Section 115 of the ECA, Labour Inspectorate conducts state supervision of the fulfilment of the requirements provided for in Sections 43(4) and (5) of the ECA. If an employer violates the working time restrictions set for minors, a labour inspector shall have the right to issue a precept as well as to initiate a misdemeanour proceeding against the employer and to apply pecuniary punishment.

The Committee previously asked what sanctions are applied in cases of violations. The report indicates that if the precept is not respected, a penalty of maximum € 3,200 may be imposed according to the Substitutive Enforcement and Penalty Payment Act. For a violation of occupational health and safety requirements, a pecuniary punishment of up to 300 fine units shall be applied (one fine unit is equal to € 4). For the same act committed by a legal person, a pecuniary punishment of up to € 2,600 shall be applied. In case of breaches of the requirements related to the employment relationship, a precept may be issued as well as a misdemeanour proceeding may be initiated against the employer and pecuniary punishment

may be applied. The pecuniary punishment may be up to 100 fine units. For the same act committed by a legal person, a pecuniary punishment of up to € 1,300 shall be applied.

The report indicates that from a number of 107 applications concerning cases employing a minor (7-14 years of age) which the Labour Inspectorate received in 2013, a number of 88 applications were granted.

In its previous conclusion (Conclusions 2011), the Committee asked how the conditions under which work at home is performed are supervised in practice. The report indicates that the ECA does not differentiate on the basis of whether the minor is working at a residential household, a family enterprise, a family farmstead or any other enterprise. The Labour Inspectorate's rights to conduct supervision also extend to residential households, family enterprises and family farmsteads. The Labour Inspectorate conducts state supervision pursuant to the Law Enforcement Act and it may for example enter without the consent of the possessor a fenced or marked immovable, building, dwelling or room in his or her possession, including open doors and gates or eliminate other obstacles.

### *Conclusion*

The Committee concludes that the situation in Estonia is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.

## **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 notes from the information contained in the report submitted by Estonia that there have been no changes to the situation which it has previously found to be in conformity with Article 7§2 of the Charter.

The Committee notes from another source that during the period from 2010 to 2013, investigations concerning children were conducted in 79 enterprises, of which 67 infringements were identified. Seven violations were related to the employment of young persons in hazardous work, such as work in bars and breweries, work in the garden using dangerous machines and lifting heavy weights. Misdemeanour procedures were initiated in 21 cases in relation to the violation of the Employment Contracts Act, and in 14 cases, sanctions amounting to a total of € 8,030 were imposed (Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), Worst Forms of Child Labour Convention, 1999, (No. 182), Estonia).

The Committee takes note of the information provided in the report according to which a handbook and a set of information sheets explaining the basics of safe working, work ergonomics and measures to prevent health damage, using vocabulary understandable to young people, were developed and made available in all vocational schools and many libraries in Estonia.

### *Conclusion*

The Committee concludes that the situation in Estonia 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 Estonia.

In its previous conclusion (Conclusions 2011), the Committee noted that according to Section 43(4) of the Employment Contracts Act (ECA), unless the employer and the child have not agreed on a shorter working time, the maximum working time for children subject to compulsory education is:

- in the case of children of 7-12 years of age, 3 hours per day (followed by a rest period of at least 21 consecutive hours) and 15 hours per seven days;
- in the case of children of 13-14 years of age or who are subject to the obligation to attend school, 4 hours per day (followed by a rest period of at least 20 consecutive hours) and 20 hours per seven days.

The Committee concluded that the daily and weekly working time for children subject to compulsory education was excessive and therefore the situation was not in conformity with Article 7§3 of the Charter (Conclusions 2011). The Committee considered that the above mentioned working times for children subject to compulsory education are excessive. The Committee held that 2 hours on a school day and 12 hours a week for work performed in term-time outside the hours fixed for school attendance, provided that this is not prohibited by national legislation and/or practice and that in no circumstances may the daily working time exceed seven hours, fulfil the requirements of Article 7§3 of the Charter.

The Committee recalls that during school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework. The Committee notes from the report that the situation with regard to the daily and weekly working time during school term for children subject to compulsory education has not changed and it therefore maintains its conclusion of non-conformity.

In its previous conclusion (Conclusions 2011), the Committee referred to its Statement of Interpretation on Article 7§3 in the General Introduction. It asked the next report to indicate whether the situation in Estonia complies with the principles set out in that statement. It asked in particular information on the nature and duration of work that may be carried out during school holidays and on the supervision by the Labour Inspectorate of work carried out by children during school holidays. The Committee refers to its Statement on Interpretation on Article 7§3 in the General Introduction to Conclusions 2011 where it noted that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays. Its duration shall not be less than 2 weeks during the summer holidays.

In reply, the report indicates that that young people subject to compulsory school attendance may work both while fulfilling their obligation of compulsory school attendance and during school holidays, with the observance of the restrictions prescribed by law. Working during school holidays does not differ from working outside school holidays, neither by nature nor by duration of the work. The same requirements apply to working during school holidays and working while fulfilling their obligation of compulsory school attendance.

The Committee notes that according to Section 56 of the ECA, the annual holidays for a young worker are 35 calendar days, unless the employer and the employee have agreed on a longer period of annual holidays or unless otherwise provided by law. The Committee asks whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday and what are the rest periods during the other school holidays.

As working during school holidays does not differ from working outside school holidays, neither by nature nor by duration of the work, the Labour Inspectorate conducts state supervision over work performed by children during school holidays on the same basis and in the same way as while fulfilling their obligation of compulsory school attendance. The Labour Inspectorate may impose a pecuniary punishment of up to €1,300 on an employer if



the latter has entered into an employment contract with a minor without the consent of his or her legal representative and a labour inspector (Section 119 of the ECA). The report provides some data on the activities of the Labour Inspectorate during the reference period indicating that only 2 fines amounting to €90, one fine of €50 and 4 fines amounting to €380 were imposed on the employers in 2011, respectively 2012 and 2013.

The Committee notes from another source that during the period from 2010 to 2013, investigations concerning children were conducted in 79 enterprises, of which 67 infringements were identified. Most of these violations related to working hours, rest periods and holidays, and overtime. Misdemeanour procedures were initiated in 21 cases in relation to the violation of the Employment Contracts Act, and in 14 cases, sanctions amounting to a total of €8,030 were imposed (Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), Worst Forms of Child Labour Convention, 1999, (No. 182), Estonia).

#### *Conclusion*

The Committee concludes that the situation in Estonia is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly working time for children subject to compulsory education is excessive.

## **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 Estonia.

The Committee noted previously that according to Section 43(4) of the Employment Contracts Act (ECA), the maximum working time for young workers not subject to compulsory education is:

- in the case of young workers of 15 years of age, 6 hours per day (followed by a rest period of at least 18 consecutive hours) and 30 hours per seven days; and
- in the case of young workers of 16 and 17 years of age, 7 hours per day (followed by a rest period of at least 17 consecutive hours) and 35 hours per seven days.

Section 44(2) of the ECA prohibits overtime work for young workers. According to Section 47(3) of the ECA, a break of at least 30 minutes during a work day of at least 4 and a half hours must be granted to young workers.

The report indicates that according to Section 51(2) of ECA, the daily rest time for young workers is:

- minimum 18 hours of consecutive rest time over a period of 24 hours for young workers of 15 years of age who are not subject to compulsory school attendance;
- minimum 17 hours of consecutive rest time over a period of 24 hours for young workers of 16 years of age who are not subject to compulsory school attendance and for young workers of 17 years of age.

The report indicates that the Labour Inspectorate may impose a fine of up to € 1,300 on the employers who do not comply with the restrictions on the working time for young workers.

The Committee recalls that the situation in practice should be regularly monitored. It invites the asks the next report to provide information on the number and nature of violations detected by the Labour Inspectorate as well as on sanctions imposed on employers in practice for breach of the rules concerning the reduced working time for young persons who are not subject to compulsory education.

### *Conclusion*

The Committee concludes that the situation in Estonia is in conformity with Article 7§4 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 Estonia.

The Committee noted previously that according to Section 56 of the Employment Contracts Act (ECA), a young worker has the right to 35 calendar days of annual holidays, unless the employer and the employee have agreed on a longer period of annual holidays or unless otherwise provided by law (Conclusions 2011). The purpose of the longer period of annual holidays is to ensure the social development and education of young persons. It also noted that according to Section 68(2) of the ECA, time of temporary incapacity for work serves as basis for granting additional annual holidays.

The report indicates that under Section 69(6) of the ECA, an employee has the right to interrupt, postpone or terminate prematurely a holiday due to significant reasons connected to the employee, such as a temporary incapacity for work, pregnancy and maternity leave or participation in a strike. The employee has the right to demand the unused part of the holiday immediately after the impediment to use the holiday ceases to exist or, by agreement of the parties, at another time. The employee shall notify the employer of the impediment in using the holiday at first opportunity. The abovementioned regulation applies also to temporary incapacity for work occurring during a young worker's holiday.

### *Conclusion*

The Committee concludes that the situation in Estonia 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 Estonia.

The Committee previously noted that the night work of children and young workers is regulated by Section 49 of the Employment Contracts Act (ECA), which provides that an agreement by which a child or young worker undertakes to work between 8:00 p.m. and 6:00 a.m. is void. An exception to the abovementioned rule is established if the child or young worker is performing light work in the fields of culture, art, sports or advertising under the supervision of an adult between 8:00 p.m. and 12:00 p.m. (Section 49(2) of the ECA).

The report indicates that the Labour Inspectorate has the right to impose a fine of up to €1,300 on the employer who fails to comply with the restrictions on the night work for young workers (Section 124 of the ECA).

The Committee recalls that the situation in practice should be regularly monitored and therefore it asks that the next report contains information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of night work for young workers under the age of 18.

### *Conclusion*

The Committee concludes that the situation in Estonia 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 Estonia.

In its previous conclusion (Conclusions 2011), the Committee considered that although the interval between the medical check-ups has been shortened from three years previously to two years, such a period between medical check-ups for persons under 18 years of age continues to be excessive. It therefore concluded that the situation was not in conformity with the Charter on the ground that medical examinations for young workers were not frequent enough.

The Committee previously recalled that the medical check-ups foreseen by Article 7§9 should take into account the skills and risks of the work envisaged. It asked whether there are any other intervals applied for young workers that are employed in certain occupations where their health must be closely and frequently monitored.

The report indicates that initial medical examination shall take place within the first month of starting to work and subsequent medical examinations shall take place at least once within the next two years. When referring employees to medical examinations, occupational health physicians shall be guided by the specific employee's age, state of health and the risk factors the employee encounters in his or her work. The physician may shorten the interval between medical examinations at his own discretion if he finds it necessary due to the young employee's state of health and/or if the employee's work entails special hazards which may have fast-acting impacts on his or her health.

The Committee notes that the minimum interval between medical check-ups is still 2 years which it considers to be excessive. The report provides information on shorter intervals between medical examinations with regard to some specific professions such as seamen, divers, aeronautics specialists. The Committee considers that the information is not relevant as long as young persons under 18 are not allowed to work in such professions. Therefore, the Committee maintains its conclusion of non-conformity on this point and considers that the situation in Estonia is not in conformity with Article 7§9 of the Charter on the ground that medical examinations for young workers are not frequent enough.

### *Conclusion*

The Committee concludes that the situation in Estonia is not in conformity with Article 7§9 of the Charter on the ground that medical examinations for young workers are not frequent enough.

## **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 Estonia.

### ***Protection against sexual exploitation***

In its previous conclusion (Conclusions 2011) the Committee noted that Article 177 of the Penal Code criminalises the use of a person younger than 18 years as a model or actor in the manufacture of pornographic work and the use of a person under 14 years of age in pornographic or erotic work or erotic picture, film, writings or other works or reproductions.

The Committee recalled in this connection that all acts of sexual exploitation must be criminalised, including child prostitution (offer, use or provision of a child for sexual activities for remuneration or any other kind of consideration), child pornography (procurement, production, distribution making available and simple possession of material that visually depicts a child engaged in sexually explicit conduct or realising images representing a child engaged in sexually explicit conduct). Furthermore, States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent.

The Committee notes that the new Child Protection Act of 2014 (in force between 23/12/2013 and 31/12/2015) provides in its Section 178 (Manufacture of works involving child pornography or making child pornography available) that manufacture, acquisition or storing, handing over, displaying or making available to another person in any other manner of pictures, writings or other works or reproductions of works depicting a person of less than 18 years of age in a pornographic situation, or a person of less than 14 years of age in a pornographic or erotic situation, is punishable by a pecuniary punishment or up to three years' imprisonment.

The Committee notes that the UN Committee on the Rights of the Child (UN-CRC) recommends that protection against use in the production of erotic works be extended to all persons under 18 years of age (Concluding observations on the report submitted by Estonia under Article 12(1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography).

The Committee considers that making a distinction as does Estonian law between what can be considered as 'erotic' and 'pornographic' and allowing the production of what can be referred to a erotic material depicting a child between 14 and 18 years of age, runs counter to the requirement of the States to protect children against physical hazards and thus fails to guarantee their fundamental rights and may expose them to serious impairments of the rights to life, health and psychological and physical integrity. Therefore, the Committee concludes that the situation is not in conformity with the Charter as children between 14 and 18 years of age are not effectively protected against sexual exploitation.

In reply to the Committee's question as to whether child victims of sexual exploitation can be prosecuted for any act connected with such exploitation, the Committee notes from the report that a child victim of sexual exploitation cannot be accused or prosecuted in any legal manner as he/she is exclusively treated as a victim with all rights stemming from the civil law and the penal law.

### ***Protection against the misuse of information technologies***

In reply to the Committee's question the report states that the Information Society Act was amended, transposing the E-Commerce Directive 2003/31/EC, prescribing requirements for information society service providers. Even if there are no specific guidelines for internet providers, methods are established for quick removal of inappropriate or illegal material being disseminated over the internet. Police and internet service providers have close cooperation on daily basis. A hint hotline has been established which provides the

opportunity to notify about web pages displaying illegal or inappropriate content. Besides, according to the report, children are advised and trained on the subject of internet safety.

The Committee notes from ECPAT (Global monitoring status of action against commercial sexual exploitation of children, Estonia) that in June 2010, Estonia's mobile operators signed a code of conduct on safer mobile use by younger teenagers and children. This agreement falls under the umbrella of the European Union's European Framework for Safer Mobile Use and includes such requirements as the need to offer access control restrictions where adult content is provided.

### ***Protection from other forms of exploitation***

The Committee recalls that under Article 7§10 of the Charter States must prohibit the use of children in other forms of exploitation such as domestic/labour exploitation, including trafficking for the purposes of labour exploitation and begging. States must also take measures to prevent and assist street children. The Committee wishes to be informed about the measures taken, both legislative as well as in practice to combat trafficking in children as well as to assist street children.

### ***Conclusion***

The Committee concludes that the situation in Estonia is not in conformity with Article 7§10 of the Charter on the ground that children between 14 and 18 years of age are not effectively protected against all forms of sexual exploitation.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 1 - Maternity leave*

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

### ***Right to maternity leave***

Pursuant to Section 59 (1) of the Employment Contracts Act (ECA), a woman has the right to a pregnancy and maternity leave of 140 calendar days (20 weeks). Between 30 and 70 days can be taken before the birth of a child. If less than 30 days are taken before the expected birth, the unused part of the leave cannot be used later. The Committee notes from the report that the average duration of pregnancy and maternity leave was 139.3 days in 2013, which seems to indicate that in practice women take entirely their maternity leave. It asks the next report to clarify whether this is the case. It notes in this respect that, according to another source (Pall. K. and Karu. M. (2014) Estonia Country Note, in P.Moss (ed.) International Review of Leave Policies and Research 2014, available on [leavenetwork.org](http://leavenetwork.org)), maternity leave is obligatory and 100% of employed women take up leave. The Committee asks the next report to provide all relevant information with a view to confirming that, in law and/or in practice, the right of women to at least six weeks compulsory postnatal leave is guaranteed.

The Committee furthermore notes that both parents are entitled to child care leave until the child reaches the age of three years. Child care leave may be used by one person at a time, in one or several parts at any time and it is remunerated on the basis of the minimum wage. The Committee asks the next report to clarify what is the maximum length of parental leave and its level of remuneration.

As regards the regime applicable to women employed in the public sector, the report confirms that the pregnancy and maternity leave provisions (Section 59 ECA) and the paternity leave provisions (Section 60 ECA) apply both to officials (civil servants accepted into service with an administrative act and having authorisation to exercise public authority) and employees (civil servants under an employment contract and performing work which supports the exercise of public authority). In addition, the new Civil Service Act entered into force on 1 April 2013 provides for a temporary ease of service conditions for pregnant officials (Section 48).

### ***Right to maternity benefits***

The Committee notes that the situation which it has previously found to be in conformity with the Revised Charter has not changed: all employed women are entitled to 100% of their average wage during maternity leave. It notes from the report that the same regime applies to women employed in the public sector.

With reference to its Statement of Interpretation on Article 8§1 (Conclusions 2015), the Committee asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Estonia is in conformity with Article 8§1 of the Charter.



## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

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

### ***Prohibition of dismissal***

The Committee previously noted that the Employment Contracts Act (ECA) prohibits an employer to dismiss a pregnant woman or a person raising a child under three years of age for reasons related to the maternity (Section 92(1)). The dismissal of a woman who is pregnant or raising a child below 3 years of age is deemed to be done for reasons related to the maternity, unless the employer proves that it is based on a ground permitted by the law (Section 92(2)), which include the employee's incapacity to perform the work (Section 88(1)1-2), the employee's misconduct (Section 88(1)3-8) and individual and collective dismissals for economic reasons (Sections 89 and 90). Even in these cases, however, the law prohibits the dismissal for economic reasons of a pregnant woman or a woman who has the right to pregnancy and maternity leave, or a person who is on child care leave or is an adoptive parent, except in the event of the cessation of the activities of the employer or of bankruptcy (Section 93(1)). Furthermore, a pregnant woman or a woman who has the right to pregnancy and maternity leave cannot be dismissed due to a decrease in the employee's capacity for work (Section 93(2)).

The report clarifies, in response to the Committee's question, that the same rules apply to public sector employees. Civil service officials also enjoy a similar protection under the Civil Service Act (Section 100): an official who is pregnant, who is entitled to pregnancy or maternity leave or is raising a child below three years of age cannot be released from service except upon liquidation of the agency.

### ***Redress in case of unlawful dismissal***

Under Section 109(2) of the ECA, if the court or labour dispute committee finds that the dismissal of a worker who is pregnant or on maternity leave is void, and reinstatement is not possible, the employer shall pay the employee compensation in the amount of six months' average wages. The court or labour dispute committee may change the amount of the compensation, considering the circumstances of the dismissal and the interests of both parties. The Committee previously noted that additional compensation for damage could also be claimed in accordance with the Law of Obligations Act. The Committee asks the next report to provide relevant case law examples relating to the award of compensation in cases of dismissal of workers who are pregnant or on maternity leave.

The report confirms that similar rules apply to public officials under the Civils Service Act (Section 105), in particular the limit to the compensation (six months' average wages) shall not apply if an official was dismissed violating the principle of equal treatment. Furthermore, an official dismissed while being pregnant, on maternity leave or raising a child under seven years of age, is entitled to demand, upon the unlawful dismissal, the annulment of the administrative act relating to the dismissal, the reinstatement into office and remuneration for the period of forced absence from service.

### ***Conclusion***

The Committee concludes that the situation in Estonia is in conformity with Article 8§2 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

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

It notes that there have been no changes to the situations which it has previously found to be in conformity with the Charter: pursuant to the Occupational Health and Safety Act (Section 10) and Regulation No. 95 of the Government of the Republic, a nursing mother raising a child until one and half years old is entitled to nursing breaks, of at least 30 minutes every three hours, in addition to the general breaks for rest and meals. A nursing break of at least one hour will be granted for nursing two or more children of up to one and a half years of age. Nursing breaks shall be included in the working time and average wages shall be paid to the employee for such breaks. The payments shall be compensated to the employer from the state budget. The same rules apply to women employed in both the private and public sectors.

### *Conclusion*

The Committee concludes that the situation in Estonia 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 Estonia.

It notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter: under Section 18 of the Employment Contract Act (ECA) of 17 December 2008 and Regulation No. 95 of 11 June 2009 on Occupational Health and Safety Requirements for Work of Pregnant and Nursing Women, pregnant women and women who enjoy the right to pregnancy and maternity leave are entitled to ask to be temporarily moved to work that is adapted to their state of health, and can accordingly refuse to perform night work. According to Section 18(2) of the ECA, an employee can temporarily refuse to perform work duties if the employer cannot provide work adapted to the employee's state of health. The possible difference in remuneration between the work corresponding to the health of the employee and the work specified in the employment contract will be compensated in accordance with the Health Insurance Act. Moreover, an employee is entitled to a temporary work incapacity benefit if he or she has temporarily refused to perform work duties in accordance with Section 18(2) of the ECA which correspond to 80% of the employee's average wage (Section 54(3) of the Health Insurance Act).

In response to the Committee's question, the report clarifies that this regime also applies to employees of the public sector. As regards public sector's officials, the report states that, according to Section 40(5) of the Civil Service Act of 13 June 2012, an official who is pregnant or is raising a child under three years of age or a disabled child cannot be required to work at night.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

It notes from the report that the legal framework, which it has previously been found to be in conformity with the Charter, has not changed. According to Regulation No. 95 of 11 June 2009 on Occupational Health and Safety Requirements for Work of Pregnant and Nursing Women (RT I 2009, 31, 197, as amended in 2010), employers must carry out a risk assessment for pregnant women, women who have recently given birth and those who are nursing their infant. Employees falling into these categories must be assigned to work which does not jeopardise their state of health and prevent their exposure to hazards. If this is not possible, they can refuse to carry out temporarily their duties, in accordance with Section 18 of the Employment Contracts Act on the basis of a doctor's note. The employee concerned is entitled in such cases to temporary incapacity benefits in accordance with the Health Insurance Act. She will receive the equivalent of the difference of wage in case the new job she is temporarily assigned to is less paid than her previous work, or benefits equivalent to 80% of her average wage if she has to stay off work.

The risks taken into account in Regulation No. 95 include exposure to infection by rubella or toxoplasmosis (unless it is proven that the person is sufficiently protected by immunity); conditions involving high air pressure; exposure to lead or related compounds; underground work; vibration, noise, harmful radiation, constant high or low temperature, chemical hazards listed in the Chemicals Act such as mercury and its compounds, carbon monoxide, organic solvents, and biological hazards, such as viral hepatitis, chickenpox, HIV, etc. In addition, Regulation No. 26 of the Minister of Social Affairs on Occupational Health and Safety Requirements for Manual Handling of Loads of 27 February 2001 prohibits the manual handling of loads for pregnant women and women until 3 months after childbirth.

In response to the Committee's question, the report indicates that the relevant regulations apply also to the women working in the public sector, whether employees or officials (Section 48 of the Civil Service Act of 13 June 2012). The report also refers to the issuing between 2010 and 2013 of occupational health and safety guides (available at [www.tööelu.ee](http://www.tööelu.ee)), dealing inter alia with occupational health and safety of pregnant and nursing employees.

### *Conclusion*

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

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

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

### ***Social protection of families***

#### ***Housing for families***

The report refers to the National Development Plan for Housing Sector 2008-2013, which aimed at improving housing conditions and opportunities to acquire a dwelling. For the period 2008-2013, the report provides the following statistics:

- 3,692 dwellings were bought by young families thanks to loan guarantees issued by the State;
- housing conditions of 1,818 families with many children were supported.

As regards protection against unlawful eviction, the report indicates that eviction is regulated by the Code of Enforcement Procedure (CEP). An eviction is initiated in the framework of an enforcement proceeding. A debtor can be granted a notice of up to 3 months in case of voluntary compliance with an enforcement instrument. The minimum notice is 14 days. The Supreme Court has stressed that when setting a notice for voluntary compliance an important circumstance has to be considered, namely that the proceeding may mean the loss of a home for the debtor. In addition, a proceeding to release an immovable property must take into account the claimant's justified interest but also the climatic conditions. Pursuant to Article 180§2 of the CEP an enforcement notice concerning the release of an immovable shall be delivered to a debtor not less than 14 days before the planned compulsory enforcement.

Before the sale of the immovable property and also during the eviction, the debtor can file a petition with the court in order to suspend the enforcement proceedings. The debtor can also ask the court to extend or defer enforcement if the continuation of the proceedings is unfair towards him/her. The court's decision shall take into account the claimant's interests and other circumstances, including the family and economic situation of the debtor.

As to legal aid, there are no special rules on enforcement proceedings on eviction. State legal aid can be applied for by a person if that person complies with the conditions for granting state legal aid, is unable to protect his/her own rights and that his/her significant interests may be left unprotected without an advocate's help, as regulated by the Code of Civil Procedure (CCP). State legal aid can also be applied for *inter alia* to cover the cost of representation in enforcement proceedings, to draw up legal documents or for other legal counsel pursuant to the State Legal Aid Act (SLAA).

Under the Penal Code, illegal eviction is considered as an offence. In such cases, the debtor can file a claim for compensatory damages.

In view of the foregoing, the Committee considers that the minimum notice period before eviction of 14 days is too short. It therefore concludes that the situation is not in conformity with the Charter.

In its previous conclusion (Conclusions 2011), the Committee asked information on measures taken to improve the housing situation of Roma families. The report explains that regarding eviction Roma families are treated on an equal footing with nationals, but does not provide further information. The Committee therefore reiterates its request notably concerning their access to housing. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity in this respect.

### ***Childcare facilities***

The Committee notes that as Estonia has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

### ***Family counselling services***

The report explains that family counselling services are mainly provided by service providers in the private sector and the voluntary sector. Local governments have information about service providers in their respective region. Pursuant to the Social Welfare Act, everyone has the right to social counselling. The social worker refers the person to a qualified family counsellor. Some local governments support the person by paying for the counselling service or have an agreement with the service provider to have the service provided for free in case the person is referred by them. Access to the service depends on the possibilities of funding of the local government. Moreover, access to such services is easier in larger cities.

As to funding, the State supports the availability of counselling services at the local level via projects funded from EU programmes such as the European Social Fund. In addition, the State supports various projects providing family counselling services via the Estonian Council of Gambling Tax.

### ***Participation of associations representing families***

In order to involve families with children into the legislative drafting process, draft legislation relating to children and families is submitted to their representative organisations for comments. The report provides examples of relevant associations: Union for Child Welfare, Association of Parents, Association of Large Families, Child Advocacy Chamber, Association for Fathers, Association of Single Parents and Women's Associations Roundtable.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The principle of equality of spouses is enshrined in the Family Law Act, meaning that spouses have equal rights and obligations with respect to each other and family. Parents have equal rights and obligations with respect to their children, if they have equal custody over their children. Spouses are also equal regarding ownership.

As regards legal disputes concerning spouses and children the report indicates that they can be solved in a court, which is responsible for settling the dispute having regard to the child's best interests.

#### ***Mediation services***

The Committee refers to its previous conclusion (Conclusions 2011) where it found the situation to be in conformity with the Charter in respect of mediation services.

#### ***Domestic violence against women***

The report explains that there is no specific legislation on domestic violence *per se*, but that this latter falls under the category of ordinary violence punished by the Penal Code. According to the Penal Code, a person can be punished by pecuniary damages or up to 3 years of imprisonment. There are neither alternative justice mechanisms to handle cases of violence against women.

The Committee notes the existence of several measures dealing with the issue of domestic violence. Victims of domestic violence can use the National Victim Support system. In this regard, the law provides for the establishment of a network of victim support centres in all counties. Most of the regional victim support specialists work in local police units. There is also a co-operation between the Police, the Victim Support Department of the Social Insurance Board, the NGO Women's Shelters Union and all the women's shelter. As from 2013, all 13 women's shelters run by NGOs, which provide temporary lodgings and support

services to victims of domestic violence, started receiving funding from the State budget. In 2013, women's shelters were allocated €430,000. The Government also adopted the Development Plan for Reducing Violence 2010-2014, which notably covers domestic violence and aims at reducing and preventing domestic violence through prevention, victim support, better efficiency during the investigation of cases and rehabilitation. For the period 2012-2015, the Ministry of Social Affairs co-ordinates a €2 million programme on violence against women with a view to reduce gender-based violence by developing services for victims of domestic violence, raising awareness among victims and the general public, etc. The Committee asks the next report to provide statistics on the results of the implemented plans.

### ***Economic protection of families***

#### ***Family benefits***

According to Eurostat data, the monthly median equivalised income in 2013 was €548. According to MISSOC, the monthly amount of child benefit was €19.18 for the first and second child and €76.72 for the third and following children. Child benefit thus represented a percentage of that income as follows: 3.5% for the first and second child and 14% for the third and next child. The Committee concludes that the situation is not in conformity on the ground that family benefits are not of an adequate level for a significant number of families.

#### ***Vulnerable families***

In its previous conclusion (Conclusions 2011) the Committee asked what measures were taken to ensure the economic protection of Roma families. The report indicates that Roma families are ensured the same economic rights, state aid and support as other families. The Committee asks the next report to provide updated information, including statistics, in respect of the economic protection of vulnerable families, such as Roma families.

#### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The report stresses that foreign nationals and stateless persons are treated equally as nationals with regard to family benefits. The Committee also notes from its previous conclusion that there are no residence requirement imposed on foreign nationals.

The Committee asks the next report to indicate whether refugees are treated equally with regard to family benefits.

#### ***Conclusion***

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

- the notice period before eviction is too short;
- family benefits are not of an adequate level for a significant number of families.

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

### *Paragraph 1 - Assistance, education and training*

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

### ***The legal status of the child***

The Committee notes that there have been no changes to the situation.

### ***Protection from ill-treatment and abuse***

In its previous conclusion (Conclusions 2011) the Committee held that the situation was not in conformity with the Charter as corporal punishment was not explicitly prohibited in the home and in schools.

The Committee notes from the report that Section 24 (1) of the new Child Protection Act fully prohibits the abuse of children in all its manifestations and explicitly names corporal punishment as a form of abuse of a child and therefore prohibits it. As regards corporal punishment in schools, pursuant to Section 44 of the Basic Schools and Upper Secondary Schools Act schools must ensure the mental and physical security of students, which includes protection against corporal punishment. Teachers having utilised this form of 'educating' have been prosecuted on the basis of Article 121 of the Penal Code.

The Committee notes from another source (Global Initiative to end corporal punishment) that the law reform has been achieved. Corporal punishment is prohibited in all settings, including the home.

The Committee considers that the situation has been brought into conformity.

### ***Rights of children in public care***

According to the report, the forms of substitute care include not only substitute homes and foster families but also guardianship families providing family-based care. The number of children in substitute care in Estonia has decreased from a total of 2,731 children in substitute care in 2011 to a total of 2,484 children in 2013.

By the end of 2013, 1,026 children were in substitute homes, 226 children were in foster care and 1,332 children were in guardianship families. According to the report, the balance in placing children separated from their origin family into substitute care is inclined towards family-based forms (a total of 1,558 children are living in foster families and guardianship families).

Although more children are in family-based substitute care than in institutional care, according to the report, the progress made in this respect has been unsatisfactory. However, the draft Child Protection Act (CPA) is planned to enter into force on January 1, 2016 and the preparatory activities for implementing the Act have already started. The Act will bring significant changes to the activities of child care institutions, including substitute homes, as well as to supervision of children's well-being and rights. For example, the new Act prescribes the right to complaint, the child care institution's obligation to perform periodic internal assessments, and the limits of state supervision as well as measures that the local government may employ to protect a child by intervening into the family's life and measures concerning a child placed in substitute care. The Committee wishes to be kept informed of any developments in this respect.

In its previous conclusion the Committee asked what were the criteria for the restriction of custody or parental rights and what is the extent of such restrictions. It also asked what were the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances.



The Committee notes from the report that pursuant to the Family Law Act, if leaving a child in his or her family endangers the health or life of the child, a rural municipality government or city government may separate the child from the family before a court ruling is made. In such case the rural municipality government or city government shall promptly submit an application to a court for restriction of parental rights with respect to the child. A court shall restrict parental rights and obligations only to the extent that this is necessary.

This is the only case where a child may be separated from his or her parents before a court judgment is made. Regardless of the separation from the family, the parent retains his or her rights and obligations in that situation, including the right to see the child. Separate court adjudication is required for restricting the parent's right to see the child.

The new draft Child Protection Act further specifies the regulation of separating a child temporarily from his or her family and provides a specific timeframe during which the local government or the National Social Insurance Board must turn to a court concerning the separation of the child from the family. The aim of the regulation is to ensure that a court adjudication on separating a child from a family is made within 48 hours. Pursuant to the Family Law Act, a court may separate a child from the parents only if damage to the interests of the child cannot be prevented by other measures applied in the relationship between the parents and the child. Parents may contest the separation from family and the restriction of right of custody pursuant to court procedure.

### ***Right to education***

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

### ***Young offenders***

In 2012, the proportion of juveniles referred to juvenile committees in all of Estonia was 1.5% of the total age group 7-17 years. A total of 3,126 sanctions were imposed by juvenile committees in 2012. While a total of 2,653 cases reached a decision, among them were 1,804 cases where a single sanction was imposed, 593 cases where multiple sanctions were imposed and 256 cases where no sanctions were imposed.

As the proceedings in juvenile committees do not provide for the best securing of a child's rights and interests and the imposing of sanctions is not effective (the rate of repeat offending among juveniles referred to a juvenile committee was in the range of 30-50% in 2008-2012), the Ministry of Education and Research as the authority responsible for the domain in co-operation with the Ministry of Justice conducted a comprehensive analysis of the activities of juvenile committees in 2010.

At the beginning of 2014, the Ministry of Social Affairs presented a proposal to transfer the domain of treating minor-age offenders from the area of government of the Ministry of Education and Research to the area of government of the Ministry of Social Affairs. This change is part of the current ongoing child protection reform in Estonia, with the aim to secure the interests and rights of all children. The Committee wishes to be kept informed of these developments.

In its previous conclusion the Committee asked whether young offenders have a statutory right to education. In this regard it notes from the report that pursuant to Section 6 (1) of the Basic Schools and Upper Secondary Schools Act, general education of good quality is equally available to all persons regardless of their social and economic background, nationality, gender, place of residence or special educational needs. All young offenders are subject to compulsory school attendance, i.e. committing an offence is not grounds for expelling from school. Schools do not have legal grounds for establishing special requirements that would restrict or hinder the right of juveniles having committed an offence to obtain free education. After leaving a specialised school, the juvenile continues his or her

education in a school of his or her residence (the school has the obligation to accept him or her). Also, juveniles subject to compulsory school attendance who are in prison have the opportunity to obtain an education.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect that against negligence, violence or exploitation.

### ***Conclusion***

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

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

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

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

In its previous conclusion (Conclusions 2011) the Committee asked about the situation of Roma children in schools. According to the report, there were 32 Roma students attending general education schools in the the school year 2013/2014, including 6 students with simplified study programme in ordinary schools as well as 5 students attending the 3rd stage of study in a specialised school (upon the parent's petition and the counselling committee's recommendation). The Committee notes that in 2014/2016 a project to improve the quality of counselling for Roma students will be launched. It wishes to be informed of the results of this project.

According to the report, enrolment in the special needs school can only take place with a decision of the counselling committee, at the approval of parents. The Committee asks how many children are enrolled with this school and what are the 'special needs' that are taken into account. The Committee notes from the report that the Ministry of Education and Research is supporting a study called 'Roma in the Estonian Education System – issues and solutions'. According to the report, based on the results of this study, it will become possible to elaborate the necessary measures to improve the schooling for Roma. The Committee wishes to be informed about these developments.

The Committee recalls that under Article 17§2 of the Charter education system should be both accessible and effective. Education provided by States must fulfil the criteria of availability, accessibility and adaptability. Educational institutions and curricula have to be accessible to everyone, without discrimination and teaching has to be designed to respond to children with special needs.

Moreover, measures must be taken to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism. In this regard the Committee notes from the report that a person who is not registered in the list of student of any school is considered to be a person who is not fulfilling the obligation of compulsory school attendance. A person who quits school without obtaining basic education is a drop-out. The Committee notes from UNICEF that the net enrolment ratio in the secondary school for males stood at 91.3% in 2008-2012 and for females at 92.8%. According to the report in 2012/2013 0.3% of all students were quitters and the highest drop-out rate was in the 3rd stage of study, up to 0.7%. There were 540 schools with daytime study in the school year of 2013-2014, 42 of them being schools for children with special needs.

In 2011, the Committee adopted the Statement of interpretation on Article 17§2 where it held that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. The States are required to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child. The Committee asks whether irregularly present children have access to education.

### *Conclusion*

The Committee concludes that the situation in Estonia is in conformity with Article 17§2 of the Charter.

## **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 Estonia.

### **Migration trends**

According to the International Organisation for Migration (IOM), Estonian migration policy has been stable but restrictive towards immigration since Estonia gained its independence in 1991. In 2013, 16.3% of the population was made up of immigrants. Most immigrants come to Estonia to join their spouses and close relatives. In 2011 the majority of residence permits were issued on the grounds of labour and family ties.

There has been no sudden increase of immigration in connection with Estonia's accession to the European Union (EU). After Estonia joined the Schengen common visa area in 2007, there has been an increase in individuals showing interest in obtaining Schengen travel documents via Estonia's representations abroad.

The national inbound labour immigration quota has remained stable for a number of years. In 2008, the quota was increased from 0.05% to 0.10% of the total population, leading to roughly 1,300 people being accepted annually for labour migration purposes. The outbound labour migration has been increasing due to the economic recession with many Estonians emigrating primarily to other EU member states.

Assisted Voluntary Return and Reintegration (AVRR) is a key tool in regulating migration and aims at the orderly, humane, and cost effective return of migrants, who wish to return voluntarily to their countries of origin. The IOM, Tallinn, started implementing an AVRR programme in Estonia in 2010.

### **Change in policy and the legal framework**

The Equal Treatment Act, which prohibits discrimination based on, *inter alia*, ethnic origin, race, colour and religion, entered into force on 1 January 2009. The report states that the legal framework has not changed since the previous cycle.

### **Free services and information for migrant workers**

The Committee asked in its previous conclusions (Conclusions XIX-4, 2011) for information regarding the implementation of the policies regarding services and information for migrants. The report gives examples of the work of the Immigration and Migration Foundation (MISA), which deals with counselling and providing information to new migrants. The report states that new immigrants are offered an average of 22 hours of consultation, during which they are given information about language and training opportunities, the health and social care systems are explained, and specific advice on applications for necessary documents.

The Committee also notes that two new counselling centres were set up in February 2014, in accessible locations in Tallinn and Narva, to provide integration related support to immigrants.

The Committee notes that the Estonian Integration Plan 2008-2013 provided for the teaching of the Estonian language to new immigrants, which is implemented through MISA. Teaching of the language was also provided during the reference period in the context of the "Our People" adaptation programme. This programme included information about the rights of residents and migrants, cultural and historical learning opportunities, and 364 hours of Estonian language classes. These measures were designed to improve the socio-economic coping abilities of new migrants. The Committee notes that during the period 2010 – 2013, a total of 226 migrants availed themselves of the programme according to MISA figures provided in the report. The Committee notes that the number of migrants participating was relatively low compared to the total immigration figures, and asks what reasons applied for

the discrepancy in uptake. Another programme run by MTU Johannes Mihkelsoni Keskus offered a support service from 2011 until 2013 to around 60 immigrants. The Committee notes that these courses involve a wider range of skills-based opportunities than previous schemes. It requests that the next report continue to provide up to date statistics on the number of immigrants who participate in such schemes.

The report states that vocational education is offered in Russian and Estonian through education institutions, and that in 2013 24% of such courses were taught in Russian. The Committee notes that Estonia intends to ensure all such courses are taught in Estonian, with a time estimate of 2020. This will be supported by improved offerings of Estonian language courses. The report states that insufficient knowledge of the language of instruction has now been included as a special need in the “Conditions and procedure for persons with special needs attending vocational education institutions” Regulation, to which the main response is further language classes.

The Committee asks whether there are also vocational courses specifically targeted towards migrant workers. In the meantime, taking account of the information provided in the report, and the previous explanations of the regulatory system, the Committee concludes that the situation in this respect is in conformity with the Charter.

### ***Measures against misleading propaganda relating to emigration and immigration***

The Committee notes the introduction and implementation of the “Diversity Enriches” project, undertaken by the Ministry of Social Affairs in collaboration with Tallinn University since 2010. It notes that nationwide training courses and seminars for minority groups have taken place within the framework of this project to increase knowledge of the Equal Treatment Act. Furthermore, employers have been counselled to promote equal treatment. State officials have also taken part in the courses which are open to all.

The Committee notes from the 4<sup>th</sup> report of the European Commission against Racism and Intolerance (ECRI) on Estonia (adopted 2009) that the Criminal Code contains anti-discrimination provisions, such as Article 151 which prohibits activities which publicly incite hatred, violence or discrimination on the basis of, *inter alia*, nationality, race, colour, origin or religion. The Committee asks for further information the implementation of anti-discrimination regulations and what bodies are responsible.

The Committee notes from the 2009 ECRI report (pp. 29 – 30) that racism and discrimination are identified as problems within the media, and that there is little action taken by the state against such issues. The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information. It considers that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere. The Committee asks what monitoring systems exist to ensure the implementation of anti-discrimination regulations.

The Committee notes from the report that media coverage of issues surrounding migration was encouraged through the “My Estonia” project. It asks what other measures are being taken to tackle the issue of prejudice in public life.

In respect of police officers, the Committee notes that the Police and Border Guard Board conducted seven training courses on the topic of “Manifestations of radicalism and terrorism” from September – December 2013, which included discussions of racism. Participants from all police prefectures and departments took part.

The Committee recalls that States have an obligation to take measures or undertake programmes to prevent the dissemination of false information to departing nationals, as well

as to prevent the misinformation of foreigners wishing to enter the country. Authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia). It asks for complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Estonia is in conformity with Article 19§1 of the Charter.

**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 Estonia.

***Departure, journey and reception of migrant workers***

The report states that the Integration and Migration Foundation (MISA) provides support for the migration process to both immigrants and emigrants.

The Committee notes the provision of financial support for returning Estonians and for incoming foreigners. In 2013, 97 returning Estonians and 36 foreign nationals were supported, with financial contributions totalling €74,835 and €18,000 respectively. The Committee asks what the criteria are to qualify for such support. The Committee asks for details on the process of applying for and receiving this support, and for how long the support may be provided.

The Committee recalls that reception 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). It recalls that 'reception' must be provided at the time of arrival and the period immediately following, that is to say during the weeks in which immigrant workers and their families find themselves in a particularly difficult position (Statement of interpretation – Conclusions IV (1975)). The Committee notes from the report that everyone in Estonia has a right to emergency social assistance including food, shelter and clothing, regardless of their legal status. This care is also provided by MISA.

With respect to emigration, MISA also provides financial support. A remigration allowance is available to foreign nationals who have lived in Estonia for 10 years or longer and wish to cancel their residence permit and move permanently to another country. The Committee asks for details of the purpose of this allowance, whether any other criteria apply, and information on its amount.

The Committee notes that the previous system of allowances for migrants who were expelled has ceased to apply. MISA does not provide such financial aid. Expelled migrants are now the responsibility of the Police and Border Guard Board. The Committee notes however that the International Organization for Migration Office provides support for irregular migrants to return.

The report states that the social security system in Estonia is not based on citizenship and that equal treatment is ensured. The Committee notes also that "pursuant to the Health Insurance Act, all insured persons are treated equally and on the basis of the provisions of the Act." The Committee notes from the European Commission report "Your social security rights in Estonia" (published July 2013) that national health insurance covers employees; the self-employed; the spouse of self-employed persons entered into the commercial register, who participate in the business activities of the self-employed; and certain categories of persons on whose behalf the State pays social tax.

The following categories of persons have the same entitlement to healthcare without having to pay social tax:

- children under the age of 19;
- full-time students under the age of 24;
- recipients of a State pension;
- pregnant women from the moment pregnancy is medically determined;
- dependent spouses of insured persons under five years away from retirement age.

There is generally no qualifying period required, although for employees, the duration of the employment contract must exceed one month. For the self-employed, the qualifying period is fourteen days from the date of registration with the Health Insurance Fund.

The Committee notes that there is no period of residence requirement, and therefore understands that migrant workers are fully insured upon arrival, provided that their employment contract exceeds one month. It asks for confirmation of this understanding.

The report also states that pursuant to Section 6(1) of the Health Services Organisation Act, emergency medical care is assured for every person in the territory of Estonia, regardless of status. Emergency care is defined as "health services which are provided by healthcare professionals in situations where postponement of care or failure to provide care may cause the death or permanent damage to the health of the person requiring care."

### ***Services for health, medical attention and hygienic conditions during the journey***

The report also states that hygienic conditions of migrant workers and their family members are ensured during transport. 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 requests details of any measures taken in regard of collective recruitment, if it should occur.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Estonia is in conformity with Article 19§2 of the Charter.



## **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 Estonia.

According to the report, the Integration and Migration Foundation (MISA) provides material support and counselling to foreigners and migrants. It supports both those who wish to immigrate and those who wish emigrate.

The provision of local care, including emergency assistance, is organised by local governments, other public bodies, or NGOs and churches. NGOs offer social counselling, pastoral services and possibilities of retraining, jobs or other work-like activities.

The Committee points out that the scope of Article 19§3 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. It 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. (Conclusions XV-1 (2000), Belgium).

Whilst it considers that collaboration among social services can be adapted in the light of the size of migratory movements (Conclusions XIV-1 (1998), Norway), the Committee holds that there must still be established links or methods for such collaboration to take place.

Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (Conclusions XV-1 (2000), Finland).

The Committee asks whether cooperation takes place in an international context between NGOs and public bodies to coordinate the provision of assistance to migrants. It also asks whether the governmental bodies, including MISA and local government providers of social care, are in contact with and cooperate with social services or private social care NGOs in other countries, in particular countries from which Estonia receives the greatest number of immigrants such as Russia and Ukraine, and whether collaboration occurs with or via international organisations such as the International Social Service. The Committee also requests any information on the implementation of such cooperation in practice.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Estonia is in conformity with Article 19§3 of the Charter.

## **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 Estonia.

### ***Remuneration and other employment and working conditions***

The report states that there has been no amendment to the Employment Contract Act or the Equal Treatment Act since the previous conclusions (Conclusions 2011). Equality of treatment is also regulated in the Gender Equality Act, the Penal Code and other legislation.

The Committee notes that Estonia has implemented the Estonian Integration Strategy 2008 – 2013, which included measures aimed at reducing differences in treatment between employees with different ethnic backgrounds. Efforts included a campaign started through a public procurement process, to explain the principles of equal treatment to employers and introduce them to experiences of various companies with ethnically diverse personnel. Media coverage and spokespeople were also used to increase awareness, through the “My Estonia” project. A multi-cultural enterprise competition was also held in co-operation with the media. Information on the Equal Treatment Act was distributed to companies in 2010, and other information binders were produced in both Estonian and Russian in cooperation with the Equality commissioner and the Estonian Human Rights Centre. In 2012 an impact assessment was carried out and policy recommendations were sought via this process. The “Diversity Enriches” programme also had a specific focus in 2012 on diversity in private companies, which included seminars and training programmes for different minority groups.

The Committee notes the introduction in 2014 of a new integration strategy “*Lõimuv Eesti 2020*”. Employers are to be informed of the importance of equal treatment and given information on the economic benefits of multicultural workforces.

The Committee requests information regarding the implementation of the Equal Treatment Act and the Employment Contracts Act, including monitoring information, and asks whether any complaints related to discrimination against migrants with regard to employment conditions or remuneration have been registered.

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 and promotion. The provision applies also to vocational training (Conclusions VII (1981), United Kingdom). The Committee asks whether vocational training with a view to improving the skills of workers and their opportunities is available in Estonia on the same basis for migrants and nationals.

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

The report states that the legal framework has not changed since the previous conclusions. Estonian legislation continues not to discriminate between migrant workers and local employees upon membership of trade unions, participation in collective bargaining and enjoyment of the benefits of collective bargaining.

The Committee notes the statistics provided which indicate that 7.1% of the employed immigrant population are members of trade unions, while for nationals the figure is 5.2%.

The Committee takes note of the competence of the Equality Commissioner to investigate cases of discrimination where it is alleged that a person has been discriminated against due to being a trade union member. The Commissioner may investigate the case, provide an opinion and/or help the person in the Labour Dispute Committee or a court. The report indicates that between 2005 – 2014 no complaint was registered concerning allegations of discrimination against a migrant worker on grounds of trade union membership.

The Committee refers to the Statement of interpretation in the General Introduction (Conclusions 2015) and asks for information concerning the legal status of workers posted

from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

### ***Accommodation***

Pursuant to the Social Welfare Act, local government bodies are required to provide social housing for persons or families who are unable to secure housing for themselves. The report stresses that everyone, including migrant workers and their families, has equal conditions and opportunities regarding accommodation.

In its previous conclusion (Conclusions 2011) the Committee asked for information on possible cases of discrimination regarding social housing at local level and the practical measures to remedy such cases. In reply, the report indicates that no complaints were filed with the Gender Equality and Equal Treatment Commissioner regarding discrimination concerning social housing.

### ***Conclusion***

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

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

### *Paragraph 5 - Equality regarding taxes and contributions*

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

In response to the Committee's request for updated information (Conclusions 2011), the report gives details of the applicable legislation. The report indicates that no changes to the legislation have occurred since the previous report (see Conclusions 2011). Social tax, income tax, mandatory pension payments and unemployment insurance payments are paid on salaries.

Pursuant to Section 2(1)(1) of the Social Welfare Act, the obligation to pay social tax does not depend on whether the employee is an Estonian citizen. The same rules apply to migrant workers as to Estonian citizens.

Payment of income tax likewise does not depend upon the citizenship of the person receiving their salary. Taxation may depend upon the residency of the worker. Pursuant to Section 29(1) of the Income Tax Act, income tax is charged on income derived by a non-resident natural person from work in Estonia (subsections 13 (1) and (11)) if the payment was made by an Estonian state or local government authority or resident or a non-resident operating in Estonia as an employer or a non-resident through or on account of its permanent establishment (§ 7) located in Estonia, or if the person has stayed in Estonia for the purpose of employment for at least 183 days over the course of 12 consecutive calendar months. If the employee is a resident of a country with which Estonia has entered into an agreement on prevention of double taxation by income tax, the provisions of that agreement must be taken into account when calculating the tax obligation.

Mandatory pension contributions do not depend on citizenship and are paid by all persons resident in Estonia.

### *Conclusion*

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

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

### *Paragraph 6 - Family reunion*

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

#### **Scope**

Admission for the purposes of family reunion is available to spouses and other close relatives. Close relative includes, *inter alia*, minor children and adult children needing specific care due to health reasons or a disability.

The Committee considers that in this regard the situation in Estonia is in conformity with the Charter.

#### **Conditions governing family reunion**

There are no residence requirements for EU nationals holding Blue Cards or citizens of states within the European Economic Area.

With respect to non-EU nationals, the report states that if a person has been legally residing in Estonia for two years, he or she can apply to reunite with his or her spouse. If a person resides in Estonia permanently, he or she can apply to reunite with other family members. If the person does not meet the residence requirement, reunion is contingent on the granting of an independent residence permit to the relative, for the purposes of work or other economic activity, or for study. The Committee recalls that States may require a certain length of residence of migrant workers before their family can join them. The report refers to EU Directive 2003/86/EC, and states that Estonian law is in compliance with the requirements imposed therein. The Committee points out that the directive expressly states in Article 3§4 that it is without prejudice to the Charter, and that it shall not affect the possibility for the Member States to adopt or maintain more favourable provisions than those required by the Directive (Article 3§5). The Committee considers that a period of one year is acceptable under the Charter, but a longer period is considered excessive (Conclusions 2011, Statement of interpretation on Article 19§6). The Committee therefore reiterates that the situation is not in conformity with the Charter.

The Committee notes that other conditions applying to family reunion include a permanent legal income, independently or jointly with the spouse, to ensure that the family is maintained in Estonia. The Committee notes the indication in the report that no family member has been declined a residence permit because he or she did not have sufficient legal income. Nevertheless it considers that such requirements if too restrictive may deter migrants from applying for family reunion and thus present an obstacle to the enjoyment of their rights under Article 19§8 of the Charter. The Committee asks on what basis the determination of whether the applicant satisfies this criterion is made, and whether there are any thresholds applied. It recalls that social benefits should not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of interpretation on Article 19§6). It asks what constitutes "legal income" relevant to the determination, and whether social assistance to which the applicant or their family members are lawfully entitled are excluded from the calculation.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee notes the requirement in the Aliens Act that the family must have a residence in Estonia, and asks whether there are any restrictions on what size or type of accommodation is considered sufficient for the purposes of family reunion.

The Committee considers 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. The Committee asks what appeal mechanisms exist to challenge decisions against the grant of family reunion.

#### *Conclusion*

The Committee concludes that the situation in Estonia is not in conformity with Article 19§6 of the Charter on the ground that the two years residence requirement, imposed on migrant workers who are not citizens of Member States of the European Union nor citizens of states within the European Economic Area, is excessive.

## **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 Estonia.

In response to the question of the Committee (Conclusions 2011), the report indicates that assistance in legal proceedings is prescribed in the State Legal Aid Act. The persons covered by the act also include migrant workers. Natural persons may receive state legal aid if they are unable to pay for competent legal services due to their financial situation at the time they require assistance, if they are only partially able to pay for legal services, or if they would not be able to meet their own basic subsistence needs after paying for such legal services. Assistance is provided to persons who at the time of application have residence in Estonia or another member state of the EU, or is a citizen of Estonia or another Member State of the EU. Determination of residence is based on Article 59 of Council Regulation No. 44/2001/EC. The Committee notes that this Article states that 1) in order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law and 2) if a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State. The report indicates that legal aid will not otherwise be granted to natural persons unless the obligation arises from binding international law. The Committee requests clarification on who shall be considered to be resident in Estonia for these purposes.

In criminal proceedings, the accused person who applies for criminal defence counsel or in whose case counsel is required by law will receive state legal aid regardless of their financial situation.

The report states that categories of state legal aid include, *inter alia*, defence in criminal proceedings, representation in civil and administrative proceedings, enforcement proceedings and judicial review proceedings, drawing up legal documents and other legal counselling or representation. Pre-trial proceedings are also included within the scope of legal aid.

The Committee recalls that 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). If the advocate provided has no knowledge of the language spoken by the migrant worker, interpretation services will be used. The advocate is then compensated for the cost of those services pursuant to regulations. The expense of translation from Estonian to other languages due to the fact that the advocate does not have sufficient knowledge of Estonian shall not be compensated to the advocate. The Committee considers the situation in this regard to be in conformity with the Charter.

The Committee refers to its Statement of interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid assistance.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Estonia is in conformity with Article 19§7 of the Charter.

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

### *Paragraph 8 - Guarantees concerning deportation*

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

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

In its previous conclusion (Conclusions 2011), the Committee examined the rules relating to expulsion and found them to be in conformity with the Charter. It recalls that the Obligation to Leave and Prohibition on Entry Act provides the bases and procedure for expulsion. A non-national may be expelled from Estonia on the grounds that he or she no longer has any basis for remaining and s/he fails to leave the territory or where it is necessary to ensure the protection of public order, national security, health or moral standards or to prevent an offence. Prior to a non-national being expelled, he or she is issued with a "precept" informing him/her of the obligation to leave. The term for voluntary compliance with the obligation to leave stipulated in the precept can be between 7 and 30 days, and may be extended if necessary. A foreigner is then expelled if he/she does not comply with the precept without good reason. An appeal against the decision to issue a precept or a decision made to ensure compliance with a precept may be filed with an administrative court within ten days of the notification of the decision. The Committee understands that when making a decision on expulsion the court takes into account the personal circumstances of the foreigner and his/her family members, and asks for confirmation of this point.

The Committee recalls that foreign nationals who have been resident for a sufficient length of time in a state, either legally or with the tacit acceptance of their illegal status by the authorities in view of the host country's needs, should be covered by the rules that already protect other foreign nationals from deportation (Conclusions 2011, Statement of interpretation on Article 19§8). In its previous conclusion (Conclusions 2011) the Committee asked for information on this issue. The Committee repeats its request for information on the law and practice pertaining to the expulsion of migrants who are citizens of other States party to the Charter, who have been long-term residents in Estonia and established significant ties there.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Estonia is in conformity with Article 19§8 of the Charter.



## **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 Estonia.

The report indicates that any restrictions on transfer of earnings are only imposed in the context of private banking arrangements, which are subject to the requirement of non-discrimination on the basis of nationality. The principle of freedom of contract means that banks have the freedom to choose with whom to enter into a contract, provided that the conditions comply with laws and other legislation in force. The Equal Treatment Act, Section 2(1)(1), prohibits discrimination on the grounds of nationality, ethnic origin, race or colour upon entry into contracts for the provision of services.

With reference to its Statement of interpretation on Article 19§9 (Conclusions 2011), the Committee asks whether there are any restrictions on the transfer of the movable property of migrant workers.

### *Conclusion*

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

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

### *Paragraph 10 - Equal treatment for the self-employed*

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

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

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

The Committee has found the situation in Estonia not to be in conformity with Article 19§6. Accordingly, the Committee concludes that the situation in the Estonia is not in conformity with Article 19§10.

### *Conclusion*

The Committee concludes that the situation in Estonia is not in conformity with Article 19§10 of the Charter as the ground of non-conformity under Article 19§6 applies also to self-employed migrants.

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

### *Paragraph 11 - Teaching language of host state*

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

The report states that from 2011 – 2013, the Integration and Migration Foundation (MISA) offered various opportunities to learn the national language and to support such learning, funded by the European Social Fund and the state budget. The Committee notes that payments of up to €320 for learning expenses are available upon passing an examination, and were paid on 828 occasions in 2011, 789 occasions in 2012 and 683 occasions in 2013. The Committee recalls that under the previous system language programmes were provided for free, and asks whether an equivalent number of lessons are still provided under the current system. The report indicates that free language teaching is available to citizens of third countries. The Committee asks whether this applies to all migrant workers of States Parties to the Charter.

The report indicates that learning materials for the national language have been published online, including materials for disabled learners.

In 2011-2013, a total of 525 students with Russian as their mother tongue attended academic and professional Estonian courses, which are directed to vocational students to improve competitiveness in the labour market.

Students whose first language is not Estonian and who require more support to benefit from the study process are given additional courses in the national language. According to the data of the Estonian Education Information System (EHIS), 172 new immigrant students (less than 3 years of living or studying in Estonia) with non-Estonian native language were attending general education schools of Estonia in 2013/14; 65 among them attended additional courses of Estonian as a second language.

For all students whose first language is not Estonian and whose instruction is conducted in another language (usually being Russian), Estonian is taught in school as a second language. Supplementary lessons and immersion classes are also provided to secondary schools where students transition to Estonian as the main language of instruction. Due to upper secondary schools transitioning to Estonian language of instruction, the number of students graduating from upper secondary education in Russian has significantly decreased from year to year. While 3,258 juveniles graduated from upper secondary education as full-time study in Russian language of instruction in 2007 and 2,520 juveniles did so in 2008. Starting with 2013, all upper secondary level schools with Russian language of instruction have transitioned to teaching subject matter in Estonian; in 2014, the transition to teaching in Estonian will start in vocational education. Integration will be supported by teacher training programmes.

The report states that students who need further extra-curricular help in learning Estonian can obtain financial assistance on a needs-tested basis.

### *Conclusion*

The Committee concludes that the situation in Estonia is in conformity with Article 19§11 of the Charter.

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

### *Paragraph 12 - Teaching mother tongue of migrant*

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

The Committee notes that under Section 21 of the Basic Schools and Upper Secondary Schools Act, where 10 students of a single school with the same native language submit requests, the school shall organise language and cultural classes. If fewer than 10 requests are submitted, the school shall determine the provision of language and cultural teaching in cooperation with the local government. The report indicates that this option is seldom used in practice, due to the general lack of concentration of migrants with similar backgrounds. The Committee notes the exceptions of the Tallinn Jewish School and the Tallinn Finnish School, which both have instruction in the mother tongues. The Committee also notes the provision of basic education in Russian, which is a common language among migrant families.

The Committee notes the existence of Sunday schools which teach languages as an extra-curricular activity. Such Sunday schools can be registered under legislation which then enables them to receive state funding. The Integration and Migration Foundation has registered 35 active Sunday schools. In 2013, the Ministry of Education and Research provided €125,000 to support the activities of Sunday schools.

Cultural activities are also organised by umbrella organisations, 20 of which exist as of 2011. These organisations can receive funding through the Ministry of Culture, Ministry of Education, and other bodies. Other private funds and embassies support language and cultural activities as well.

### *Conclusion*

The Committee concludes that the situation in Estonia is in conformity with Article 19§12 of the Charter.

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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

In its previous conclusion (Conclusions 2011) the Committee asked whether there existed any specific vocational guidance, counselling, information and placement services for workers with family responsibilities, to assist such workers in participating or advancing in economic activity.

It notes from the report that the Labour Market Services and Benefits Act does not prescribe special measures for job seekers with family responsibilities, but the Employment Programme 2014- 2015 (outside the reference period) provides that the Unemployment Insurance Fund may compensate additional costs of care service and other costs stemming from the person's special needs. The costs of care service may be compensated for an unemployed person who cannot participate in the labour market service and cannot work due to raising a child of up to 7 years of age or caring for an elderly or a disabled person.

The Committee recalls that the aim of Article 27§1 is to provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment. To be able to return to professional life, such persons may need special assistance in terms of vocational guidance and training. However, if the standard employment services (those available to everyone) are well developed, the lack of extra services for people with family responsibilities cannot be regarded as a human rights violation (Conclusions 2003, Sweden). Since under Articles 10§3 and 10§4 (Conclusions 2012, Estonia) the Committee expressed no objections as to the level of standard training and employment services, it therefore considers the quality of vocational guidance and training offered to people with family responsibilities to be compatible with the Charter.

### ***Conditions of employment, social security***

In its previous conclusion the Committee asked for information about legislative provisions and/or collective agreements governing work conditions that may facilitate the reconciliation of working and private life, such as working from home or flexible working hours.

The Committee notes from the report that the number of collective agreements regulating work conditions that may facilitate the balancing of work and private life are stated on the basis of the data in the database of collective agreements as of 2011. Agreements for parental leave have been entered into on 49 occasions i.e. in 16% of all valid collective agreements. Teleworking agreements have been entered into on 9 occasions i.e. in 3%, while agreements for part-time work have been entered into on 22 occasions i.e. in 7% and agreements for additional time off have been entered into on 32 occasions i.e. in 10% of all valid collective agreements as of the end of 2011.

The Committee has previously noted that the State pays social contributions/tax for persons receiving child care allowance. The Committee asked if the crediting of periods of childcare leave in pension schemes is secured equally to men and women.

In this respect, the Committee notes from the report that the state pension system ensures that parental leave periods are accounted equally for men and women in their pension plans. In the mandatory funded pension system, additional mandatory funded pension payments for raising a child are made from the state budget for one parent (man or woman) from the child's birth until the child attains 3 years of age. The payment is made regardless of whether the person is on parental leave or not.

### ***Child day care services and other childcare arrangements***

In reply to the Committee's question, the report states that professional standards have been established for both preschool child care institution teachers and childminders. Pursuant to Section 37 1 (2) of the Social Welfare Act a county government shall exercise administrative supervision over the quality of childcare service. In order to act as a childminder a person must hold a childminder's professional certificate or have completed the special needs education, preschool education or social work. 62% of teachers and 98% of managers in preschool child care institutions have completed professional higher education and the rest have completed vocational education.

The Committee takes note of the statistics concerning the participation rates of preschool children in preschool child care institutions and schools. It notes in particular that in 2013 the number of children attending preschools rose by 9.4% as compared to 2009.

#### *Conclusion*

The Committee concludes that the situation in Estonia is in conformity with Article 27§1 of the Charter.

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

### *Paragraph 2 - Parental leave*

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

In its previous conclusion (Conclusions 2011) the Committee recalled that under Article 27§2 childcare leave should in principle be an individual entitlement granted separately to each parent, and asked if the authorities have considered making the right to parental leave individual and non-transferable.

In this connection, the Committee notes from the report that in 2013 the Ministry of Social Affairs commissioned a study on “Analysis of the Estonian system of parental leave”, conducted by the PRAXIS Centre for Policy Studies and funded by the ESF.

One of the aims of that this study was to assess how the current system enables parents to combine work and family life as well as whether and how it motivates fathers to use parental leaves. One of the conclusions reached in the analysis was that in order to increase the involvement of fathers in bearing the care load, it would be appropriate to consider establishing an individual non-transferable compensated parental leave period for fathers.

According to the report, relevant policy recommendations on this issue were planned to be made in the Green Paper on Family Benefits and Services to be adopted in 2014. The Committee wishes to be informed of the developments in this respect and in the meantime it reserves its position on this issue.

In its previous conclusion the Committee also asks if at the end of the parental leave workers have the right to return to the same job. Pursuant to Section 19(1) of the Employment Contracts Act (ECA), an employee returning from parental leave has the right to continue in his or her previous job with the same conditions as before taking the parental leave. During an employee's leave or upon his or her returning to work, the employer cannot amend the employment contract's provisions unilaterally without the employee's consent. Pursuant to Section 12 of the ECA, an employment contract can be amended only with an agreement between the parties.

### *Conclusion*

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

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

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

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

In reply to the Committee's question whether the enhanced protection against dismissal for reasons relating to family responsibilities applies also to male employees, it notes from the report that Section 92(2) of the Employment Contracts Act (ECA) regarding the termination of employment contract applies to both women and men. Performance of family responsibilities is a wider notion and includes more than just raising children. Performance of family responsibilities also includes caring for one's parents, for example.

In its previous conclusion (Conclusions 2011) the Committee noted that Section 109(2) of ECA still made a reference to six months' average wages as compensation for unlawful dismissal on the ground of family responsibilities. However, it was possible for the court or labour dispute committee to change the amount of the compensation, considering the circumstances of the cancellation of the employment contract and the interests of both parties.

In this context, the Committee asked for some examples that would illustrate the level of actual compensation awarded in such cases.

It takes note of an example provided in the report of a female employee who was awarded a compensation of € 1,000 for unlawful dismissal on the basis of gender (due to being a parent and fulfilling family responsibilities) under the Gender Equality Act.

The Committee refers to its conclusion on Article 1§2 (Conclusions 2012, Estonia) where it noted that the ECA obliges employers to take into account the provisions of the Equal Treatment Act and the Gender Equality Act in all aspects of the employment relationship, including non-discrimination. In its conclusion on Article 24 (Conclusions 2007, Estonia) the Committee noted that although compensation for unlawful dismissal was limited to the equivalent of six months wages, in addition, compensation could be sought under the Law of Obligations Act.

In this connection the Committee refers to its Statement of interpretation on Articles 8§2 and 27§3 (Conclusions 2011) where it held 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.

The Committee understands that in addition to the compensation that can be claimed under Section 109(2) of the ECA up to the amount of six month's average wages, the employee, unlawfully dismissed on the ground of family responsibilities may claim non-pecuniary damages through other legal avenues, such as the Gender Equality Act, the Equal Treatment Act and the Law of Obligations Act.

### *Conclusion*

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





January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**FINLAND**

*This text may be subject to editorial revision.*



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Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Finland which ratified the Charter on 21 June 2002. The deadline for submitting the 10<sup>th</sup> report was 31 October 2014 and Finland submitted it on 31 October 2014.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns information requested by the Committee in Conclusions 2013 in respect of its conclusions of non-conformity due to a repeated lack of information<sup>1</sup>:

- Right to social security – Social security of persons moving between States (Article 12§4)
- Right of the elderly to social protection (Article 23)

The Committee adopted two conclusions of conformity.

The next report by Finland will deal with the accepted provisions of the thematic group "Employment, training and equal opportunities":

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

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- Right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter)

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<sup>1</sup>Finland also submitted a report on follow-up to decisions on the merits in collective complaints. The Committee's findings in this respect are available in a separate document.

## **Article 12 - Right to social security**

### *Paragraph 4 - Social security of persons moving between States*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Finland in response to the conclusion it had not been established that the retention of accrued benefits was guaranteed to nationals of all other States Parties (Conclusions 2013, Finland).

The Committee recalls that in order to ensure the exportability of benefits, States may choose between bilateral agreements or any other means such as unilateral, legislative or administrative measures (Statement of interpretation on Article 12, Conclusions XIII-4).

The report states that Finnish legislation guarantees the retention of accrued benefits relating to work, including for nationals of non-EU States Parties to the Charter. The legislation on earnings-related pensions does not limit payment on the basis of nationality or residence. Thus, pensions are exported to all countries irrespective of the nationality of the recipient as provided for in Chapter 8, Section 112 of the Employees Pensions Act No. 395/2006. This provision expressly stipulates that pensions may be paid to the recipient's account abroad. Similarly, accrued benefits from the occupational accident and disease insurance scheme are exported to all workers irrespective of nationality and wherever the worker chooses to reside.

On this basis, the Committee considers that the situation is in conformity with the Charter as regards retention of accrued benefits.

### *Conclusion*

The Committee concludes that the situation in Finland is in conformity with Article 12§4 of the Charter with respect to the retention of accrued benefits for nationals of all other States Parties.

## **Article 23 - Right of the elderly to social protection**

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Finland in response to the conclusion that it had not been established that there is an adequate legal framework prohibiting discrimination on grounds of age (Conclusions 2013, Finland).

The Committee recalls that Article 23 requires States Parties to combat age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services (see for example Conclusions 2009, Andorra).

The Committee's previous conclusion of non-conformity was specifically based on the absence of information on the progressive expansion of the ban on age discrimination to include the areas of social security, health care and goods.

The report refers to Article 6§2 of the Finnish Constitution which expressly prohibits discrimination on the basis of age. This prohibition applies to all public functions, including the spheres of social security, health care and other provision of goods and services. This provision is also considered to be of interpretational value in relations between private parties (e.g. private companies and individuals). The Government also indicates that Chapter 11, Article 11 of the Penal Code criminalises discrimination and covers all public and private activities, including areas such as social security, health care and provision of goods and services.

The report further states that relevant prohibitions of discrimination have been laid down in various specific acts, such as the Consumer Protection Act No. 38/1978, the Status and Rights of Patients Act No. 785/1992 and the Status and Rights of Recipients of Social Welfare Act No. 812/2000.

Finally, the Committee notes that the Government has submitted a new Equal Treatment Act to Parliament on 3 April 2014. According to the Government the proposed act has a very broad scope: it would be applicable to all public and private activities, the only exceptions being activities that take place in the realm of private and family life as well as the practice of religion. The new act would expressly prohibit discrimination on a number of grounds including age. The Committee asks that the next report contain information on the implementation of the act, if adopted, especially in so far as it impinges on age discrimination outside employment.

In view of the information provided the Committee considers that the situation is in conformity with the Charter.

### *Conclusion*

The Committee concludes that the situation in Finland is in conformity with Article 23 of the Charter as regards the legal framework prohibiting discrimination on grounds of age.



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**FRANCE**

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Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns France which ratified the Charter on 7 May 1999. The deadline for submitting the 14<sup>th</sup> report was 31 October 2014 and France submitted it on 17 December 2014. Comments on the report by CEJESCO were registered on 15 July 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns information requested by the Committee in Conclusions 2013 in respect of its conclusions of non-conformity due to a repeated lack of information<sup>1</sup>:

- Right to social and medical assistance – Adequate assistance for every person in need (Article 13§1).

The Committee adopted a conclusion of non-conformity on this provision.

The next report by France will deal with the accepted provisions of the thematic group "Employment, training and equal opportunities":

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

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter)

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<sup>1</sup>France also submitted a report on follow-up to decisions on the merits in collective complaints. The Committee's findings in this respect are available in a separate document.



## **Article 13 - Right to social and medical assistance**

### *Paragraph 1 - Adequate assistance for every person in need*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information contained in the report submitted by France in response to the conclusion that it had not been established that the level of social assistance was adequate.

The Committee recalls that it must be such as to make it possible to live a decent life and to cover the individual's basic needs. In order to assess the level of assistance, the Committee takes into account basic benefits, additional benefits and the poverty threshold in the country, which is set at 50% of the median equivalised disposable income and calculated on the basis on the Eurostat at-risk-of-poverty threshold (*Finnish Society of Social Rights v. Finland*, Complaint No. 88/2012, decision on the merits of 9 September 2014, §112).

The report states that the active solidarity income ("*Revenu de solidarité active*" or RSA) for a single person is €509. The report further explains that the amount of housing benefit varies depending on the geographical area where the person lives and his/her personal circumstances (whether he/she lives alone or in a couple, or is in charge of dependent persons), ranging from €237.67 to €290.96 for a single person, €288.12 to €350.92 for a couple and €323.05 to €396.61 for a single person or a couple in charge of a dependant person. Furthermore, the report states that these amounts may be complemented by other social benefits, such as electricity, gas, telephone, internet or transport subsidies, as well as free access to healthcare (CMU-C) and the exoneration from paying property taxes. The report explains that determining the amount of supplementary benefits in the abstract is difficult due to the fact that most social benefits depend on the personal circumstances of the applicant.

The Committee takes note of this information. It further notes that the poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value) corresponded to €873 per month in 2013. In order to assess the situation properly, the Committee asks that the next report specify the combined (total) amount of basic and supplementary benefits available for a single person, if necessary by providing information on and/or examples of total amounts received by "typical" single beneficiaries on a monthly basis. In the absence of such information in the present report, the Committee finds that it has not been established that the level of assistance is adequate in the meaning of Article 13§1 of the Charter.

### *Conclusion*

The Committee concludes that the situation in France is not in conformity with Article 13§1 of the Charter on the ground that it has not been established that the level of social assistance is adequate.



January 2015

# **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**GEORGIA**

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The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Georgia which ratified the Charter on 22 August 2005. The deadline for submitting the 8th report was 31 October 2014 and Georgia submitted it on 26 December 2014. On 13 July 2015, a request for additional information regarding Article 7§5, 7§8, 27§2 and 17§1 was sent to the Government, which did not submit a reply.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report contains also information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information:

the right to protection of health – advisory and educational facilities – universal coverage (Article 11§1)

the right to protection of health – advisory and educational facilities – screening (Article 11§2)

the right to protection of health – prevention of diseases and accidents (Article 11§3)

the right to benefit from social services – public participation in the establishment and maintenance of social services (Article 14§2)

Georgia has accepted all provisions from the above-mentioned group except Articles 8§§1 and 2, 16, 17§2 and 31.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Georgia concern 33 situations and are as follows:

– 10 conclusions of conformity: Articles 7§7, 7§10, 8§3, 8§4, 14§2, 19§5, 19§7, 19§8, 19§9, 27§3.

– 21 conclusions of non-conformity: Articles 7§1, 7§2, 7§3, 7§4, 7§5, 7§6, 7§8, 7§9, 8§5, 11§1, 11§2, 11§3, 17§1, 19§1, 19§3, 19§4, 19§6, 19§10, 19§11, 27§1, 27§2.

In respect of the other 2 situations related to Articles 19§2 and 19§12, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Georgia under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

## **Article 27§2**

According to Article 27 of the Labour Code, as amended by Organic Law of Georgia No.1393/ 2013, an employee (at her request) shall be granted maternity and child care leave of absence of 730 calendar days. 183 calendar days of maternity and child care leave of absence shall be paid. 200 calendar days shall be paid in the event of pregnancy complication or multiple births.

The next report will deal with the following provisions of 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 report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to just conditions of work – public holidays with pay (Article 2§2)
- the right to just conditions of work – weekly rest period (Article 2§5)
- the right to just conditions of work – night work (Article 2§7)
- the right to organise (Article 5)
- the right to bargain collectively – negotiation procedures (Article 6§2)
- the right to bargain collectively – collective action (Article 6§4)
- the right to dignity in the workplace – moral harassment (Article 26§2)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 Georgia.

The Committee noted previously that according to Article 4 of the Labour Code, the minimum age for admission to employment is 16. The Committee asked whether the prohibition of employment below the age of 16 applies to all economic sectors and forms of economic activity in Georgia (Conclusions 2011). The report does not reply to the Committee's question.

The Committee notes from another source that self-employment is not regulated by the legislation of Georgia and the provisions of the Labour Code apply only to employed workers (Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138)). The same source indicates that the number of self-employed minors is much higher than those employed in the formal sector and many children are working on family farms or in the agricultural sector, and that child labour is widespread in various regions of Georgia during the crop period in the agriculture sector.

The Committee recalls that under Article 7§1, 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. 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). The Committee considers that the situation is not in conformity with Article 7§1 of the Charter on the ground that the prohibition of employment under the age of 15 does not apply to all economic sectors and all forms of economic activity.

The report indicates that, as an exception, Article 4(2) of the Labour Code allows the employment of children below 16 years, on the condition that such work is not against their interests, does not damage their moral, physical or mental development or limit their right and ability to obtain elementary, compulsory and basic education, and upon the consent from their legal representative, tutor or guardian. According to Article 4(3) of the Labour Code, a labour agreement can be concluded with a child below 14 years only for work related to sport, art, cultural and advertising activities. The Committee previously asked what is the allowed duration of such work. The report does not provide the requested information. The Committee notes from another source that, Article 14 of the Labour Code provides that, if parties do not agree otherwise, a working week shall not exceed 41 hours, which is also applicable to young workers. The report also indicates that the national legislation allows children between the ages of 14 and 16 years to work for eight hours a day (Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138)) .

The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015). Given that according to the Labour Code, children under 15 years of age are allowed to perform light work up to 8 hours per day, the Committee considers that the situation is not in conformity with the Charter on the ground that the daily and weekly working time for children under 15 is excessive and cannot qualify as light work.

The Committee takes note from another source of the comments made by the Georgian Trade Unions Confederation (GTUC) that according to UNICEF estimates, 30% of children between the ages of 5–15 years worked in Georgia and that there were reports of children between the ages of 7–12 years working on the streets of Tbilisi, in markets, carrying or loading wares, selling goods in underground carriages, railway stations, etc. Moreover, based on the information provided by the Trade Union of Agricultural Workers, the GTUC alleged that child labour is widespread in the agricultural sector at harvest time in several regions of Georgia (Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138) – Georgia (Ratification:1996)). The Committee asks that the next report provide updated information and statistics on the employment of children under the age of 15, in particular children working in the streets and in the agricultural sector.

In its previous conclusion, the Committee asked information on the activity of the Labour Inspectorate concerning the supervision of the situation in practice. The report indicates that a draft bill on the State Labour Inspection is being prepared. The Committee requests updated information on any developments with regard to the draft of the bill on the State Labour Inspection. The Committee takes note of the information that the Labour Inspectorate was abolished according to the Labour Code of 2006. It had noted the comments made by the GTUC that with the abolition of the labour inspectorate, there exists no public authority to monitor the implementation of labour legislation, including child labour provisions ((Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138) – Georgia (Ratification:1996)). 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 Inspection has a decisive role to play in effectively implementing Article 7 of the Charter (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32). Recalling that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact. Therefore, the Committee considers that the situation is not in conformity with Article 7§1 of the Charter on the ground that during the reference period there was no labour inspection that supervised that the restrictions/regulations on child labour were implemented in practice.

The Committee notes that in 2015, outside the reference period, Resolution No 249 (2005) of the Government of Georgia on Approving the Statute of the Ministry of Labour, Health and Social Affairs of Georgia was amended, introducing the Labour Inspectorate Department. The Committee wishes to be kept informed.

In its previous conclusion, the Committee asked what was the situation regarding the monitoring of work done at home. The Committee recalls that regarding work done at home, States are required to monitor the conditions under which it is performed in practice (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28). The Committee asks whether the educational and social services have the competence to monitor how work within the family is performed by children.

### *Conclusion*

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

- the prohibition of employment under the age of 15 does not apply to all economic sectors and all forms of economic activity;
- the daily and weekly working time for children under 15 is excessive and therefore cannot be qualified as light work;
- during the reference period there was no labour inspection supervising that the regulations on child labour were respected 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 Georgia.

The Committee previously noted that according to the Labour Code, it is prohibited to conclude a labour agreement with young persons under the age of 18, with respect to prescribed occupations regarded as dangerous or unhealthy (Conclusions 2011). The Committee asked whether there are any exceptions from this prohibition. The report indicates that the Labour Code does not provide any exception from this prohibition.

The report indicates that according to the Labour Code it is prohibited to conclude a labour agreement with persons under the age of 18 for activities related to gambling, nightclubs, preparation, transportation and sale of erotic and pornographic products, as well as pharmaceutical and toxic substances.

The report further indicates that the Ministry of Labour, Health and Social Affairs is preparing the draft of the Law on Health and Safety at Work, which will contain the definition and list of the hazardous work. The report states that the Order No. 147/N of 3 May 2007 which provides for a list of heavy, hazardous and harmful works as mentioned in the previous report, was updated three times. The Committee notes that the Appendix 1 of the Order No. 147/N of 3 May 2007 contains the list of heavy, hazardous and harmful works which are prohibited to young workers under 18 years of age. The report adds that new activities were added to this list, such as firefighter, work in the underground/subway and in the archives.

The Committee previously asked information on the activity of the Labour Inspectorate of monitoring the prohibition of employment of young persons under 18 for dangerous or unhealthy activities (Conclusions 2011). The Committee notes from the information provided in the report and other sources that the Labour Inspectorate was abolished according to the Labour Code of 2006 (Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138) – Georgia (Ratification:1996)).

The Committee recalls that the aim and purpose of the Charter, being a human rights instrument, is to protect rights not merely theoretically, but also in fact. In this regard, it considers 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 (see for example Conclusions XIII-3). It considers that the labour inspection has a decisive role to play in effectively implementing Article 7 of the Charter (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32).

Therefore, the Committee considers that the situation is not in conformity with Article 7§2 of the Charter on the ground that during the reference period there was no labour inspection to supervise how the regulations regarding the prohibition of employment of young persons under 18 for dangerous or unhealthy activities were implemented in practice.

The Committee notes that in 2015, outside the reference period, Resolution No 249 (2005) of the Government of Georgia on Approving the Statute of the Ministry of Labour, Health and Social Affairs of Georgia was amended, introducing the Labour Inspectorate Department. The Committee wishes to be kept informed.

### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 7§2 of the Charter on the ground that during the reference period there was no labour inspection to supervise how the regulations regarding the prohibition of employment of young persons under 18 for dangerous or unhealthy activities were implemented in practice.



## **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 Georgia.

The Committee noted previously that according to Article 4 of the Labour Code, light work is permissible for children starting from the age of 14, with the agreement of a legitimate representative of the child, if such work does not conflict with the child's interests, does not cause damage to his/her moral, physical and mental development and does not limit his/her right and ability to receive education.

The Committee refers to its conclusion on Article 7§1 where it noted that children of 14 years of age are allowed to perform light work related to sport, art, cultural and advertising activities for up to 8 hours per day. The legislation does not provide reduced working time for children who are still subject to compulsory education so as to allow time for education and training (including the time needed for homework) for rest during the day and for leisure activities. The Committee considers that the situation is not in conformity with Article 7§3 on the ground that the daily and weekly working time for children subject to compulsory education is excessive and therefore cannot be qualified as light work.

As regards work during school holidays, the Committee refers to its Statement of Interpretation on Article 7§3 in the General Introduction of Conclusions 2011. It asks the next report to indicate whether the situation in Georgia complies with the principles set out in this statement. In particular, it asks whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. It also asks what are the rest periods during the other school holidays.

The Committee recalls that the aim and purpose of the Charter, being a human rights instrument, is to protect rights not merely theoretically, but also in fact. In this regard, it considers 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 (see for example Conclusions XIII-3). It considers that the labour inspection has a decisive role to play in effectively implementing Article 7 of the Charter (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32). The Committee considers that the situation is not in conformity with Article 7§3 of the Charter on the ground that during the reference period there was no labour inspection to monitor how the regulations regarding the prohibition of employment of children who are still subject to compulsory education were implemented in practice.

The Committee notes that in 2015, outside the reference period, Resolution No 249 (2005) of the Government of Georgia on Approving the Statute of the Ministry of Labour, Health and Social Affairs of Georgia was amended, introducing the Labour Inspectorate Department. The Committee wishes to be kept informed.

### *Conclusion*

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

- the daily and weekly duration of light work permitted to children subject to compulsory education is excessive and therefore cannot be qualified as light work;
- during the reference period there was no labour inspection to monitor the conditions of work of children who are still subject to compulsory education.

## **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 Georgia.

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

The Committee previously deferred its conclusion and asked clarifications on the regulatory framework and the situation in practice, in particular on the working time for young persons who are not subject to compulsory education. The report indicates that according to the amendments brought to the Labour Code in 2013, (i) the duration of working time for minors from 16 to 18 years of age shall be of maximum 36 hours per week and (ii) the duration of working time for minors from 14 to 16 years of age shall be of maximum 24 hours per week.

The report does not provide any information on the situation in practice. In this respect, the Committee recalls that the situation in practice should be regularly monitored. It considers that the labour inspection has a decisive role to play in effectively implementing Article 7 of the Charter (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32). The Committee understands from the report that there is no labour inspection to monitor the implementation of labour regulations with regard to working time of young persons. The Committee considers that the situation is not in conformity with Article 7§4 of the Charter on the ground that during the reference period there was no labour inspection to monitor how the regulations regarding the working time of young persons under 18 years of age who are no longer subject to compulsory schooling were implemented in practice.

The Committee notes that in 2015, outside the reference period, Resolution No 249 (2005) of the Government of Georgia on Approving the Statute of the Ministry of Labour, Health and Social Affairs of Georgia was amended, introducing the Labour Inspectorate Department. The Committee wishes to be kept informed.

### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 7§4 of the Charter on the ground that during the reference period there was no labour inspection to monitor the working time of young persons under 18 years of age who are no longer subject to compulsory schooling.

## **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 Georgia.

#### ***Young workers***

In its previous conclusion, the Committee deferred its conclusion requesting information on the level of wages paid to young workers. It also asked what was the net minimum wage and the net average wage in Georgia.

The report indicates that the minimum wage in the private sector is 20 Georgian Lari (GEL)(€ 8) (Presidential Order № 351) and in the public sector is GEL 135 (€ 53.60) (Presidential Order № 43). The report states that in practice the minimum wages are much higher. The report provides the amount of the net average wage in different economic activities during the reference period. The Committee asks whether young workers are paid the same wage as adult workers.

However, in order to assess the conformity of the situation with Article 7§5 of the Charter, the Committee requested information on the corresponding minimum wages paid to young workers in practice in the economic activities mentioned in the report. In the absence of a reply to its supplementary question on this issue, the Committee considers that it has not been established that the minimum wage paid to young workers is fair.

#### ***Apprentices***

In its previous conclusion (Conclusions 2011), the Committee noted that the remuneration of apprentices is equal to the monthly salary of an adult employed in the same occupation and asked for information on the net minimum wage in Georgia.

The report does not provide any information with regard to the apprentices. In order to assess on the conformity of the situation with Article 7§5 of the Charter, the Committee requests to be provided with the net values of the allowances paid to apprentices (after deduction of social security contributions) in practice at the beginning and at the end of the apprenticeship. Pending receipt of the information requested, the Committee reserves its position on this point.

#### ***Conclusion***

The Committee concludes that the situation in Georgia is not in conformity with Article 7§5 of the Charter on the ground that it has not been established that the minimum wage paid to young workers is 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 Georgia.

In its previous conclusion (Conclusions 2011), the Committee recalled 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. 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. The Committee asked whether such is the situation regarding the inclusion of vocational training in the normal working time in Georgia.

The report indicates that according to the Labour Code, the labour relationship is suspended during the vocational training, professional retraining or education which does not exceed 30 calendar days per year. The report states that study leaves for up to three months may be granted to civil servants once in five years for upgrading qualifications. Salary shall be maintained for public employees during their study leaves.

The Committee notes from the information provided in the report that since the labour contract is suspended during the vocational training, the time of training shall not be included in the normal working hours and thus remunerated as such. The Committee considers that the situation is not in conformity with Article 7§6 of the Charter on the ground that the time spent in vocational training is not included in the normal working time and remunerated as such.

### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 7§6 of the Charter on the ground that the time spent in vocational training is not included in the normal working time and remunerated as such.

## **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 Georgia.

The report indicates that according to the Labour Code, an employee shall have the right to enjoy paid leave for at least 24 working days per year.

In its previous conclusion, the Committee recalled 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.

The report does not provide the information requested. The Committee reiterates its questions. The Committee takes note that according to Article 22(4) of the Labour Code, the leave does not include a period of temporary disability, a maternity and parental leave, a leave due to adoption of a newborn, or any additional parental leave (Labour Code 2013). The Committee asks whether the leave lost due to a temporary disability/illness can be postponed at another time. It also asks whether young workers under 18 can waive their right to annual holiday with pay and whether financial compensation for unused annual leave is allowed in case of young employees under 18.

### *Conclusion*

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

The report indicates that it is prohibited to employ a minor for a night job (from 10 p.m. to 6:00 a.m.) without his/her consent.

In the absence of a reply to its supplementary question, the Committee asks again whether an employer can employ a young person under 18 in night work if the minor has given his/her consent or whether the exception mentioned in Article 18 of the Labour Code requiring the consent applies only to a person who takes care of a child under the age of three and/or a person with limited capabilities.

The Committee considered that 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 Committee asks whether such exceptions are instituted with regard to certain occupations and which is the number of young workers not covered by the ban on night work.

In its previous conclusion, the Committee asked for information on the activity of the Labour Inspectorate concerning the supervision of the situation in practice. The report states that since 2006 there has been no authority to monitor the labour rights and labour conditions in Georgia. The report adds that the Government is actively engaged in the creation of such authority. The Committee asks to be kept informed on any developments in this regard.

The Committee recalls that the situation in practice should be regularly monitored. It considers that the labour inspection has a decisive role to play in effectively implementing Article 7 of the Charter (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32). The Committee considers that the situation is not in conformity with Article 7§8 of the Charter on the ground that during the reference period there was no labour inspection to monitor how the regulations regarding prohibition of night work of young persons under 18 years of age were implemented in practice.

The Committee notes that in 2015, outside the reference period, Resolution No 249 (2005) of the Government of Georgia on Approving the Statute of the Ministry of Labour, Health and Social Affairs of Georgia was amended, introducing the Labour Inspectorate Department. The Committee wishes to be kept informed.

### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 7§8 of the Charter on the ground that during the reference period there was no labour inspection to monitor how the regulations regarding prohibition of night work of young persons under 18 years of age were implemented in practice.

## **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 Georgia.

The report states that, in compliance with the requirements of Article 54 of the Labour Code, the Ministerial Order No. 215 of 2007, of the Minister of Labour, Health and Social Affairs provides for rules governing the periodical mandatory medical checkups of employees at the expense of the employer. The order specifies types of workers who must be subject to regular medical examinations. The medical check-up is carried out when an employee is assigned to night work or hazardous or harmful work. The employer is also obliged to fully compensate the employee for any expenses due to damage caused by deterioration of health because of carrying out the work and for its treatment.

The Committee previously asked information on the initial and periodic medical check-ups and at what intervals they were carried out. The report does not provide any information in this sense. The Committee recalls that in application of Article 7§9, domestic law must provide for compulsory regular medical check-ups for under 18 year-olds employed in occupations specified by national laws or regulations. The obligation entails a full medical examination on recruitment and regular check-ups thereafter (Conclusions XIII-1 (1993) Sweden). The intervals between check-ups must not be too long. In this regard, an interval of three years has been considered to be too long by the Committee (Conclusions 2011, Estonia). Given the lack of information in the report, the Committee concludes that the situation is not in conformity with Article 7§9 of the Charter on the ground that it has not been established that there is an initial medical check-up at recruitment and regular medical check-ups thereafter of young workers under 18 years of age employed in occupations specified by national laws and regulations.

### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 7§9 of the Charter on the grounds that it has not been established that there is an initial medical check-up at recruitment and regular medical check-ups thereafter of young workers under 18 years of age employed in occupations specified by national laws and regulations.

## **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 Georgia.

### ***Protection against sexual exploitation***

The Committee takes note of the legislative framework governing sexual exploitation of children.

It notes that Article 255 of the Criminal Code prohibits procuring, keeping, attending at the performance, offering, distributing, transmitting, promoting or ensuring the other kind of availability to a pornographic piece, containing the image of a minor.

Article 255 (1) prohibits involvement of a minor in production and selling of pornographic material. The dissemination of such material, advertisement, trade or getting benefit from this action is punished by imprisonment from two to five years.

In reply to the Committee's question, the report states that Georgian legislation criminalises child pornography and child prostitution up to the age of 18 years.

In its previous conclusion the Committee also asked whether child victims of sexual exploitation, including trafficking, could be prosecuted for any act connected with this exploitation. It notes from the report in this regard that according to Section 15 of the Law of Georgia on Combating Trafficking, victims of human trafficking shall be discharged from liability for having committed actions under Article 344 (illegal crossing of the state border), Article 172 of the Criminal Code (Prostitution) etc.

The Committee asks whether legislation permits prosecution of children involved in prostitution, which is not linked to trafficking.

The Committee wishes to be informed about the statistics regarding sexual exploitation of children, identification of victims and prosecution of perpetrators.

### ***Protection against the misuse of information technologies***

In 2012 within the framework of the Council of Europe Convention on Cybercrime, a specialised cybercrime unit was established within the Central Criminal Police Department which carries out prevention, detection, suppression and investigation of online child pornographic crime. In the process of enhancing international cooperation against online child pornography the Specialised Cybercrime Unit also operates as the 24/7 international contact point.

The Committee also takes note of the Regulation about the delivery of service in the field of electronic communications and the rights of users approved by Decree No 3/2006 of the National Communications Commission, which obliges internet service providers to develop mechanisms to identify users who disseminate prohibited material.

### ***Protection from other forms of exploitation***

In 2012 the Government amended the 2006 law on Combating Trafficking and added a new chapter on child victims of trafficking in human beings, including individual risk assessment on the basis of the child's best interest. The Committee asks what the individual risk assessment involves.

The Committee also takes note of the legislative amendments as well as measures taken to implement recommendations of international bodies, such as the Group of Experts against Trafficking in Human Beings (GRETA) as regards trafficking in human beings.

The Inter-agency council is set up to combat trafficking in persons in Georgia, whose task is to make sure that children, victims of trafficking as well as children accompanying their



parents who have been trafficked have entitlements and when the need arises, receive appropriate accommodation and age specific education and support programmes tailored to their needs.

According to the report, within the framework of the National Action Plan 2012-2015 for Child Welfare and Protection the Ministry of Labour, Health and Social Affairs has been implementing a project with UNICEF and the EU on street children. Working groups as well as task forces have been created to address particular issues relating to street children, such as child identification, registration etc.

Three mobile groups (consisting of social workers, psychologists etc), three day-time centres (that provide children living and/or working on the street with basic necessities), two crisis intervention shelters and two transitional centres (that offer an individualised approach and intensive developmental opportunities to children living on streets) have been set up.

The Committee also takes note of the training programme and curriculum which has been developed to train the mobile team members, administrative and care staff of the daycare/crisis centres as well as the policemen.

The Committee wishes to be informed about the implementation of the National Action Plan for Child Welfare and in particular about the number of street children. It also asks whether the legislation permits prosecuting children for begging in the street.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Georgia is in conformity with Article 7§10 of the Charter.

**Article 8 - Right of employed women to protection of maternity**

*Paragraph 3 - Time off for nursing mothers*

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

It previously noted (Conclusions 2011) that, under the Labour Code, employees who nurse a child aged less than twelve months are entitled, upon request, to an additional break of no less than one hour per working day. Nursing breaks are regarded as working time and remunerated as such (Article 19 of the Labour Code, as amended in 2013 – Article 20 of the previous Labour Code). In response to the Committee's question, the report confirms that this also applies to women employed in the public sector.

*Conclusion*

The Committee concludes that the situation in Georgia 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 Georgia.

The Labour Code provides that pregnant women, women having recently given birth or who are nursing their infant cannot perform night work (from 10 pm to 6 am) without their consent. Unless otherwise provided by the Law on Public Service or other specific law, officials and support staff as well as other employees related to the public sector are subject to the labour legislation (Section 14 of the Law on Public Service), therefore, according to the report, the same restrictions apply to women employed in the public as in the private sector.

The Committee recalls that Article 8§4 does not require states to prohibit night work for pregnant women, women who have recently given birth and women nursing their infants, but to regulate it in order to limit the adverse effects on the health of the woman. The regulations must:

- only authorise night work where necessary, having due regard to working conditions and the organisation of work in the firm concerned;
- lay down conditions for night work of pregnant women, women who have recently given birth and women nursing their infants, e.g. prior authorisation by the Labour Inspectorate (when applicable), prescribed working hours, breaks, rest days following periods of night work, the right to be transferred to daytime work in case of health problems linked to night work, etc.

In this respect, the Committee refers to its conclusion on Article 2§7 on night work (Conclusions 2014) in which a number of questions on the rules on night work were raised. As these questions are also of particular relevance for pregnant women, women having recently given birth and those who breastfeed their children, and the current report on Article 8§4 does not bring any further information on the guarantees surrounding night work, the Committee asks the next report to explain more in detail the rules which apply to night work and in particular whether a medical checkup is carried out before an employee who is pregnant, has recently given birth or is nursing her infant is assigned to night work and regularly thereafter, allowing for a transfer to daytime work and what rules apply if such transfer is not possible. The Committee underlines that should the next report not provide the information requested there will be nothing to establish that the situation is in conformity with the Charter.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Georgia is in conformity with Article 8§4 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

It previously noted (Conclusions 2011) that Article 4§5 of the Labour Code prohibits the employment of pregnant or nursing women in dangerous, unhealthy or arduous work. The report confirms that this also applies to officials and support staff in the public sector subject to the specific provisions set out in the Law on Public Service (Section 14 of this Law) or other specific legislation. The Committee asks the next report to clarify whether there are exceptions or specific regulations applying to women employed in the public sector as regards the exposure to risks related to dangerous, unhealthy or arduous activities during their pregnancy, postnatal or nursing period.

The report does not reply to the other questions previously raised (Conclusions 2011), the Committee accordingly reiterates them; it wishes in particular to know both for the private and the public sector:

- whether employment in underground mining is explicitly prohibited for the categories of women protected under Article 8§5 of the Charter;
- what are the regulations applying for these categories of women as regards certain other dangerous activities, such as those involving exposure to lead, benzene, ionising radiation, high temperatures, vibration or viral agents;
- whether the law provide for the temporary reassignment without loss of pay of these women to work suitable to their condition or for paid leave in case such reassignment is not possible;
- whether, in case of reassignment to another post for reasons related to maternity, the women concerned maintain the right to return to their post at the end of the protected period;
- what guarantees relating to professional risk exposure are set through specific regulations in favour of women having recently given birth or, if no such specific regulations exist, through the general health and safety regulations.

The Committee notes that the report refers to a draft law on Health and Safety at work which will detail the provisions regarding protection of women against all known hazards. It asks the next report to provide full details of the relevant legislation. In the meantime, it considers 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 nursing women.

### *Conclusion*

The Committee concludes that the situation in Georgia 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 or arduous work in respect of pregnant employees, employees who have recently given birth or who are nursing their infants.

## **Article 11 - Right to protection of health**

### *Paragraph 1 - Removal of the causes of ill-health*

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that there was a public health system providing universal coverage (Conclusions 2013, Georgia).

The Committee recalls that the health care system must be accessible to everyone. The right of access to care requires *inter alia* that the cost of health care should be borne, at least in part, by the community as a whole (Conclusions I (1969), Statement of Interpretation on Article 11) and the cost of health care must not represent an excessively heavy burden for the individual. Out-of-pocket payments should not be the main source of funding of the health system (Conclusions 2013, Georgia).

The report states that on 28 February 2013 a Universal Health Care Programme was launched for persons without medical insurance. The first phase of the programme ensured citizens with a basic medical package, including primary health care and emergency hospitalisation. Since 1 July 2013 the programme has been expanded to include more services of primary health care and emergency hospitalisation, emergency outpatient care, planned surgeries, treatment of oncological diseases and child delivery. According to recent data (April 2014), all citizens of Georgia are now provided with basic healthcare, approximately 3.4 million people in the framework of the Universal Health Care Programme, 560,000 people are beneficiaries of the State Health Insurance Programme and about 546,000 people have a private or corporate insurance.

The Committee notes that the Government has declared health care as a priority field, resulting in funding for state health care programmes almost doubling: from 365 million GEL in 2012 (€ 139 million) to 634 million GEL in 2013 (€ 241 million). State spending as a share of GDP has increased from 1.7% to 2.7% and as a share of the state budget from 5% to 9%.

However, the Government acknowledges that despite improvements the cost of medication remains high amounting to 35% of state expenditure on health care. The report does not provide information on out-of-pocket payments as a share of total spending on health care, but according to WHO data it was still between 60% and 70% in 2011 (compared to about 16% on average for EU-27). Very limited coverage of medication costs is now provided under the Universal Health Care Programme, for example for emergency care, chemotherapy and radiotherapy, but the general lack of coverage of medication costs is a major point of dissatisfaction among beneficiaries of the programme according to a recent evaluation (Universal Healthcare (UHC) Program Evaluation by the USAID Health System Strengthening Project, April 2014). The Committee notes the examples provided by the Government of coverage of certain medication costs under the State Health Insurance Programme.

The report states that as a result of deregulation measures the pharmaceutical market has become free and competitive, however no evidence is provided to show that the price of medication has become generally more accessible, especially for vulnerable groups and those with chronic conditions.

While the Committee considers that the Universal Health Care Programme is a positive step forward and that the role of out-of-pocket payments as a source of funding of the health system may have been reduced somewhat, it still considers that the high proportion of out-of-pocket payments for health care, and in particular the high medication costs, represent too high a burden for the individual effectively being an obstacle to universal access to health care. The situation is therefore not in conformity with the Charter.

### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 11§1 of the Charter on the ground that out-of-pocket payments in general and medication costs in particular represent too high a burden for the individual effectively being an obstacle to universal access to health care.

## **Article 11 - Right to protection of health**

### *Paragraph 2 - Advisory and educational facilities*

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that prevention through screening was used as a contribution to the health of the population (Conclusions 2013, Georgia).

The Committee recalls that there should be screening, preferably systematic, for all the diseases that constitute the principal causes of death (Conclusions 2005, Republic of Moldova). The Committee has ruled that "where it has proved to be an effective means of prevention, screening must be used to the full" (Conclusions XV-2 (2001), Belgium).

The Committee notes the information on control and prevention measures concerning HIV/AIDS, TB and malaria. However, as regards mass screening for diseases constituting the main causes of death the report merely states that the state programme for early detection of diseases "foresees the early revealing and diagnostics of breast, uterine cervix, colorectal and prostate cancer screening." The Committee asks that the next report contain detailed information on screening programmes, their target groups and participation rates and in particular on the results achieved in terms of reducing mortality rates and improving early early detection rates.

From WHO's Health System Performance Assessment in respect of Georgia (2009) the Committee observes that there is a need to focus on health promotion, disease prevention and early detection through screening. According to this report the low rates of diagnosis of cancer in early stages are attributable to the fact that few women in Georgia are screened for breast and cervical cancer (only 1% of Georgian women undergo mammography each year and screening rates for cervical cancer are also very low), two cancers for which screening programmes have proven to be effective in reducing mortality. The report indicates that Georgia lags far behind other countries in the region and the world in this respect.

Moreover, the Committee notes that there are high rates of mortality and morbidity from cardiovascular and respiratory diseases and it has found no evidence of nationwide screening programmes for these diseases.

The Committee finally notes from the National Health Care Strategy 2011-2015 (Access to Quality Health Care) that one of the Government's public health policy objectives is to develop and implement population screening programmes for early detection of cancer and cardiovascular diseases and that it intends to develop mechanisms for the integration of such prevention measures into insurance schemes and public health care.

While acknowledging the Government's intention to develop screening programmes, the Committee considers that the information at its disposal is not sufficient to show that such programmes are used to the full to contribute to the health of the population.

### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 11§2 of the Charter on the ground that it has not been established that screening programmes are adequately used as a contribution to the health of the population.

## **Article 11 - Right to protection of health**

### *Paragraph 3 - Prevention of diseases and accidents*

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that adequate measures had been taken to ensure access to safe drinking water in rural areas (Conclusions 2013, Georgia).

The Committee recalls that having access to safe drinking water is central to living a life in dignity and upholding human rights. It also recalls that "under Article 11§3 of the Charter, health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action, and states must guarantee the best possible results in line with the available knowledge." (Conclusions XV-2, Denmark).

The report lists a number of resolutions concerning sanitation and hygiene adopted in 2014, including several pertaining to water, such as Regulation N58 of 15 January 2014 on potable water, Regulation N73 of 15 January 2014 on the water supply system, Regulation N62 of 15 January 2014 on disinfection of water supply facilities and Regulation N425 of 31 January 2014 on protection of surface water from pollution. However, no indication is given as to whether these resolutions specifically address the situation regarding access to safe drinking water in rural areas.

From WHO information (WHO/Europe, Situation assessment of small-scale water supplies in rural Georgia, Project Report, 2013) the Committee observes that about half of the Georgian population lives in rural areas and use water from small systems, such as local wells or springs. An assessment of the situation of small-scale water supplies in two pilot districts resulted *inter alia* in the following findings:

- a significant proportion of the water supplies showed microbial contamination. About two thirds of the water samples were non-compliant with the national standard for *Escherichia coli*, a microbial indicator signalling faecal contamination;
- standardized sanitary inspections revealed a number of risk factors potentially compromising the provision of safe drinking-water. They include lack of sanitary protection zones, poorly located on-site sanitation facilities and inadequately designed and maintained abstraction facilities;
- based on water quality and sanitary inspection findings, 40% and 24% of the investigated sites in Marneuli and Dusheti, respectively, could be categorized as at "high" or "very high" risk, requiring urgent attention in terms of improvement needs.

The Committee asks that the next report provide detailed and up-dated information on the situation as regards access to safe drinking water in rural areas as well as information on any measures taken (including the the above-mentioned Government resolutions, if relevant) and their impact on the situation. Meanwhile, the Committee reiterates its conclusion that the situation is not in conformity with the Charter as regards measures to ensure access to safe drinking water in rural areas.

### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 11§3 of the Charter on the ground that adequate measures have not been taken to ensure access to safe drinking water in rural areas.



## **Article 14 - Right to benefit from social services**

### *Paragraph 2 - Public participation in the establishment and maintenance of social services*

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Georgia in response to the conclusion that it had not been established that measures were taken to encourage individuals and voluntary organisations to participate in the establishment and running of social welfare services (Conclusions 2013, Georgia).

The Committee recalls that Article 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services (Conclusions 2005, Statement of Interpretation on Article 14§2). This does not imply a uniform model, and States may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The "individuals and voluntary or other organisations" referred to in paragraph 2 include, the voluntary sector (non-governmental organisations and other associations), private individuals, and private firms. Moreover, in order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms, an effective preventive and reparative supervisory system is required.

The report explains that in order to become a social services provider, it is necessary for an organization to meet certain criteria and be registered with the Ministry of Labour, Health and Social Affairs of Georgia. Registration criteria and conditions are determined by decree of the Minister of Labour, Health and Social Affairs, and they may vary according to the services in question. Compliance of service providers with the applicable standards is monitored by the Monitoring Unit of the Ministry of Labour, Health and Social Affairs.

Currently there are 45 NGOs registered as service providers for persons with disabilities. The Government also emphasises that persons with disabilities and their representative organizations are involved in the process of development of policy and programmes and in provision of social services for this target group. Mention is made of the State Coordination Council which is a permanent advisory body to the Government in the field of disability and the members of which consist of 10 representatives of persons with disabilities and 10 representatives of various ministries (ministers or deputy ministers) and also 2 representatives of the Parliament.

The Committee notes that the information provided mainly concerns social services for persons with disabilities and it therefore asks that the next report contain information on the participation of individuals and voluntary organisations in the establishment and running of social services for other groups such as children, the family, the elderly, young people with problems, young offenders, refugees, the homeless, alcohol and drug abusers, victims of domestic violence and former prisoners. It also wishes to receive up-dated information on the public and/or private funding set aside for encouraging such participation.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Georgia is in conformity with Article 14§2 of the Charter as regards measures taken to encourage individuals and voluntary organisations to participate in the establishment and running of social services.

## **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 Georgia.

### ***The legal status of the child***

In reply to the Committee's question in the previous conclusion (Conclusions 2011), the report states that Georgian legislation does not distinguish between children born in marriage and those born out of wedlock with respect to the protection of their rights or heritage and obligation to support.

The Committee further notes that according to the legislation, disclosure of the adoption secret is prohibited without consent of the biological parent, the adoptive parent and the adoptee, having reached the age of majority. At the request of the adoptive parent, the place, month and day of birth of the adoptee may be changed in order to secure the confidentiality of the adoption. The real place and date of birth of the adoptee shall be stored and may not be dissolved except when the adoptive parent wishes to do so, until the adoptee attains the age of majority.

### ***Protection from ill-treatment and abuse***

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as corporal punishment of children was not explicitly prohibited in the home. The Committee notes from another source (Global Initiative to end Corporal Punishment of Children) that prohibition is still to be achieved in the home, alternative care settings and schools.

According to the same source, in rejecting a recommendation to prohibit all corporal punishment made during the Universal Periodic Review of Georgia in 2011, the Government stated that existing legislation "provides for a blanket prohibition on all forms of corporal punishment, including directed against children" and "adequately protects children from any form of corporal punishment", and that Georgia therefore "does not intend to amend the applicable legislation".

The Committee recalls that under Article 17 of the Charter, the prohibition of any form of corporal punishment is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2). The Committee recalls its interpretation of Article 17 of the Charter as regards the corporal punishment of children laid down most recently in its decision in *World Organisation against Torture (OMCT) v. Portugal* (Complaint No. 34/2006, decision on the merits of 5 December 2006; §§19-21):

"To comply with Article 17, states' domestic law must prohibit and penalize all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.

The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

Moreover, states must act with due diligence to ensure that such violence is eliminated in practice."

The Committee has noted that there is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers, in particular, in this respect to the General Comments Nos. 8 and 13 of the Committee on the Rights of the Child (*Complaint No 93/2013 Association for the Protection of All Children (APPROACH) v. Ireland* , decision on the merits of 2 December 2014, §§45-47).

The Committee considers that in the absence of information regarding the specific legal basis for prohibition of all forms of corporal punishment in the home, in schools and in institutions, it considers that the situation is not in conformity with the Charter as it has not been established that such prohibition in the home, in schools and in institutions has a precise legislative basis.

### ***Rights of children in public care***

In its previous conclusion the Committee wished to be informed about the development of foster care and the numbers of children placed in foster care as opposed to institutions. It also asked what were the criteria for the restriction of custody or parental rights and what was the extent of such restrictions.

According to the report, the Civil Code defines the parental responsibilities and the legal basis for restriction of parental rights and responsibilities. The Law on Adoption and Foster Care regulates the alternative family type services, the issues of children deprived of parental care, who are permanently or temporarily left in state care. This law defines the categories of children, who might be placed in foster families, the basis and the procedure of placement of a child in a foster family and granting the status of a foster child, the rights and responsibilities of the competent bodies. The Law on Social Assistance defines the types of social assistance, such as subsistence allowance, reintegration allowance, reimbursement of foster care etc.

Specialised institutions provide services for vulnerable children and children living and/or working in streets. The terms and conditions for placement and withdrawal of a person in specialised institution is approved by the Order of the Minister of Labour, health and social affairs. This order also defines the categories of children believed to be deprived of parental care.

The Government approved the national child welfare action plan for 2012/2015 and the Coordination Council was created for the effective implementation of the Action Plan. The action plan envisaging the implementation of the following programmes: provision of food to children at risk of abandonment; early childhood development programme, children rehabilitation programme, day care centre programme, mother and child shelter aiming at prevention of infant abandonment and empowering the biological family of the child. Foster care programme is aimed at upbringing children in the family environment. Small Group homes aims at placement of children in a family type environment.

The Guardianship and Custody Agency considers child's placement in a foster care as the preferred alternative. The placement of a child in state care services (large size institutions) has been reduced and the placement in foster care has been increased.

The following obligation is defined for the service providers according to the child care standards (Standard N10, Feedback and Protest Procedures):•

- to establish a simple and clear feedback and protest procedure, which is provided by the regulations and is known for the beneficiaries;
- to create conditions within the service, in order to give opportunity to the beneficiary/their legal representatives to provide anonymous feedback regarding the service structure and content (e.g. there is a questionnaire, feedback book or other means of expressing anonymous comments).
- to consider the opinions and views of beneficiary while revision of the issues related with them and provide their inclusion in decision-making process;

A social worker carries out the assessment of a child and his/her biological family in accordance with the approved form, before child placement in foster care. On the basis of the assessment, he/she develops an individual development plan of a child and implements monitoring over the fulfilment of the plan, supervises the foster child's living conditions,

upbringing, development, education, health condition, also the fulfilment of their obligations by the foster mother/father.

The Programme Monitoring Division, operating in the Ministry of Labour, Health and Social Affairs of Georgia, provides for control over the fulfilment of the requirements by the child care services, as defined by the child care standards and prepares the relevant recommendations for the performer. According to the report in 2013, 40 institutions (24-hour-a-day service – 31, day care centre – 16) were monitored, recommendations were prepared according to the separate standards and the service providers were given the time to correct the identified deficiencies.

The Committee takes note of the number of children placed in foster care, small group homes and large-sized institutions. It notes that there has been a considerable decrease in these numbers as concerns large-sized institutions, from 1,005 in 2010 to 132 in 2013, while placement in foster care has gone up from 509 in 2010 to 1,094 in 2013.

The Civil Code defines regulations relating to restricting, suspending and depriving from the rights and duties of parents. As regards restriction of parental rights, these can only be restricted by a court. The court may suspend the parental rights until dispute is resolved. The suspension of rights takes place, inter alia, when abandoning a child by parents' own action or inaction, as well as in case of domestic violence. Deprivation of parental rights is an extraordinary measure which is imposed by the court if it finds it established that a parent systematically evades performance of the duty of rearing the child or abuses parental rights.

Parental rights may be restored only in a court proceeding, initiated upon the application of the child, one of the parents or a guardianship and custody agency. The decision taken by the court of first instance can be appealed by the parties. The Committee asks whether the vulnerable financial situation of a family can become the sole ground for suspension or deprivation of parental rights.

### ***Right to education***

The Committee recalls that Georgia has not accepted Article 17§2 of the Charter and it therefore examines the issues relating to education in this provision.

In its previous conclusion the Committee asked whether children from vulnerable families receive any assistance to guarantee their effective access to free compulsory education.

According to the report, the Law on General Education regulates the main objective of the Government policy in the field of general education. The state guarantees equal access to general education for everyone, the right to obtain general education near the place of residence to fully develop their personality and obtain the knowledge and skills that are necessary for equal opportunities. Primary and basic education is mandatory. The State finances 12 years of general education.

The Committee notes that text books were provided free of charge to children from socially vulnerable families and large families. Since 2013 all pupils in public schools, including vulnerable families of private schools receive free text books. The Committee notes that since 2013 measures have been taken to improve access to schools for pupils who have to walk long distances to schools by providing them with transport.

The Committee recalls that as regards education of children of Roma origin, even though educational policies for Roma children may be accompanied by flexible structures to meet the diversity of the group and may take into account the fact some groups lead an itinerant or semi-itinerant lifestyle, there should be no separate schools for Roma children. Special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group (Conclusions 2011, Slovakia). The Committee wishes to be informed about measures taken to facilitate access to education for Roma children.

The Committee also asks what measures are taken to facilitate access to mainstream education for children with disabilities.

### ***Young offenders***

In reply to the Committee's questions in the previous conclusion, the report states that the maximum term of pre-trial detention of a minor is 9 months. The age of criminal responsibility is 14 years. Minors in pre-trial detention are placed in two facilities, isolated from adults. Convicted minors are placed in a separate Minor Rehabilitation Facility. They are provided with education appropriate to the general education standards. Education in the Minor Rehabilitation Facility is provided by the Ministry of Education. The Committee asks what is the maximum length of a prison sentence that may be imposed on a juvenile.

The Committee also wishes to be informed of preventive, rehabilitation and integration measures that are taken with regard to the young offenders.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to foreign children present in the territory in an irregular manner to protect them against negligence, violence or exploitation.

### ***Conclusion***

The Committee concludes that the situation in Georgia is not in conformity with Article 17§1 of the Charter on the ground that it has not been established that the prohibition of all forms of corporal punishment in the home, in schools and in institutions has a precise legislative basis.

## **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 Georgia.

### ***Migration trends***

Georgia is mainly a source country for migration. Significant numbers of people of Georgian origin reside in Russia, however, the vast majority are not citizens of Georgia. In 2002 roughly 50,000 Georgian citizens resided in Russia. In 2012 there were also 17,000 Georgians in Germany, with significant numbers also living in Greece and Spain. According to the 2002 Georgian Census, economic reasons accounted for 78.4% of all emigration.

The vast majority of immigrants living in Georgia are from former Soviet countries, and especially Russia and Ukraine. Recently, temporary migration has been more popular than permanent, with 6382 temporary permits issued in 2010 and 2011, compared to 3162 permanent residence permits. During the reference period, a large proportion of temporary migrants arrived from Turkey.

Georgia is primarily a source, and to some extent a transit country, for trafficking in human beings. The Georgian victims are trafficked primarily to Turkey and to a much lesser extent to the United Arab Emirates while foreign victims from Central Asia are known to have been trafficked through Georgia to the United Arab Emirates and Turkey. In 2006, Georgia adopted the Law on the Fight against Trafficking in Persons, developed and established a national victim referral mechanism, and established the Permanent Anti-Trafficking Coordination Council, which adopted the National Action Plan for 2007-2008.

### ***Change in policy and the legal framework***

The report states that the new Legal Status of Aliens Act (2012) is aimed at facilitating international cooperation in preventing illegal migration. It was adopted during the reference period, however only came into force in September 2014.

According to the First Progress Report of the EU Commission on the implementation of the Action Plan on Visa Liberalisation (published 2013), the institutional framework for coordination of migration policy is well developed. In 2010, the State Commission on Migration Issues was created. The Commission is composed of representatives of 12 competent ministries and is responsible for the overall coordination of the migration management.

According to the International Organization for Migration (IOM), under the 2006 Law on Foreigners, migrants who enter the country legally (with a valid visa or exempted from visa) can work in Georgia even without a work permit.

Starting from 15 December 2013 onwards, the IOM is implementing a new project to support Georgia in border and migration management and assist with capacity development in the field, in line with relevant EU-Georgia Agreements and action plans, in particular the Visa Liberalization Action Plan. The project is funded by the European Union and will continue until June 2017. It focuses on four main areas:

- Integrated border management;
- Combating irregular migration;
- Reintegration assistance to returned Georgian migrants;
- Migration data management system development.

The Committee notes that under Section 35 of the new Act on the Legal Status of Foreigners, foreign citizens may not establish or become members of political associations in Georgia.

### ***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 notes that the government runs a website (<http://migration.commission.ge/>) which provides information for emigrants from Georgia in both Georgian and English. Specific information on various major countries of destination is provided.

The report states that in 2013, for the purposes of employment support an interactive web-portal ([worknet.gov.ge](http://worknet.gov.ge)) was created by Ministry of Labour, Health and Social Affairs.

The job-seekers including migrants may register on the web-portal, which is the part of the Labour Market Information System (LMIS). The registration in the system is voluntary and free.

With regard to gaining residence in Georgia, the abovementioned state website also provides details of the process required to acquire a permit. It includes copies of the relevant legislation in Georgian and English.

Concern has been raised by Transparency International over reforms to the procedures for application for visas and residence permits. The Committee notes that the main areas of concern are the accessibility of application centres and the discretionary nature of the decision making process. The Committee asks whether guidelines exist for officials on how to apply the criteria for admission, and if so wishes to receive details of such guidelines. It also asks what steps are taken to ensure that people wishing to enter or remain in Georgia are able to have access to the procedure for applications.

The report states that the established IOM network of six Mobility Centres with countrywide coverage represents an efficient mechanism for comprehensive services aimed at diverse groups of population such as IDPs, returned migrants, vulnerable social groups prone to migration, migrant communities and mobile populations. The IOM is also involved in the development of specially designed vocational education programmes in line with labour market demands.

The report states that returning Georgians are provided with assistance including training, medical aid and temporary accommodation. The Committee asks whether arrival assistance is available to non-Georgian migrants.

The committee considers that the assistance to emigrants provided by the government, along with the network of independent assistance, constitutes sufficient measures concerning the provision of adequate and free services for migrants, and in this regard the situation in Georgia is in conformity with Article 19§1 of the Charter.

### ***Measures against misleading propaganda relating to emigration and immigration***

The Committee notes from the Third Report of the European Commission against Racism and Intolerance (ECRI) (adopted 2010) that there is an Ombudsman (the 'Public Defender') to monitor intolerance and defend the rights of minority groups in Georgia. It asks for further information on the activities of the Ombudsman, particularly in relation to migrants.

With regard to the training of police forces and other public authorities, the Committee notes that under the aegis of the EU-funded project "Reinforcing the Capacities of the Government of Georgia in Border and Migration Management", the IOM conducted interview skills training

for 22 Patrol Police officers from Tbilisi International Airport, Red Bridge, Sadakhlo and Kazbegi border checkpoints from 4-5 March 2015.

The Committee notes from the abovementioned European Commission First Progress Report that the curricula of the training for Border Police and Patrol Police officers are based on the recommendations of EU- and US experts. Specialised, ad hoc training is provided on subjects such as border control management, irregular migration and organised crime, trafficking, corruption, and forged documents. The MIA Academy also offers courses on the Police Code of Ethics and Public-oriented Police, which cover relations with national, racial and religious minorities. In order to support on-the-job training, the Academy has created mobile training units.

From the beginning of 2013, the basic training courses for the officers of Patrol Police and Border Police have been extended in duration. Certain advanced training courses have been increased (inter alia for Border Police, human rights protection, fighting organised crime, asylum seekers and refugees, and corruption and malfeasance in office).

The Committee notes the concerns of ECRI in its abovementioned Third Report that in 2010, reports continued to mention the existence of stereotypes, prejudice and misconceptions towards minorities being expressed in particular by politicians, in the media and in school textbooks. Other groups, such as Chechens are also affected by negative profiling. The majority population remained insufficiently aware of cultural differences and the problem of discrimination.

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information, and of deterring the promulgation of discriminatory views. It considers that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.

The Committee notes from the abovementioned Third Report of ECRI that the Broadcasters' Code of Conduct, adopted in 2009, contains provisions prohibiting hate speech, and that broadcasters are under the duty to create public appellate bodies which can receive complaints from the public and take binding decisions in this field. The Committee notes however that these obligations had not been implemented at the time of that report, and asks for updated information in this regard.

The report submitted by Georgia states that the Fighting against Trafficking Act stipulates that actions of the state in the area of avoidance of human trafficking shall include: reduction of threat of illegal labour migration and human trafficking through providing informative – educational activities, establishment of hot-lines in relevant state institutions, elaboration of educational programs for society, provision of information on legal labour and avoidance of human trafficking of Georgian citizens abroad, as well as protection, assistance and rehabilitation centres for the victims of trafficking, border check points and consulate departments.

According to the report, the Georgian Permanent Interagency Coordination Council for Carrying out Measures against Trafficking in Persons coordinates the arrangement of public awareness activities, including training, establishment of hot-lines, elaboration of special curriculum, broadcasting of public service announcements and TV and radio programs, preparation and dissemination of the print information material, public discussions on the issue of trafficking in persons, etc. The Committee requests that the next report provide full and up-to-date information concerning the concrete measures taken to implement the Fighting against Trafficking Act, and any statistics or other data available on the results of such activities.



The report provides no information relating to the Committee's question (Conclusions 2011) concerning the implementation of the National Concept and Action Plan for Tolerance and Civic Integration, nor other measures taken to counter misleading propaganda. As a result, the Committee finds that there is nothing to demonstrate that the measures taken to combat misleading propaganda are sufficient to conform with the Charter. The Committee recalls 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). According to the Conclusions of ECRI (adopted 2013), awareness-raising campaigns were launched in different regions of Georgia, such as Kvemo-Kartli, Samtskhe-Javakheti, Adjara, Imereti, Guria and Gori, to inform the local population about important aspects of the repatriation process. The Committee notes the observation of ECRI that these campaigns do not target the entire Georgian population. The Committee asks for complete and up-to-date information on any awareness-raising campaigns related to migration and integration.

#### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 19§1 of the Charter on the ground that it has not been established that adequate measures have been taken against misleading propaganda in relation to emigration and immigration.

## **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 Georgia.

### ***Departure, journey and reception of 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 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).

Reception means the period of weeks which follows immediately from their 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). The Committee asks what provision is made, whether financial or otherwise, for the assistance of persons in need with basic needs such as food, shelter and healthcare.

The report states that migrants residing permanently in Georgia shall have the same right to assistance, pension and other forms of social security as citizens of Georgia. Social security of migrants residing temporarily in Georgia and stateless persons shall be determined in compliance with the Georgian legislation and international treaties. The Georgian law on social assistance applies to persons needing social care, impoverished families and homeless persons permanently residing in Georgia on a legal basis. Accordingly, migrants in Georgia having a legal basis of stay, in the same situation, have a right to receive the assistance intended for persons living in poverty. The Committee asks whether these provisions also apply upon arrival to migrants within Georgia who are in need of social care, impoverished or homeless. In the meantime, the Committee reserves its position on this matter.

The Committee notes from the EU Commission's First Progress Report on the implementation of the Action Plan on Visa Liberalisation (Published 2013) that reception of asylum seekers takes place in a dedicated reception centre. Special attention is paid to the needs of vulnerable groups. Interpretation services are available in the centre. Medical care is provided by the public health network and financed by the state budget. It also notes that refugees and persons granted humanitarian status are entitled to accommodation in a reception centre for a period of three months after being granted the status, access to education, and medical and social assistance. Access to language courses (both of Georgian, and foreign languages) and education is also provided.

The Committee considers that the legal framework for Refugees is in conformity with the Charter. The Committee notes that according to the 2010 Report of the European Commission against Racism and Intolerance on Georgia, in July 2009, there were 998 persons with refugee status, out of whom 975 were of Russian nationality. It asks that the next report contain up-to-date information concerning the implementation of the abovementioned entitlements, including details of the measures taken and any statistics.

With regard to healthcare provision upon arrival, the report states that Law on Legal Status of Foreigners of Georgia stipulates that migrants in Georgia shall enjoy the right to health protection in compliance with the Georgian legislation. The Committee asks what criteria apply for eligibility to receive health protection. In particular, it wishes to know whether urgent healthcare is provided to all persons including migrant workers on the territory of Georgia.

The report states that a number of larger employers provide accommodation for their workers. The Committee wishes to know what requirements are imposed upon such

employers to ensure the health and safety of those employees, and whether there is any mechanism for monitoring and dealing with complaints over hygiene conditions.

The Committee notes from the report that in the context of returning Georgian citizens, 101 families were provided with temporary accommodation. The Committee asks whether such assistance may also be provided to migrant workers from other States. The Committee wishes to receive further information on the criteria for provision of temporary shelter, its purpose, and any other assistance which is provided to migrants in respect of basic needs such as food and shelter.

***Services for health, medical attention and hygienic conditions during 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 requests details of any measures taken in regard of collective recruitment, should it take place.

*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 Georgia.

The report refers only to a bilateral agreement signed in 2013 regarding circular labour migration with France. It states that 19 other countries have also signalled willingness to conclude similar agreements. The Committee considers, however, that this information is not pertinent to the subject matter of Article 19§3, which specifically covers the eventuality of cooperation between social services. The Committee recalls that 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).

The Committee recalls from its previous conclusion (Conclusions 2011) that the International Organisation for Migration co-operates with the Georgian authorities with regard to case-by-case assisted voluntary returns from Belgium, Belarus, the Czech Republic, Ireland, Latvia, the Netherlands, Poland, Slovak Republic, Switzerland and the United-Kingdom. It also recalls that in November 2009, Georgia signed a Joint Declaration on a Mobility Partnership the European Community and sixteen EU Member States. This document is conceived as a long term framework based on the existing relationship between Georgia and the European Community and its Member States in the framework of their Partnership and Cooperation Agreement and the European Neighbourhood Policy. The Mobility Partnership is aimed at strengthening the Georgian institutional capacity to manage migration, in particular through deepening inter-agency cooperation and coordination. The Committee asks for updated information on the implementation of this partnership agreement.

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). 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.

Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (Conclusions XV-1 (2000), Finland).

The Committee deferred its previous conclusion, pending receipt of information concerning any measures taken to establish contact and cooperation between social services in other countries. As the report does not contain this information, the Committee considers that the information provided in the report is not sufficient to enable it to assess the situation. It therefore finds that it has not been established that the situation is in conformity with Article 19§3 of the Charter.

### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 19§3 of the Charter on the ground that it has not been established that appropriate co-operation between social services, public and private, in emigration and immigration countries is sufficiently 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 Georgia.

The Committee recalls from its previous conclusion (Conclusions 2011) that the Constitution provides that aliens and stateless persons residing in Georgia shall have the rights and obligations equal to the rights of nationals unless otherwise provided by the Constitution and the law. The Law on Legal Status of Aliens (2006) stipulates that migrants shall be equal before the law irrespective, inter alia, of their origin, social and material status, race, nationality, language, field of activity, and other conditions. Georgia shall guarantee the protection of the rights and freedoms of foreigners on its territory.

### ***Remuneration and other employment and working conditions***

The report states that under the new Labour Code, any form of discrimination based upon race, skin colour, language, ethnicity or social status, nationality, origin, material status or position, place of residence, age, sex, sexual orientation, marital status, handicap, religious, public, political or other affiliation, including affiliation to trade unions, political or other opinions is prohibited in labour and pre-contractual relations.

In 2013 the Legal Status of Foreigners Act was amended. According to Section 25 of this law, migrants in Georgia shall have the same rights, freedoms and obligations as citizens. They shall be equal before the law regardless of origin, social and material status, race, nationality, language, religion, political or other beliefs, etc.

The Committee asks that the next report provide detailed information on the implementation of the Labour Code. It notes that during the reference period, there was no labour inspection in Georgia. It further notes that in 2015, outside the reference period, Resolution No 249 (2005) of the Government of Georgia on Approving the Statute of the Ministry of Labour, Health and Social Affairs of Georgia was amended, introducing the Labour Inspectorate Department. The Committee wishes to be kept informed on this development and asks what bodies are responsible for monitoring labour conditions of migrants. Furthermore, it asks whether migrants have the right to bring claims against employers who fail to respect their rights, and asks that the report provide statistics or other information on the enforcement of these rights.

The report states that with the purpose of the regulation of labour migration processes the State Migration Commission was established in 2010.

It indicates that in 2013 the Ministry of Labour, Health and Social Affairs of Georgia was entrusted to draft a new Labour Migration Law. The Committee requests that the next report provide full and updated information on the content and implementation of any amendments to current legislation.

In the meantime, the Committee considers that the information provided in the report does not permit it to assess the situation properly. It 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 and promotion" (Conclusions VII (1981), United-Kingdom). The Committee considers that it has not been demonstrated that treatment of migrant workers not less favourable than that of citizens is guaranteed in practice.

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

Section 35 of the Legal Status of Foreigners' Act provides that foreigners in Georgia shall have the same right to establish public associations, become members of trade unions, scientific, cultural, sports associations, and other public organisations as the citizens of Georgia, unless this contradicts the byelaws of such organisations and the legislation of

Georgia. The Committee asks whether there are any situations in which migrants may be prohibited from founding or joining trade unions or other associations in a discriminatory manner, and whether trade unions are permitted to discriminate within their own byelaws.

Section 43 of the abovementioned Act provides that aliens shall have the right to assembly and manifestation under the legislation of Georgia. The report states that foreigners have rights equal to citizens to participate in collective bargaining and receive benefits of these processes.

The Committee asks what body is responsible for dealing with cases of discrimination in relation to membership and activities of trade unions, and for details of any complaints referring to such issues.

The Committee refers to its Statement of Interpretation in the General Introduction and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

### ***Accommodation***

The Committee recalls that the undertaking of States under this sub-heading is to 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). There must be no legal or *de facto* restrictions on home-buying, access to subsidised housing or housing aids, such as loans or other allowances" (Conclusions IV (1975), Norway – Conclusions III (1973), Italy).

In its previous conclusion (Conclusions 2011) the Committee asked for information proving the absence of discrimination in practice of migrant workers with regard to accommodation or on any possible measure taken to remedy cases of discrimination. Despite the Committee's request the report provides no such information. The Committee therefore finds the situation not to be in conformity with the Charter on the ground that it has not been established that migrant workers lawfully resident in the country are treated no less favourably than nationals with regard to accommodation.

### ***Conclusion***

The Committee concludes that the situation in Georgia is not in conformity with Article 19§4 of the Charter on the ground that it has not been established that migrant workers lawfully resident in the country are treated not less favourably than nationals with regard to remuneration and working conditions, or accommodation.

**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 Georgia.

According to Article 39 of the Tax Code, foreign nationals residing Georgia shall be taxed in the same manner as citizens of Georgia, unless otherwise prescribed by the legislation of Georgia.

The report states that the Tax code provides for an income tax rate of 20% for both residents and non-residents.

Migrants may carry out investment and business activity in compliance with the Georgian legislation. In this case they shall have the same rights and obligations as citizens of Georgia.

The tax ombudsman supervises the protection of taxpayers' rights and legal interests on the territory of Georgia, and assists in claims over violations. The tax ombudsman reviews the statements and claims of the persons, regarding tax and violations.

The Committee asks what contributions are payable in relation to employment, and whether migrants are treated equally with nationals.

*Conclusion*

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

**Article 19 - Right of migrant workers and their families to protection and assistance**  
*Paragraph 6 - Family reunion*

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

**Scope**

Section 2 of the Legal Status of Aliens Act defines a family member as a "spouse, child, parent of an alien or of a person having the status of stateless person in Georgia, as well as a person under guardianship or custody of an alien or of a person having a status of stateless person in Georgia, and/or a fully dependent minor, and a legally incompetent or disabled person". The report states that such persons may receive a residence permit for family reunification purposes.

**Conditions governing family reunion**

Section 15(c) of the Legal Status of Aliens Act provides that a residence permit for the purpose of family reunification shall be issued to family members of an alien holding a residence permit.

Section 17(10) says that an application for a residence permit shall be considered under the procedure established by the government. The Committee previously asked whether the right to family reunion is subject to discretion (Conclusions 2011). It notes that there is a discrepancy between the English language version of the legislation available online, which states that a residence permit "shall" be issued, and the report that states that it "may" be issued. It notes also that Transparency International ("Problems persist with Georgian immigration policy", 26 February 2015, available at: <http://www.transparency.ge/en/node/5063>) identified a great deal of discretion in the process in its study of the new regulations. In order to clarify the situation, the Committee asks for a complete explanation of the procedure referred to in article 17(10) concerning the decision making process.

The Committee also notes that under the abovementioned Act, an alien may be denied a residence permit in Georgia if there is "a decision of an authorised body on the advisability of his/her residence in Georgia with regard to safeguarding state security and/or public safety interests" (Section 18(1)(a)). The Committee notes the concerns of Transparency International that such decisions of the authorised body are classified and therefore difficult to challenge. It asks what bodies are authorised to take such decisions and what types of consideration such a decision could take into account. Furthermore it asks for details of the procedure used by the decision maker determining, once a decision on advisability is transmitted to them, whether a permit may be issued.

With respect to conditions and restrictions on exercising the right to family reunion, 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 addition, the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of interpretation on Article 19§6).

The Committee acknowledges that States may take measures to encourage the integration of migrant workers and their family members. It notes the importance of such measures in promoting economic and social cohesion. However, the Committee considers that requirements that family members pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may impede rather



than facilitate family reunion and therefore are contrary to Article 19§6 of the Charter where they:

a) have the potential effect of denying entry or the right to remain to family members of a migrant worker, or

b) otherwise deprive the right guaranteed under Article 19§6 of its substance, for example by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments. (Statement of interpretation on Article 19§6, General introduction to Conclusions 2015).

States may require a certain length of residence of migrant workers before their family can join them. A period of one year is acceptable under the Charter, but a longer period is considered excessive (Conclusion 2011, Statement of interpretation on Article 19§6).

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee therefore asks whether there are any requirements as to health, means, accommodation, language skills, or time limits prior to eligibility for family reunion, and if so, it requests a full description thereof.

The Committee considers 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. It notes that Section 17(9) of the abovementioned Act gives a right to appeal over decisions concerning residence permits, and asks for further information and statistics concerning this process.

The Committee previously requested a full and up-to-date description concerning the practical implementation of the legal framework on family reunion (Conclusions 2011). It also requested pertinent figures and examples for illustration. Despite describing briefly the provisions of the new Legal Status of Aliens Act, the report does not provide any of the details requested in the Committee's previous conclusion. As such, the Committee considers that the information provided in the report is not sufficient to enable it to assess the situation properly, and accordingly concludes that it has not been established that the situation is in conformity with the Charter.

#### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 19§6 of the Charter on the ground that it has not been established that the State facilitates as far as possible the reunion of the families of foreign workers.

## **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 Georgia.

Article 41 of the Legal Status of Aliens Act provides that foreign nationals in Georgia, regardless of their legal status, may apply to the courts and other state agencies to protect their personal, property, and other rights. In legal proceedings foreign nationals shall have the same procedural rights as citizens of Georgia. Foreign nationals may apply to a diplomatic mission or a consular office of the state of their citizenship or permanent residence or of the state that is authorised to protect their rights and legitimate interests.

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

The report does not mention anything regarding legal aid or interpretation services. The Committee notes, however, the existence of the Legal Aid Service, which provides free advocacy service in criminal cases and certain civil and administrative cases such as social protection and family law, if either the accused is insolvent and requests a lawyer, or the case belongs to the category of compulsory defence. Examples of compulsory defence in criminal trials include if the defendant is a minor, and where he or she does not know the language of criminal proceeding. Insolvent persons are those registered on the database of socially vulnerable families. Exceptionally, persons not so registered can be awarded legal aid pursuant to Decision of the Legal Aid Council No. 10 of 11 July 2014, if they are in socio-economic need. The Committee understands that migrants are subject to the same criteria as nationals and can therefore benefit from the provision of legal aid where the interests of justice require. While noting that counsel may be provided in cases where the defendant does not understand the language of proceedings, the Committee asks whether the provision of assistance extends to interpretation so that the litigant is fully aware of the situation. In the meantime, the Committee concludes that the situation in Georgia is in conformity with the Charter.

The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid assistance.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Georgia is in conformity with Article 19§7 of the Charter.

**Article 19 - Right of migrant workers and their families to protection and assistance**  
*Paragraph 8 - Guarantees concerning deportation*

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

The report states that under the Legal Status of Aliens Act, Section 51.1, a foreign national may be removed from Georgia:

- a. if he/she has illegally entered Georgia;
- b. there are no legal grounds for his/her further stay in Georgia;
- c. his/her stay in Georgia is contrary to the state security and/or public order;
- d. his/her removal is necessary for protecting the health, rights, and legitimate interests of citizens of Georgia and of other individuals lawfully staying in Georgia;
- e. he/she repeatedly breaches the legislation of Georgia;
- f. he/she has obtained legal grounds for entry or stay in Georgia through forged or invalid documents;
- g. after he/she completes serving the sentence, if he/she has committed a premeditated crime for which he/she was sentenced to more than one year of imprisonment;
- h. before he/she completes serving the sentence, if he/she has been given a non-custodial sentence, or before the expiry of the probation period, if he/she has been given a conditional sentence.

The Committee notes that paragraph 1(a) and (b) of Section 51 shall not apply to a person during the course of the administrative procedure for determining the status of a stateless person carried out by the Agency. Furthermore, any stateless person may be removed from Georgia only in the circumstances prescribed by paragraph 1(c).

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' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of Interpretation on Article 19§8, Conclusions 2015).

The Committee previously asked for confirmation whether the sections corresponding to articles 51.1 c), d), e) and g) were interpreted in conformity with the requirements of Article 19§8 of the Charter (Conclusions 2011). The report does not provide information in this regard. The Committee reiterates its question and asks specifically whether following the adoption of the new Legal Status of Aliens Act, decisions under Section 51.1(c) concerning public order, 51.1(d) concerning the rights or legitimate interests of citizens, and 51.1(e) concerning repeated breach of the law and 51.1(g) and 51.1(h) concerning sentences for criminal behaviour take account of all aspects of the non-national's behaviour, as required by Article 19§8 of the Charter.

The Committee furthermore recalls that risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment (Conclusions V (1977), Germany). It reiterates its question

whether Section 51.1(d) concerning the protection of health is interpreted and applied in conformity with the requirements of the Charter.

The Committee also asked (Conclusions 2011) who takes the decision to expel a migrant worker and whether there is a right of appeal to a court or other independent body. The report does not answer this question. However, Section 53 of the Legal Status of Aliens Act provides certain details of the procedure. This states that the court shall make a decision on removing foreign nationals from Georgia (Section 53.1). It also provides that an authorised body of the Ministry of Internal Affairs (MIA) shall consider the issue of removing a foreign national from Georgia within 10 business days after detecting the grounds for removal and shall decide according to the legislation whether to deport, refuse deportation, or defer deportation (Section 53.2). The Committee therefore understands that both a court and an authorised body can take a decision to order the deportation of a foreigner. It notes that under Ordinance No. 525 on approving the procedures for removing foreign nationals from Georgia, the MIA shall itself consider removal under paragraphs 51.1(a) and (b). For other provisions it shall apply to a court for review of the matter. The Committee notes that according to the abovementioned Ordinance, the MIA must consider the removal or apply to a court within 10 days of discovering grounds for removal. It asks what procedures apply beyond this time limit.

The Committee notes that according to Section 53.4, when making a decision on removing aliens from Georgia, the relevant decision-making body shall take into account:

- a. the duration of an alien's lawful residence in Georgia, his/her personal, social, economic and other ties with Georgia;
- b. the principle of family unity, implications for an alien's family or for individuals permanently residing with him/her;
- c. an alien's social, economic and other links with the receiving country.

The Committee recalls that States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake (Conclusions V (1977), United Kingdom). The Committee notes that the relevant decision-making body shall be obliged to present the foreign national to be removed with a substantiated decision on his/her removal (Section 53.3). It notes that under Section 56 there is statutory provision for an appeal to be made 'in the manner prescribed by the legislation of Georgia' within 10 days of being notified of the removal decision. It asks whether such an appeal procedure applies following the decisions of both a court and the MIA, and requests that the next report provide detailed information and any available statistics on such appeals processes.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Georgia is in conformity with Article 19§8 of the Charter.

**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 Georgia.

The report states that Georgia does not impose any limitations on capital repatriation, and it is not subject to taxation.

The National Bank is permitted by the National Bank Organic Law to supervise remittances for the purpose of tackling counterfeit money flow. If the transaction exceeds a specific amount, the Bank is obliged to request copies of documents detailing the purpose of the transaction.

With reference to its Statement of Interpretation on Article 19§9 (Conclusions 2011), the Committee asks whether there are any restrictions on the transfer of the movable property of migrant workers.

*Conclusion*

The Committee concludes that the situation in Georgia is in conformity with Article 19§9 of the Charter.

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

### *Paragraph 10 - Equal treatment for the self-employed*

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

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.

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

The Committee has found the situation in Georgia not to be in conformity with Articles 19§1, 19§3, 19§4, 19§6 and 19§11. Under Article 19§4, the reasoning of the Committee was that the information available did not establish that the situation was in conformity with the Charter, and the Committee notes that this same issue concerns also the situation with regard to self-employed migrants. Accordingly, the Committee concludes that the situation in Georgia is not in conformity with Article 19§10.

### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 19§10 of the Charter as the grounds of non-conformity under Articles 19§1, 19§3, 19§4, 19§6 and 19§11 apply also to self-employed migrants.

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

### *Paragraph 11 - Teaching language of host state*

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

The report states that migrants in Georgia shall have the same right to education as citizens of Georgia, including instruction in the national language. The Committee asks on what basis foreign citizens have this right to education. The Committee notes from a study by the European University Institute (Gaga Gabrichidze, CARIM-East RR 2013/22, 'Integration of Migrants and Reintegration of Returnees in Georgia'), that migrants may receive financial assistance for their secondary education, but only on a basis of reciprocity with other States. The education of refugees and stateless persons is financed by the state on equal terms as for citizens.

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

The language of the host country is automatically taught to primary and secondary school students throughout the school curriculum but this is not enough to satisfy the obligations laid down by Article 19§11. The Committee considers that States must make special effort to set up additional assistance for children of immigrants who have not attended primary school right from the beginning and who therefore lag behind their fellow students who are nationals of the country. The Committee therefore wishes to know whether any special or extracurricular classes, or other forms of assistance, are provided to the children of migrant workers to enable them to learn the language and participate fully in their education.

The Committee further recalls that Article 19§11 requires that States shall encourage the teaching of the national language in the workplace, in the voluntary sector or in public establishments such as universities. It considers that a requirement to pay substantial fees is not in conformity with the Charter. States are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible (Conclusions 2011, Norway). The Committee therefore asks for information on any courses available to adult migrants to assist their learning, and what the costs are associated with such classes.

In its previous conclusion (Conclusions 2011), the Committee asked for information on programmes specifically aimed at teaching the national language to migrant workers and their families. Since the report does not provide any information concerning such measures, the Committee concludes that it has not been established that the situation is in conformity with Article 19§11 of the Charter.

### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 19§11 of the Charter on the ground that it has not been established that the State adequately promotes and facilitates the teaching of the national language to migrant workers and members of their families.

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

### *Paragraph 12 - Teaching mother tongue of migrant*

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

The report states that there are no special state programmes to promote the teaching of the migrant worker's native language because there are not many long-term migrant workers in Georgia.

The Committee notes from a study by the European University Institute (Gaga Gabrichidze, CARIM-East RR 2013/22, 'Integration of Migrants and Reintegration of Returnees in Georgia') that citizens of Georgia, whose native language is not Georgian, have the right to secondary education in their native language.

The Committee also notes that in an educational institution the language of teaching may be other foreign languages whenever so provided by an international agreement. According to the study, more than 400 minority language schools are financed by the state. The report states that there are foreign language schools where education is available in Ukrainian, Armenian, Azerbaijani, Russian, English and other languages. The Committee asks whether these schools can also be accessed by the children of migrant workers. It asks for any available statistics on the number of children enrolled in such schools.

The Committee also notes from the information provided by the representative of Georgia to the Governmental Committee (Report concerning Conclusions 2011, §578) that Georgia promotes the establishment of diaspora organisations, which assist in maintaining the mother tongue and native culture of migrant workers. The Committee requests further information concerning such organisations, including examples.

The Committee recalls that the undertaking of States under this provision is to promote and facilitate the teaching, in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory (Conclusions 2002, Italy). States should promote and facilitate the teaching of the languages most represented among the migrants present on their territories within their school systems or in other contexts such as voluntary associations or non-governmental organisations (Conclusions 2011, Statement of interpretation on Article 19§12). The Committee notes that the main countries of origin for migrants include Russia, Ukraine and Armenia. The Committee asks for further information and statistics concerning any schools which provide education in a language other than Georgian. It asks whether the children of migrants have access to multilingual education, and on what basis. It asks what steps that government has taken to facilitate the access of migrants' children to these schools. Should the information requested not be included in the next report, the Committee considers that there shall not be sufficient information to demonstrate that the situation is in conformity with Article 19§12 of the Charter. In the meantime, the Committee defers its conclusion.

### *Conclusion*

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



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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

In its previous conclusion the Committee asked whether there existed any vocational guidance, counselling, information and placement services for workers with family responsibilities.

The Committee recalls in this respect that under Article 27§1 of the Charter, if the standard employment services (those available to everyone) are well developed, the lack of extra services for people with family responsibilities cannot be regarded as a human rights violation (Conclusions 2003, Sweden).

According to the report, in 2013 the Government adopted the National Strategy and Action Plans (2013-2014) for Labour Market Formation. The Law on the State Budget 2014 contains the budget for the implementation of State training and retraining sector support programme. The practical implementation will be launched in 2015. The Committee notes that these measures fall outside the reference period. It wishes to be informed about their implementation.

Since the report contains no information regarding vocational guidance, counselling, information and placement services for workers with family responsibilities in the reference period, the Committee considers that it has not been established that there are employment services providing vocational guidance, training and retraining of workers with family responsibilities. Therefore, the situation is not in conformity with the Charter.

### ***Conditions of employment, social security***

In its previous conclusion the Committee asked the next report to describe any working conditions foreseen in legislation that may facilitate the reconciliation of working and private life, such as part-time work, working from home or flexible working hours. In the absence of the information in this respect, the Committee concludes that it has not been established that the legislation provides for facilitation of reconciliation of working and private life for persons with family responsibilities.

The Committee also asked whether workers on leave due to family responsibilities were entitled to social security benefits under the different schemes, in particular health care and whether periods of leave were taken into account for determining the right to pension and for calculating the amount of pension. In the absence of the reply, the Committee concludes that it has not been established that workers on parental leave maintain their social security rights.

### ***Child day care services and other childcare arrangements***

In its previous conclusion the Committee asked information on the coverage rate of children aged 0-6 years in childcare arrangements and child day care services.

According to the report the kindergartens are not-for-profit legal entities. Preschool institutions management agency is responsible for financing and educational programme and participates in all stages of functioning of kindergartens. Preschool education is completely decentralised. Local municipalities are in charge of funding and operating preschool education institutions. According to the report there are 1,259 preschool institutions in Georgia with a total of 116,575 places. In 2011/2012 academic year, 105,303 places were filled.

### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 27§1 of the Charter on the grounds that it has not been established that:

- there are employment services providing vocational guidance, training and retraining of workers with family responsibilities;
- the legislation provides for facilitation of reconciliation of working and private life for persons with family responsibilities;
- workers on parental leave maintain their social security rights.

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

### *Paragraph 2 - Parental leave*

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

The Committee notes that according to Article 27 of the Labour Code, as amended by Organic Law of Georgia No. 1393/2013, an employee (at her request) shall be granted maternity and child care leave of absence of 730 calendar days. 183 calendar days of maternity and child care leave of absence shall be paid. 200 calendar days shall be paid in the event of pregnancy complication or multiple births.

In its previous conclusion (Conclusions 2011) the Committee asked whether national regulations entitled men and women to an individual right to parental leave. The Committee recalls that under Article 27§2 of the Charter with a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided to each parent and at least some part of it should be non-transferable.

In the absence of a reply to the Committee's supplementary question in this regard, it considers that it has not been established that fathers have a right to use a part of parental leave provided by Article 27 of the Labour Code (730 days) on an individual, non-transferrable basis.

According to Article 30 of the Labour Code (extra child care leave of absence) at the request of employees, they shall be granted, at once or in parts but at least 2 weeks a year, an extra unpaid child care leave of absence of 12 weeks until the child turns five. Extra child care leave of absence may be granted to any person who actually takes care of the child.

As regards the remuneration of parental leave (be it continuation of pay or via social assistance/social security benefits), the Committee considers that it plays a vital role in the take up of childcare leave, in particular for fathers or lone parents. In the absence of a reply to the Committee's supplementary question, it considers that it has not been established that arrangements (i.e. benefits under social security or social assistance schemes) exist for remuneration of parental leave after 183 days or extra child care leave of absence.

### *Conclusion*

The Committee concludes that the situation in Georgia is not in conformity with Article 27§2 of the Charter on the grounds that:

- it has not been established that fathers have a right to use a part of parental leave on an individual, non-transferrable basis;
- it has not been established that arrangements (i.e. benefits under social security or social assistance schemes) exist for remuneration of parental leave (after 183 days) or extra child care leave of absence.

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

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

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

### ***Protection against dismissal***

In its previous conclusion (Conclusions 2011) the Committee asked for confirmation that both men and women workers were protected against dismissal on the ground of applying for, or taking, childcare leave.

According to the report, the Labour Code has been significantly amended to improve the protection of workers against dismissal. As for the legal safeguards in place to protect workers from unfair dismissal Article 37 of the Labour Code now provides an exhaustive list of lawful grounds for termination of labour agreements, such as economic reasons, misconduct, violation of the obligation under the labour contract etc.

Termination of labour relations shall be inadmissible during the period of maternity and child care leave of absence, newborn adoption leave of absence and extra child care leave of absence, except in the situations such as expiration of a labour agreement, completion of the work under the labour agreement, voluntary resignation of an employee, written agreement between the parties, gross violation or violation by an employee of his/her obligations, misconduct.

The Committee wishes to be informed of any relevant decisions delivered by competent national courts in this area.

### ***Effective remedies***

According to Article 38(8) of the Labour Code if the employer's decision to terminate the labour agreement is declared null and void by a court, the employer shall be obliged, under the court decision, to reinstate the person whose labour agreement was terminated, or to provide the person with an equal job or pay compensation as defined by the court.

The Committee recalls that 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 is 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 (Statement of Interpretation on Articles 8§2 and 27§3 (Conclusions 2011)).

The Committee understands that the law does not impose any ceiling to the compensation in discrimination cases. It asks whether this understanding is correct.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Georgia is in conformity with Article 27§3 of the Charter.



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**HUNGARY**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Hungary which ratified the Charter on 20 April 2009. The deadline for submitting the 5th report was 31 October 2014 and Hungary submitted it on 2 February 2015. Comments on the 5th report by NGOs were registered on 23 July 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report contains also information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information:

the right to social and medical assistance – adequate assistance for every person in need (Article 13§1)

the right to benefit from social services – promotion or provision of social services (Article 14§1)

Hungary has accepted all provisions from the above-mentioned group except Articles 7§2 to 10, 19, 27 and 31.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Hungary concern 11 situations and are as follows:

– 5 conclusions of conformity: Articles 8§2, 8§3, 8§4, 8§5 and 13§1

– 5 conclusions of non-conformity: Articles 7§1, 14§1, 16, 17§1 and 17§2

In respect of the other situation related to Article 8§1, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Hungary under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 16**

The Criminal Code, that entered into force on 1 July 2013, introduced the crime of "domestic violence".

#### **Article 17§1**

Pursuant to the legal provisions on asylum and child protection in effect from 1 May 2011, unaccompanied minors requesting their recognition shall be placed in child protection institutes under the legal regulations on child protection. As a result, the scope of the Child

Protection Act extends to unaccompanied minors requesting their recognition as well as children with an admitted status and children recognised as refugees or protected by the Hungarian authorities.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

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

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to just conditions of work – annual holiday with pay (Article 2§3)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 Hungary.

The Committee noted previously that the Labour Code established the minimum age of admission to employment at 16 (Conclusions 2011). It asked whether the law accepted any exceptions as to certain economic sectors or economic activities. The report indicates that the provisions of the Labour Code do not allow for exceptions as to certain activities or economic sectors and they apply to the employment of young persons under 18 within a non-employment relationship as well (Article 4 of the Labour Code).

The Committee noted previously that according to the Labour Code, young people under 18 may not be employed in work which may result in detrimental effects on their physical condition or development (Article 75§1). The report indicates that any person of at least 15 years of age subject to full-time education may enter into an employment relationship during school holidays. Subject to authorisation by the guardianship authority, young persons under 16 years of age may be employed in cultural, artistic, sports or advertising activities (Article 34§3 of the Labour Code). The Committee requested that the next report provided the list of jobs considered to be light work. The Committee also asked information on the rules governing the employment of young persons aged under 16 for the purposes of performance in cultural, artistic, sports or advertising activities.

The report indicates that there is no such list of jobs considered to be light. The Committee recalls that States are required to define the types of work which may be considered light, or at least to draw up a list of those that are not (International Commission of Jurists (CIJ) v Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §§29-31). The Committee considers that the situation is not in conformity with the Charter since the definition of light work is not sufficiently precise as there is no description of the types of work which may be considered light or a list of those which are not.

The Committee notes from the report that under Article 114(2) of the Labour Code, the daily working time of young workers is of eight hours, and the number of working hours performed under different employment relationships shall be summed up. The Committee asks whether the daily limit of 8 hours applies to light work performed by young workers under 15 of age, or otherwise what is the daily and weekly duration of light work allowed to young persons under 15 of age. The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015). Pending receipt of the information requested, the Committee reserves its position on this point.

The Committee previously asked up-to-date information on the activities of the Labour Inspectorate (Conclusions 2011). The report provides information on the inspections and findings of the Labour Inspectorate, supported by examples from practice. The Committee notes that the labour inspectors detected violations of the rules concerning daily and weekly working time for young workers and the employment of a young person between the age of 15 and 18 without the consent of his or her legal representative. Labour inspections were carried out especially in those sectors and fields where undeclared work is typical, such as seasonal agricultural work, tourism or construction. The report states that during the reference period the following number of cases of illegal child labour were identified: 37 in 2010, 2 in

2011, 5 in 2012 and 1 in 2013. The Committee requests that the next report provide information on the number and nature of violations detected and sanctions imposed.

In its previous conclusion (Conclusions 2011), the Committee asked information on the monitoring of work done at home. The report indicates that the Labour Safety Act covers all types of organised work, irrespective of organisational or ownership structure, with the exception of the residence of the employers' natural persons (other than the registered seat of a private entrepreneur).

The Committee recalls that work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28).

The Committee recalls that States are required to monitor the conditions under which work done at home is performed in practice (Conclusions 2006, General Introduction on Article 7§1). The Committee asks how the work done at home is monitored.

#### *Conclusion*

The Committee concludes that the situation in Hungary is not in conformity with Article 7§1 of the Charter on the ground that the definition of light work is not sufficiently precise.

## **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 Hungary.

### ***Right to maternity leave***

The report indicates that the Labour Code was amended with effect as from 1 July 2012, with a view, *inter alia*, of putting some provisions on parental leave in conformity with the relevant EU legislation. As regards maternity leave, under Article 127 of the new Labour Code, employed women remain entitled to 24 weeks leave, including up to four weeks prenatal leave and 20 weeks postnatal leave. The report indicates, however, that only two weeks leave are mandatory. Women employed in the public sector are also entitled to 24 weeks leave under Section 110(1) to (3) of the Public Service Officials Act (Act CXCIX of 2011, which entered into force on 1 March 2012). The Committee asks whether their mandatory leave is also two weeks. The Committee furthermore notes that Section 95(3) of the Armed Forces Act (Act XLIII of 1996) provides that the leave shall be no less than 6 weeks from the date of birth.

The Committee recalls its caselaw, according to which national law may permit women to opt for a maternity leave shorter than 14 weeks but in all cases there must be a compulsory period of postnatal leave of no less than six weeks which may not be waived by the woman concerned. Where compulsory leave is less than six weeks, there must be adequate legal safeguards fully protecting the right of employed women to choose freely when to return to work after childbirth – in particular, an adequate level of protection for women having recently given birth who wish to take the full maternity leave period.

In the light thereof, the Committee asks what legal safeguards exist to avoid any undue pressure on employees to shorten their maternity leave: for example, whether there is legislation against discrimination at work based on gender and family responsibilities; whether there is an agreement with social partners on the question of postnatal leave that protects the free choice of women, and whether collective agreements offer additional protection. In addition, it asks for information on the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave and what is the proportion of women taking less than 6 weeks postnatal leave). Until it has all the relevant information, it reserves its position on the matter. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity on this issue.

### ***Right to maternity benefits***

Under the Health Insurance Act (Act LXXXIII of 1997), as amended in 2009 (entered into force on 1 May 2010), pregnancy-confinement benefits are paid during the whole period of maternity leave (24 weeks) and their amount corresponds to 70% of the woman's previous year gross average daily wage, with no upper ceiling.

As from 2010, are entitled to these benefits the employees who have been insured at least 365 days during the previous two years before the birth, and the birth takes place while the person is insured, or within 42 calendar days of its expiry (28 days if the person receives sickness benefit – *Táppénz*), or while in receipt of accident benefit.

The Committee recalls that the right to benefit guaranteed by Article 8§1 of the Charter may be subject to conditions such as a minimum period of contribution and/or employment, as long as these conditions are reasonable; in particular, if qualifying periods are required, they should allow for some interruptions in the employment record (Statement of Interpretation, Conclusions 2015). In the light of the rather lengthy qualifying period under the Hungarian system, the Committee requests further information as to how such qualifying period is calculated and, in particular, whether interruptions in the employment record are taken in

account as contributory periods. It furthermore asks the next report to provide information on the situation of women who are employed but do not qualify for pregnancy-confinement benefits, in the light of the available statistical data, if any, on the proportion of women concerned and of information on the allowances available to them, in addition or instead of the child home care allowances (GYES – *Gyermekgondozasi segely*) which are available to uninsured women in an amount corresponding to that of the minimum old-age pension. It also asks whether the same regime applies to women employed in the public sector. Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity on this issue.

With reference to its abovementioned Statement of Interpretation, the Committee furthermore asks the next report to clarify whether the minimum rate of pregnancy-confinement benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

### *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 Hungary.

### ***Prohibition of dismissal***

In accordance with Article 65(3) of the new Labour Code which entered into force on 1 July 2012, it is forbidden to give notice of dismissal to a worker during pregnancy, during maternity leave as well as for up to six months from the beginning of a treatment related to human reproduction, provided that the employee has informed the employer of these circumstances. The report clarifies that during the reference period this protection applied only if the employee had informed the employer before the issuing of the dismissal notice, but this restrictive clause was later annulled by decision of the Constitutional Court in May 2014 (out of the reference period).

Under Article 78 of the Labour Code, both the employer and the employee can terminate employment without notice in the event that the other party a) wilfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship, or b) otherwise engages in conduct that would render the employment relationship impossible. The Committee previously found that these exceptions were in conformity with Article 8§2 of the Charter (Conclusions 2011).

As regards employees in the public sector, Section 70(1) of the Public Service Officials Act prohibits the employer to terminate the employment of public service officials during pregnancy or parental leave, provided that the employee had informed the employer of her pregnancy before the issuing of the dismissal notice. The Committee takes also note of the information provided in respect of employees of the Armed Forces: their service relationship cannot be terminated by exemption from work duty during pregnancy and the 3 months following the birth as well as during parental leave (Section 58(1) of the Armed Forces Act and Section 67(1) of the Private Soldiers Act). The Committee asks whether there are exceptions to the abovementioned rules in respect of employees of the public sector and armed forces.

### ***Redress in case of unlawful dismissal***

The report does not contain information as regards the redress available in case of unlawful dismissal under the new Labour Code 2012. The Committee notes however that Article 82 of the Code makes the employer liable for damages, in case of unlawful termination of employment. The Committee asks the next report to clarify whether there is a ceiling on compensation for unlawful dismissals. If so, it asks whether this upper limit covers compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation.

The Committee furthermore asks whether the entry into force of the Labour Code in 2012 or of any further legislation has involved any changes in the situation which it had previously assessed to be in conformity with Article 8§2 (Conclusions 2011). In particular the Committee asks whether it is still possible for the courts to order the employee's reinstatement in her post, in case of unlawful termination of employment. The Committee had also noted that, if the reinstatement was deemed impossible or the employee did not request it, the court could order the employer to pay no less than two and no more than twelve months' average earnings to the employee, in addition to the compensation for lost wages (and other emoluments) and any damages arising from such loss. It asks the next report to indicate whether there have been any changes to this situation.

As regards employees in the public sector, the report indicates that, in case of unlawful termination of the employment relationship, the legal remedies are different for civil servants (including public service administrators) and for government officials (including government administrators and professional managers). Pursuant to Section 190(2)(a) of the Public Service Official Act, government officials may turn to the Arbitration Commission for Government Officials and, on appeal, to the courts after the procedure with the Arbitration Commission has been completed. Civil servants, on the other hand, may turn directly to a court to enforce all their claims arising from public service relationship under Section 238(1) of the Public Service Officials Act. The Committee asks whether, in case of unlawful termination of employment relationship the victim is entitled to be reinstated, and whether there is adequate compensation in cases where reinstatement is not possible. It furthermore asks the next report to provide detailed information on the compensation that can be granted, in particular whether there is a ceiling on it and whether it covers both pecuniary and non-pecuniary damage.

#### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

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

Pursuant to Article 55(1) of the new Labour Code which entered into force on 1 July 2012, nursing employees are entitled to a one-hour nursing break twice a day during the first six months of the child and once a day during the following three months. These hours are regarded as working time and remunerated in the form of absentee pay in accordance with Article 146(3) of the 2012 Labour Code.

In response to the Committee's question, the report confirms that the same rules apply to employees of the public sector (sections 79 and 144(3) of the Public Service Officials Act) and to members of the armed forces (section 108(1) of the Private Soldiers Act).

### *Conclusion*

The Committee concludes that the situation in Hungary 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 Hungary.

It notes that new the Labour Code which entered into force as from 1 July 2012 prohibits women to perform night work – that is, work carried out between 10 p.m. and 6 a.m. (Article 89) – from the date of notification of pregnancy until their child is three years old (Article 113). The same rule applies to public service officials, pursuant to section 99(3) of the Public Service Officials Act. The Committee asks whether the abovementioned provisions cover all employees in the private and public sector. Furthermore, in view of the length of the prohibition the Committee asks whether there are any exceptions to it, for example in respect of certain professions. The Committee furthermore asks the next report to clarify whether the employed women concerned are transferred to daytime work until their child is three years old and what rules apply if such transfer is not possible.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Hungary is in conformity with Article 8§4 of the Charter.



## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

It notes that, although the legislation in force does not prohibit underground work of women in mines as such, the report refers to the restrictions set out in Decree No. 33/1998 (VI.24) by the Minister of Welfare, to the employment in activities involving exposure to the hazards listed in the Appendix 8 of the Decree (such as noise, vibration and dust, as well as arduous working conditions). The Committee recalls that under Article 8§5 of the Charter the national law must provide for the prohibition of employment of pregnant women, women who have recently given birth and women nursing their infants in underground work in mines (with the exception of women who occupy managerial posts and do not perform manual work; work in health and welfare services; spend brief training periods in underground sections of mines). It accordingly asks the next report to clarify what restrictions apply specifically to the employment in underground mines of women who are pregnant, have recently given birth or are nursing their infant.

The Committee also asks the next report to clarify which restrictions apply to the employment in the private as in the public sector of women who are pregnant, have recently given birth or are nursing their infant in activities involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents.

The Committee notes that, according to the report, the entry into force, on 1 July 2012, of a new Labour Code has not modified the situation which the Committee previously found to be in conformity with Article 8§5 of the Charter (Conclusions 2011). In particular, Article 60 of the Labour Code provides that a worker shall be offered a job fitting to her state of health if, according to a medical opinion, she's unable to work in her original position from the time the pregnancy is diagnosed till her child is one year old. The worker is entitled to the base wage normally paid for the job offered, which may not be less than her base wage as set out in her employment contract. If no other position appropriate to her medical condition is available, the worker at issue will be discharged from work duty. The base wage shall be payable for the duration of discharge, except if the job offered is refused without good reason. Similar rules apply to public service officers, pursuant to section 49 of the Public Service Officials Act.

The Committee asks the next report to clarify, in the light of the relevant case-law, how the national courts interpret the notion of "refusal without good reason" with reference to the transferral to another position of employees who are pregnant, have recently given birth or are breastfeeding. It also asks whether women transferred to another position or discharged from work duty for reasons related to maternity are entitled to return to their original post at the end of the protected period. Furthermore, it asks whether the abovementioned provisions of the Labour Code and the Public Service Officials Act cover all employees in the private and public sector.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Hungary is in conformity with Article 8§5 of the Charter.

## **Article 13 - Right to social and medical assistance**

### *Paragraph 1 - Adequate assistance for every person in need*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Hungary in response to the conclusion that it had not been established that social assistance was available to any person in need (Conclusions 2013, Hungary).

The Committee recalls that under Article 13§1 of the Charter the system of social assistance must be universal in the sense that the benefits must be payable to any person on the sole ground that (s)he is in need (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 48/2008, decision on the merits of 18 February 2009, §38). In its previous conclusion in respect of Hungary the Committee noted in particular that "regular social allowance" did not cover employed persons in a state of need and that it was not clear whether "temporary allowance" was provided for as long as the state of need persisted (Conclusions 2013, Hungary).

According to the report, Act III of 1993 on social administration and social services sets out three categories of social assistance benefits: income replacement benefits (employment substituting benefit, regular social allowance, old-age allowance, nursing fee), income supplementary benefits (home maintenance support, debt management services, health card, etc.) and benefits available in crisis situations (municipal allowance).

Benefit for persons in active age (employment substituting benefit and regular social allowance) provide support to persons of active working age who are in a disadvantaged labour market situation and do not have income for the subsistence of themselves and their families. Eligibility is conditioned on the family's monthly income per consumption unit not exceeding 90% of the current minimum old-age pension (25,650 HUF or € 83) and on owning no assets.

Employment substituting benefit is provided to persons in active age who are suitable for employment and amounts to 22,800 HUF (€ 74) per month. 273,699 persons received employment substituting benefit as of 31 December 2013. Regular social allowance is provided to persons in active age who, for some reason (health condition, age, raising small children) are not suitable or available for employment. The amount of regular social allowance depends on the income and the composition of the family. For a single person, the maximum amount of regular social allowance is 90% of the minimum old-age pension (see above). For families, the amount of the allowance may not be higher than 90% of the net salary for public employment (45,569 HUF or € 147). 37,973 persons received regular social allowance as of 31 December 2013.

The old-age allowance is financial support for elderly persons with no income to cover their livelihood. The income threshold for eligibility for the old-age allowance is, depending on the age of the eligible person and the type of household (s)he lives in, 80% of the minimum old-age pension (22,800 HUF, € 74), or 95% (27,075 HUF, € 88) or 130% thereof (37,050 HUF, € 120). These amounts apply to persons who have no income, while for eligible persons who have some income, the amount of the allowance is the difference between the above amounts and the monthly income of the eligible person. 6,555 persons received this allowance as of 31 December 2013.

The Committee notes the information on the nursing fee and the various supplementary income replacement benefits.

Finally, with respect to the municipal allowance (which replaced the "temporary allowance" in 2014) the report states that it is granted to persons in extreme life situations endangering

their means of subsistence or who periodically or permanently have problems with their means of subsistence. The municipal allowance may also be provided in the form of an interest-free loan. The municipal allowance is provided on a case by case basis or with a monthly frequency for a limited period of time. The allowance is primarily intended for persons who are unable to provide subsistence for themselves or their family by other means, or who require financial assistance due to unexpected, sudden extra expenses (in particular, expenses related to illness, death in the family, damage through natural causes, keeping a child in the case of a pregnant mother in a crisis situation, schooling, preparing for the adoption of a child, maintaining contact with the family of a child in foster care or helping a child to return to his or her family) or the disadvantaged status of their child. Due to the recent introduction of the municipal allowance the report does not provide figures on average amounts granted or the number of beneficiaries, however, in 2013, the temporary allowance was paid to 505,900 persons and in 2012 the average amount was 11,478 HUF (€ 37) per month.

While the benefit structure described in the reports appears complex and rather fragmented, the Committee considers that the various benefits taken together may be regarded as a minimum income guarantee for persons in need which in its scope in principle is compatible with Article 13§1. However, the Committee asks that the next report clarify whether persons in need who have income from employment below 90% of minimum old-age pension are entitled to employment substituting benefit and, if so, whether the benefit amount paid is the difference between the income and 90% of minimum old-age pension. It also wishes to receive confirmation that employment substituting benefits and regular social allowance are payable for as long as the state of need persists. In addition, it requests up-dated information on coverage and up-take of the various benefits.

The Committee further recalls that the next report should specify the obligations of cooperation (readiness to participate in public works) to which persons in receipt of social assistance are subject, whether any derogations apply and whether a person not complying with such obligations can be deprived of all social assistance.

The Committee finally wishes to point out that in the present conclusion it is not called upon to assess the adequacy of the amounts of benefits paid. In this respect it refers to its previous conclusion in which it found the level of social assistance benefits to be manifestly inadequate (Conclusions 2013, Hungary).

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Hungary is in conformity with Article 13§1 of the Charter as regards the availability of social assistance to any person in need.

## **Article 14 - Right to benefit from social services**

### *Paragraph 1 - Promotion or provision of social services*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Hungary in response to the conclusion that it had not been established that effective and equal access to social services was guaranteed to nationals of all other States Parties (Conclusions 2013, Hungary).

The Committee recalls that social services must be guaranteed to all nationals of other States Parties who are lawfully resident or regularly working in the territory on an equal footing with nationals.

The report explains that persons who are subject to free movement rules, i.e. EU/EEA nationals, are eligible for the social benefits and services if they have a registered place of residence and have been exercising their right of residence for a period exceeding three months. Moreover, persons having a special status such as refugees and stateless persons are entitled to social benefits and services without regard to any length of residence. Finally, the Committee understands that all foreigners having obtained a permanent residence permit in Hungary are fully eligible for social benefits.

However, the report also states that "citizens of the countries ratifying the Revised European Social Charter are entitled to municipal aid, meals and accommodation by virtue of their rightful residence in the country if there is a risk to life or physical integrity." The Committee understands the information at its disposal to mean that nationals of other States Parties (non-EU/EEA) who are lawfully resident, but without having a permanent residence permit, are entitled to social services in the meaning of Article 14 only to a limited extent and only in emergency situations where life and physical integrity are at stake. Recalling that lawfully resident nationals of all States Parties must be treated on an equal footing with nationals, it therefore holds that there is a breach of the Charter on this point.

### *Conclusion*

The Committee concludes that the situation in Hungary is not in conformity with Article 14§1 of the Charter on the ground that equal access to social services is not guaranteed for lawfully resident nationals of all States Parties.

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

Le Committee takes note of the information contained in the report submitted by Hungary as well as the comments by Non-Governmental Organisations on the national report (MINDENKIE, CFCF Chance for Children Foundation, Habitat for Humanity, GYERE, MENHELY ALAPITVANY and the Metropolitan Research Institute).

### ***Social protection of families***

#### ***Housing for families***

The Committee takes note of several measures to help families gain access to housing, particularly subsidized-interests on housing loans for young people and families and on modernisation loans for the elderly, home-building allowance, home-making subsidised-interest, etc.

In its previous conclusion (Conclusions 2011) the Committee found the situation not to be in conformity with the Charter on the ground that evictions from premises occupied without rights or entitlement could take place without alternative accommodation and in the winter. In this regard, the report confirms that in case of unlawful occupation the situation remains the same. The Committee notes once again that families evicted under this procedure become, as a consequence, homeless families (save for children left alone). The Committee also notes from the comments of the Non-Governmental Organisations on the national report that families evicted are usually forced to leave their homes without alternative housing opportunity having been offered to them and are often excluded from accessing social housing. The Committee therefore reiterates its conclusion of non-conformity (see, in particular, International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 62/2010, decision on the merits of 21 March 2012, §§ 164 and 165).

In addition, on the issue of eviction, the report indicates that there exists a reasonable time prior to eviction, i.e. several weeks from the day of the court's decision, there are legal remedies against both the court's decision and executor's measures, there is legal assistance even in case of unlawful occupation and there is compensation in case of illegal eviction.

In its previous conclusion (Conclusions 2011) the Committee asked to be provided with information on the situation with regard to social housing, particularly for the poorest people. The report provides no information in this respect. The Committee, however, notes from the Report of the Commissioner for Human Rights of the Council of Europe, dated of December 2014, that there is an urgent need to adopt a national social housing strategy for the full realisation of the right to adequate housing, which goes beyond providing emergency and individual solutions. The Committee also notes from the comments of the Non-Governmental Organisations on the national report that the number of social housing units is significantly inadequate and has been decreasing and families struggling with poverty and/or housing problems do not receive adequate help. In view of the foregoing, it therefore concludes that the situation is not in conformity with the Charter on the ground that it has not been established that there is an adequate supply of housing for vulnerable families.

On the housing situation of Roma families, the Committee takes note of some measures concerning the housing of Roma families. However, it notes from the Report of the Commissioner for Human Rights of the Council of Europe, dated December 2014, that Roma, who make up 7.5% of the population in Hungary, are still confronted with "pervasive discrimination", notably in accessing social housing. According to the estimates mentioned in the Commissioner's Report around 130,000 Roma live in segregated settlements and several hundreds of these settlements lack basic infrastructure. The Committee further notes from the European Commission against Racism and Intolerance's (ECRI) Fifth Report adopted in June 2015 that local authorities attempt to force Roma out of social housing or evict them from their homes without ensuring suitable alternatives, or subject them to directly

or indirectly discriminatory rules in respect of housing. The Committee finally notes from the comments of the Non-Governmental Organisations on the national report that Roma families usually live in segregated areas without adequate access to basic services.

In view of the foregoing, the Committee considers that the situation is not in conformity with the Charter on the ground that Roma families do not have access to adequate housing.

### ***Childcare facilities***

On nursery care for children below the age of 3, the report indicates that the number of nurseries and their capacities have continuously increased each year. During the reference period the number of nursery places increased by 5,240. In 2013, the fee that may be charged for nursery care was introduced in 309 institutions out of the 724 active nurseries, i.e. in 42% of the institutions. Nursery care is organised by the actors of the public or the private sectors as well as the church.

In addition, the report mentions the establishment of family daytime care services, which provide an alternative solution to nursery care services. It indicates that during the reference period the capacity of family daytime care services increased by almost 2,600 places and the number of new such services went up by 460. In 2013, there were 1,108 family daytime care facilities for 7,991 places. These services are generally operated by civil organisations, but the number of services organised by municipalities is also increasing. In some cases the facilities are run by the church.

Concerning kindergarten services for children 3-6 years, the report indicates that these are organised as a public education duty and therefore are free of charge. Following the Public Education Act, that entered into force in 2012, the mandatory attendance age will be reduced from 5 to 3 years of age from September 2015. Kindergarten services are financed by the central budget and EU funds.

### ***Family counselling services***

In its previous conclusion (Conclusions 2011) the Committee asked what family counselling services are available to families regardless of their composition or social circumstances. In reply, the report provides a list of services, which include notably lifestyle, mental hygiene issues, access to the service for those struggling with financial difficulties, the resolution of conflicts in the family, family therapy, the strengthening of family relations, facilitation of social integration, etc.

### ***Participation of associations representing families***

The Committee notes that the National Association of Large Families "NOE" continues to play a central role in the Government's family and demographic policy given that it has the longest history (established in 1987), the largest number of members and it is an association that is well organised at the territorial level. It also notes that the Government consults civil and church family organisations, such as those representing the interest of families with young children or children with disabilities.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The report indicates that pursuant to the Family Law Book of the Civil Code the rights and obligations of spouses are equal in terms of their personal and property relations as well as parental custody.

In case of a dispute between the spouses on the exercise of their rights and obligations in their relations and to their child the forum for legal remedy is often the guardianship

authority, whose decision may be contested in court. However, the issues concerning which parent should exercise parental custody and where the child should be accommodated in his/her best interest are directly decided by the court.

### ***Mediation services***

The report indicates that the Mediation Act of 2002 sets up a framework to settle family legal disputes. This service is available nationwide and according to the data reported by the mediators 70% of the mediation procedures end with an agreement.

The Mediation Act was amended in June 2013 in order to introduce court mediation. There are currently 56 such court mediators (court secretaries or judges). Court mediation is free of charge.

The Committee also notes the existence of child protection mediation proceedings which are organised by child welfare centres. Such centres are to be found in municipalities with a population over 40,000 and cities of county rank, regardless of the population. The mediation provided is free of charge.

### ***Domestic violence against women***

The Committee refers to its previous conclusion (Conclusions 2011) for an overall description of the legislative and practical framework for combating domestic violence against women. In this conclusion, the Committee will only take into account the latest developments in this respect.

The Committee notes that the Criminal Code, that entered into force on 1 July 2013, introduced the crime of "domestic violence".

The report indicates that in 2011 the system put in place by the Regional Crisis Management Network was reformed and modernised, notably through the amendment of the Child Protection Act. Moreover, the Government started providing funding to the operation of crisis centres and half-way/transitional houses on a three-year contract basis.

The report also indicates that 4 new crisis management centres were established with state support in 2011-2012, thereby increasing the number of places available to the victims of domestic violence, notably in the so-called Secret Shelter. At present, there are 14 crisis centres.

On prevention, the Committee notes that in 2012 a pilot project was launched with the support of the Ministry of Human Capacities and aimed at preventing victimisation in the age group 14-18 years. In Phase I, the project consisted in awareness-raising classes and sensitivity training sessions held by teachers at school. Phase II of the project (2013-2014) is still to help avoid becoming a victim but the classes and sessions focus on technical schools and vocational secondary schools.

On the issue of protection of victims, the Committee however notes from the comments of the Non-Governmental Organisations on the national report that victims of domestic violence do not receive adequate protection and there are not enough places in shelters for them. The Committee therefore asks the next report to indicate the measures that are being taken to remedy this situation.

Hungary signed on 14 March 2014 (outside the reference period) the Council of Europe Convention on preventing and combating violence against women and domestic violence but has not yet ratified it.

## ***Economic protection of families***

### ***Family benefits***

According to Eurostat data, the monthly median equivalised income in 2014 was €380. According to MISSOC, the monthly amounts of child benefit was €39 for the first child, €48 for the 2nd child and per child, €55 for the 3rd child or more and per child. Child benefit represented a percentage of that income as follows: 10.2% for the first child, 12.6% for the 2nd child, 14.47% for the 3rd child.

The Committee considers that, in order to comply with Article 16, child benefit must constitute an adequate income supplement, which is the case when it represents a significant percentage of the monthly median equivalised income. On the basis of the figures indicated, the Committee considers that the amount of the benefit is compatible with the Charter.

### ***Vulnerable families***

The Committee asked in its previous conclusion (Conclusions 2011) what measures were taken to ensure the economic protection of Roma families. The report states that the agreement between the National Roma Nationality Self-Government and the Government lists quantified objectives for the employment of Roma people thus improving their income position. In this regard, it mentions the decrease of housing costs, the extension of housing subsidies as well as making social benefits more targeted. It finally refers to the so-called subsistence support allocated to unemployed Roma people during their studies.

The Committee takes note of these measures, but asks the next report to continue to provide information on measures implemented, including statistics, to ensure the economic protection of Roma families.

### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The Committee found in its previous conclusion (Conclusions 2011) that the situation was not in conformity with the Charter on the ground that equal treatment of nationals of other States Parties to the 1961 Charter or the Charter with regard to family benefits was not ensured because the length of residence requirement was excessive (3 years).

The Committee takes note of the changes that intervened outside the reference period, namely that following this conclusion of non-conformity the personal scope of the Family Support Act was modified on 1 January 2014. Thus pursuant to the Family Support Act, third country nationals are also entitled to family benefits, even in the absence of a residence permit or an EU Blue Card, if they stay in Hungary in possession of a single permit, provided that employment was permitted for them for a period exceeding 6 months.

The situation having remained unchanged during the reference period, the Committee considers that it remains in breach of the Charter.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

### ***Conclusion***

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

- evicted families can be left homeless;
- it has not been established that there is an adequate supply of housing for vulnerable families;
- Roma families do not have access to adequate housing;



- equal treatment of nationals of other States Parties with regard to family benefits is not ensured because the length of residence requirement is excessive.

## **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 Hungary.

### ***The legal status of the child***

In its previous conclusion (Conclusions 2011) the Committee asked whether the minimum legal age for marriage was the same for men and women. It notes from the report in this respect that pursuant to Section 4:9 of Act V of 2013 of the Civil Code, there is no difference in the lowest age limit for matrimony with respect to the sex of the minor.

### ***Protection from ill-treatment and abuse***

The Committee notes that the situation which it has previously considered to be in conformity with the Charter has not changed. According to Global Initiative to End Corporal Punishment of Children, law reform has been achieved. Corporal punishment is prohibited in all settings, including the home.

### ***Rights of children in public care***

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as the living conditions in child welfare institutions were not satisfactory.

The Committee notes from the report in this regard that the State has assumed the obligation of care from the county self-governments as of January 2012 so the provision of care has been standardised in terms of professional services and has become the duty of the State alone.

The takeover of the obligation to provide care by the State has effected a total of 363 child protection service facilities and an additional 3,367 foster parents in 2012 and a total of 11 professional child protection service facilities and 328 foster parents in 2013.

According to the report, the rights of children placed in child protection care are enforced by prioritising placement with foster parents, which was introduced by the amendment of 2013 to the Child Protection Act. Children under the age of 12 shall be placed at foster parents rather than in children's homes. The Committee notes that this amendment was planned to be introduced in a phased manner as from January 2014.

The number of foster parents increased by 207 during 2013. A 500 hour foster parenting vocational training course was launched in 2013 with a view to improving the quality of care and to make foster parents better prepared for dealing with more complex challenges.

The Committee wishes to be informed of the implementation of measures regarding placement of young children in foster families.

The amendment to the Child Protection Act of 1 January 2014 establishes the foster parents' employment relationship, which according to the report, serves the interests of the children as well, since only carefully selected and prepared foster parents can be expected to provide high-quality care and education to children.

The Committee takes note of the projects implemented using EU funds, aiming at improvement of residential child facilities by replacing institutes operating in buildings in poor conditions and the establishment of institutions and facilities integrated into a residential environment, offering normal and adequate conditions in care facilities. The implementation of the projects will be completed in 2015. The Committee wishes to be informed of the outcome.

The Committee notes that the share of children placed at foster parents has increased from 57,28% in 2010 to 62,22% in 2013.

As regards the number of children in a single institution, the report states that the regulations provide that each children's home may consist of 48 places. However, in that framework, groups of 12 children must be formed in order to ensure the homely accommodation of children. A residential home may be operated as a place of care with 12 places. As regards the special children's homes, a children's home with a maximum of 40 places is divided into groups of eight children.

According to the report, in the 2007-2013 planning period, crowded and high-capacity buildings were replaced with those that could conform to the more family-centric requirements (maximum 12 places in group homes, and maximum 48 places in children's homes)

The number of children needing special care is increasing every year, even in the age group 12-16, a lower proportion of whom can be placed with foster parents. 18,464 minors received professional child protection services on 31 December 2012, while this number was 18,674 on the last day of 2013.

The Committee considers that despite the measures taken to prioritise foster care and modernise institutional care by converting large institutions into residential homes, it seems that overcrowded institutions with up to 48 places still continue to operate where a unit has more than 10 places. The Committee wishes to be kept informed of the progress made and in the meantime it reserves its position on this issue.

The Committee further asked whether the national law provided for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family.

It notes from the report in this regard that children may be separated from their parents or other relatives only in their own interest, in the cases and in the manner specified by law. Children shall not be separated from their family due to vulnerability resulting from financial reasons alone.

Children have the right to maintain contact with both parents even if the parents live in different member states. The guardianship authorities and the bodies cooperating in international communication matters promote the enforcement of this right by regulating and implementing communication.

If the court considers that the exercise of custody by the parents jeopardises the child's best interest, it may place the child under the care of a third party, provided that such third party requests the placement him/herself. In that case, that person shall be appointed as the guardian, while the parent's rights of custody are suspended.

Suspension, cancellation and termination of the parent's right of custody is decided by the court. It should be noted with regard to the remedies available against the limitation of the parent's right of custody that the court's decision may be appealed, and the court may, with a view to the future of the child, restore parental custody if the reason for its termination no longer exists and there is no other reason for its termination.

The exceptional nature of the limitation of parental custody is provided for in the detailed rule in Section 4:149 of the Civil Code which stipulates that the court or other competent authority may restrict or withdraw the parent's rights of custody in exceptional and justified cases specified by law, where this is deemed necessary for the protection of the child's best interest.

### ***Right to education***

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

## ***Young offenders***

In its previous conclusion the Committee found that the maximum duration of pre-trial detention of minors was excessive and therefore, the situation was not in conformity with the Charter.

It notes in this respect that since July 2013 the Criminal Proceedings Act differentiates between the maximum duration of pre-trial detention of juveniles older and younger than 14. The duration of pre-trial detention ordered for juveniles under the age of 14 may not exceed one year and that for juveniles over the age of 14 may not exceed two years.

Pursuant to Section 454 of the Criminal Proceedings Act the pre-trial detention of juveniles under the age of 14 at the time of committing the criminal offence shall be effectuated in correctional institutions, while the pre-trial detention of juveniles above the age of 14 in correctional institutions or penal institutions.

The duration of the pre-trial detention coming near to the upper limit of two years may be justified also by the behaviour of, or an attempts to escape by, the juvenile.

The law prescribes for the courts, as a guarantee, to regularly review the justification of the actual detention of the accused person serving a pre-trial detention at the stage of court proceedings.

The Committee considers that the situation which it has previously considered not to be in conformity with the Charter has not changed. Therefore, it reiterates its previous finding of non-conformity on the ground that the maximum period of pre-trial detention of minors is excessive.

Punishment must be imposed on a juvenile offender if the application of a measure is not expedient. Only measures can be imposed on persons who were younger than 14 at the time of committing the crime. Measures or punishments involving deprivation of liberty can only be imposed on juvenile offenders if the purpose of the measure or the punishment cannot be achieved in any other way (Article 106 of the Criminal Code).

In its previous conclusion the Committee also asked what was the maximum length of a sentence that can be imposed on juvenile offenders. It notes from the report in this regard that penalties entailing the deprivation of liberty that may be imposed on juveniles include imprisonment, detention and placing in a reformatory institution.

According to Article 109 of the Criminal Code the maximum term of imprisonment that may be imposed upon a juvenile offender over the age of 16 years at the time the crime is committed shall be 10 years for a crime that carries a maximum sentence of life imprisonment and 5 years for a crime that carries a prison term of more than five years.

The maximum term of imprisonment that may be imposed against a juvenile offender over the age of 16 years at the time the crime is committed shall be 15 years for a crime that carries a maximum sentence of life imprisonment and 10 years for a crime that carries a prison term of more than 10 years.

In reply to the Committee's question, the report states that juvenile detainees are placed in one of the four juvenile penal institutions and are separated from adults in all cases (including their transport) and are placed separate from detainees of adult age. Juvenile detainees are not placed in cells or locations shared with adult inmates. The implementation of this is ensured by the inspections performed in respect of law enforcement authorities.

In its previous conclusion the Committee further asked whether young offenders in prisons had a statutory right to education. It notes from the report in this regard that Section 48 of the Law-decree on Punishments provides that in the course of detention special attention shall be given to the education and schooling of the juveniles. The objective is to educate and teach the juveniles and to provide them with professional training in order to make them useful members of the society. The conditions of training of detainees shall be provided by

the law enforcement institution. Enrolment of applicants for education, vocational training or further education is the responsibility of the Reception and Detention Commission. According to the Law on Punishments particular care shall be paid to the education, personality and physical development of juvenile offenders, the enforcement of compulsory education and the possibility to obtain the first profession during the execution of the imprisonment.

Juvenile offenders in a reformatory institution shall also be offered the possibility to receive education and training. Nevertheless, under the Act, a juvenile offender in pre-trial detention is not allowed to participate in education or training outside of the reformatory institution. In the case of juvenile offenders placed in reformatory institutions in pre-trial detention, participation in school education is ensured.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee notes from the report that before 1 May 2011, unaccompanied minors requesting their recognition were placed in a host station suitable for the separate accommodation and care of minors until they turned 18. Pursuant to the legal provisions on asylum and child protection in effect from 1 May 2011, unaccompanied minors requesting their recognition shall be placed in child protection institutes under the legal regulations on child protection. As a result, the scope of the Child Protection Act extends to unaccompanied minors requesting their recognition as well as children with an admitted status and children recognised as refugees or protected by the Hungarian authorities.

Since 31 August 2011, unaccompanied minors applying for asylum in Hungary are placed and provided with care, as well as young adults becoming of age as refugees, are provided with professional child protection after-care services at the Károlyi István Children's Home in Fót. Since February 2013, the temporary placement of children who arrive in Hungary as unaccompanied minors, but do not apply for asylum, takes place at the Szent Ágota Child Protection Service in a children's home with 18 places.

### ***Conclusion***

The Committee concludes that the situation in Hungary is not in conformity with Article 17§1 of the Charter on the ground that the maximum period of pre-trial detention of minors is excessive.

## **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 Hungary as well as the comments by Non-Governmental Organisations on the national report (MINDENKIE, CFCF Chance for Children Foundation, Habitat for Humanity, GYERE, MENHELY ALAPITVANY and the Metropolitan Research Institute).

The Committee takes note of the reforms in the area of public education. The Public Education Act came into force in September 2012. The key objective of the reform was to improve the quality of public education and access to it and to reduce the early school leaving rate. Three main elements of the reform were the improvement in the statutory provisions related to fundamental rights and discrimination, systemic reform of the educational system as a whole and targeted measures and programmes of strategic nature to support vulnerable groups, including Roma children.

Pursuant to Section 45 of the Public Education Act, children are subject to compulsory institutional education.

In its previous conclusion the Committee asked for details concerning the situation of school absenteeism and measures taken to counter this phenomenon and their results.

According to Section 51 of Decree 20/2012 on the operation of public education institutions, as the executive decree of the Public Education Act, requires that the reason of unjustified absenteeism should be determined as soon as possible and, to this end, requires the school to contact the parent in the case of the first unjustified absence.

The school is obliged to inform the parent and on the first unjustified absence of a school-age child, as well as when the number of unjustified absences of a school-age child amounts to 10 lessons. The public education institution also informs the parent, the child welfare service, the child protection specialist service and the guardianship authority when the number of unjustified absences reaches 10, 30 or 50 lessons. The causes of the absence shall be determined and the institutions shall co-operate with each other in order to terminate the endangering circumstances.

The child welfare service, with the involvement of the public education institution, shall make an action plan, which, based on cause of the absence determined, defines the tasks aimed to cease the circumstances causing unjustified absence that endanger the child or student. The Committee wishes to be kept informed of the absenteeism and drop out rates in compulsory education.

In its previous conclusion the Committee asked whether children from vulnerable families received any assistance to guarantee their effective access to free compulsory education.

The Committee takes note of the programmes developed to promote access to education for vulnerable groups. Such programmes provide extra-curricular activities for disadvantaged pupils. The Committee takes note of For the Road-Macika Programme, launched in 2011, which aims at enhancing the chances of disadvantage students to enrol with secondary schools and successfully finish them and acquire a profession. Altogether, according to the report, more than 14,000 students receive a scholarship within the programme. The Committee also takes note of other programmes, financed by the European Union funds, aiming at mitigation of inequalities and segregation in education.

As regards financial assistance to cover hidden costs of education, according to the report the parents of multiple disadvantaged children who are eligible for regular child protection allowance receive financial support from the guardianship authority. The key objective of this support is to ensure that the most vulnerable children are also enrolled in kindergartens. The Committee asks what assistance exists to cover 'hidden' costs (schoolbooks, transport to school) of primary and secondary education for vulnerable families.

In its previous conclusion (Conclusions 2011) the Committee found that Roma children were subject to segregation in the education field and therefore, the situation was not in conformity with the Charter.

The Committee notes that one of the priorities of the National Social Inclusion Strategy and the intention of the Government is not only to prohibit segregated education, but also to take effective measures in order to eliminate spontaneous and deliberately enforced segregation.

The Antisegregation Roundtable was founded with the specific aim of preparing a joint document of the Government and non-governmental professionals, to formulate joint recommendations in order to eliminate educational segregation. In addition to determining the immediate tasks, the document also defines the directions of interventions necessary in the short, medium and long terms. The Roundtable also examines the possibilities of recognising, assessing and preventing educational segregation. The Committee wishes to be kept informed of measures taken in the framework of the Roundtable.

The Committee notes that according to the Institute for Educational Research, around 770 homogeneous Roma primary school classes were in Hungary in 2000. By 2010, the number of schools of Roma majority had increased by 34%.

As regards legislative provisions and measures with regard to the prohibition and prevention of unlawful segregation in the field of public education, the report states that the equal treatment requirement is among the principles of the Public Education Act of 2012. Besides, Section 24 of the Decree 20/2012 on the operation of public education institutions serves to eliminate and prevent schools segregation by regulating the primary school admission districts. Schools responsible for mandatory admission shall not segregate students on the basis of their origin and social situation. This provision clarifies the conditions for defining the district limits and prevents unlawful segregation. The Government monitors the situation to identify irregularities with respect to the requirement of equal treatment. In the course of 2011-2013, 20 settlements were inspected.

The Committee further notes that to promote the educational achievement of socially disadvantaged children and to compensate the disadvantages derived from their social status, kindergarten development programmes as well as other integration measures are supported from national sources and the pedagogues participating in the programme receive a salary supplement.

The Committee further notes from the Report of the Commissioner for Human Rights of the Council of Europe, following his visit to Hungary (2014) that Roma pupils remain strongly disadvantaged in education across Hungary. One of the problems is the lack of access to early pre-school services and kindergarten. Despite a positive legislative change making attendance in kindergarten obligatory as of 1 September 2013 for all children from the age of 3, there are not enough kindergarten places for Roma children who live in segregated areas. On the other hand, early drop-out remains a problem, which the recent lowering of the age of compulsory education from 18 to 16 is said to exacerbate.

As concerns desegregation of Roma pupils, according to the Commissioner, the Hungarian authorities have long started to take measures to that aim and have until recently made numerous declarations in favour of desegregation. Nonetheless, the Commissioner is deeply concerned at reports indicating that the problem of segregation of Roma children in education is far from being tackled and has even been on the rise in the last 15 years.

As concerns segregation due to placement in schools for special needs, in the 2013 *Horváth and Kiss v. Hungary* (11146/11) judgment, the European Court of Human Rights concluded that the placement in a special school for children with mental disabilities during primary education amounted to discrimination against the applicants on grounds of their Roma origin.

The Committee takes note of the status of execution of the above mentioned judgment. It notes in particular that on the basis of the National Development Plan, programmes promoting the inclusive education of special education need pupils and the training of professionals engaged in education were carried out. The main aim was to create a receptive school system and pedagogical environment in which children with different backgrounds are educated together in the same group and where the school and the educators adjust themselves to the diversity of the pupils' social and cultural backgrounds, skills, abilities and educational needs. 1,753 teachers and 350 school related personnel participated in these programmes.

As regards the legislative measures taken, the Committee notes that legislative amendments were adopted in order to ensure that the diagnosis of mental handicap of children, preceding the decision on their placement in special schools, is based on strict criteria and accompanied with special safeguards.

The Committee further notes from the Report of the Commissioner that Roma pupils are confronted with other forms of segregation in Hungary such as the existence of Roma-only schools reflecting housing segregation. There have also been cases of segregated Roma and non- Roma classes within the same school building, and of segregated buildings within the same school institution. In some specific cases, segregation resulted from what turned out to be an artificial distinction between private and public schools with all the Roma pupils attending classes in the public school. In other cases, it appears that segregation took place under the pretext of education in the minority language. In all such cases, in addition to the problem of ethnic separation, the schools or classes for Roma are generally of a lower standard in terms of teaching quality and material conditions.

The Committee notes from the comments of the Non-Governmental Organisations on the national report of Hungary that long term plans of the Government on public education fail to address segregation and desegregation. The public education equality opportunity plans made by municipalities have not been an effective means to tackle segregation. No monitoring or evaluation by public authorities were in place to assess whether measures to desegregate were actually implemented. It further notes from the comments that the segregation of Roma children in mainstream education is increasing and the over representation of Roma children in special classes remains an unsolved problem. The Committee observes that according to the case law of the Supreme Court, in each case where the final judgement established segregation of Roma children, the impugned schools still operate unlawfully.

The Committee considers that certain measures have been taken to improve access to mainstream education for Roma children. The Committee wishes to be informed of the concrete results of such measures, especially as regards the numbers of Roma children in mainstream schools as well as the enrolment and drop out rates for this group. In the meantime, the Committee considers that integration of Roma children in mainstream schools still remains weak and therefore, the situation is not in conformity with the Charter.

### *Conclusion*

The Committee concludes that the situation in Hungary is not in conformity with Article 17§2 of the Charter on the ground that Roma children are subject to segregation in the educational field.





January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**IRELAND**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Ireland which ratified the Charter on 4 November 2000. The deadline for submitting the 12<sup>th</sup> report was 31 October 2014 and Ireland submitted it on 12 December 2014.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns information requested by the Committee in Conclusions 2013 in respect of its conclusions of non-conformity due to a repeated lack of information:

- Right to safe and healthy working conditions – Occupational health services (Article 3§4)
- Right to protection of health – Prevention of diseases and accidents (Article 11§3)
- Right to social and medical assistance – Adequate assistance for every person in need (Article 13§1)
- Right to social and medical assistance – Specific emergency assistance for non-residents (Article 13§4)
- Right to benefit from social services – Promotion or provision of social services (Article 14§1)
- Right to benefit from social services – Public participation in the establishment and maintenance of social services (Article 14§2)

The Committee adopted three conclusions of conformity (Articles, 13§1, 13§4 and 14§2) and three conclusions on non-conformity (Articles 3§4, 11§3 and 14§1).

The next report by France will deal with the accepted provisions of the thematic group "Employment, training and equal opportunities":

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

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- Right to a fair remuneration – Increased remuneration for overtime work (Article 4§2)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter)

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 4 - Occupational health services*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Ireland in response to the conclusion that it had not been established that the public authorities promoted the progressive institution of occupational health services.

The Committee recalls that under Article 3§4 States must promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions. These services may be run jointly by several companies. The services must be efficient and should be able to identify, measure and prevent work-related stress, aggression and violence (see Statement of interpretation on Article 3§4, Conclusions 2013; also Conclusions 2003, Bulgaria). It further recalls that if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. Thus, States "must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Conclusions 2003, Bulgaria, Conclusions 2009, Albania).

The Government states that there is no statutory requirement in Ireland on employers to provide access to occupational health services and there are no statutory plans to establish such services.

Larger organisations in both the public and private sectors may provide some occupational health services for employees. These services are provided on a full or part time basis depending on the number of employees and the employment sector. The services provided would include rehabilitation, absence management and health promotion.

Small and micro enterprises rarely provide occupational health services because of the cost. The 2008 Workplace Health and Wellbeing Strategy, produced by the Health and Safety Authority, recommended the development of a service delivery model that would support small and micro enterprises in implementing workplace health prevention, promotion and rehabilitation programmes including access to occupational health services. However, in recent years there has been no progress made in developing occupational health services for small and micro enterprises.

The Committee notes that the Government is not in a position to give an accurate estimate of the number of companies and the proportion of employees that still do not have access to occupational health services in 2013, but that "it is highly likely that the majority do not." It further notes that there is no plan in place by the Government, its agencies or private enterprise to improve the provision of such services for small and micro enterprises.

On this basis the Committee considers that the requirements of Article 3§4 of the Charter as outlined above are not met.

#### *Conclusion*

The Committee concludes that the situation in Ireland is not in conformity with Article 3§4 of the Charter on the ground that there is no strategy to develop occupational health services for all workers.

## **Article 11 - Right to protection of health**

### *Paragraph 3 - Prevention of diseases and accidents*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Ireland in response to the conclusion that it had not been established that adequate measures were in place to prevent the risks arising from asbestos and that adequate measures were in place to prevent and reduce accidents (Conclusions 2013, Ireland).

On the first point, the Committee recalls that Article 11 entails a policy that bans the use, production and sale of asbestos and products containing it (Conclusions XVII-2 (2005), Portugal). There must also be legislation requiring the owners of residential property and public buildings to search for any asbestos and where appropriate remove it, and placing obligations on enterprises concerning waste disposal (Conclusions XVII-2 (2005), Latvia).

The report states that the placing on the market, supply, use and further adaptation of asbestos fibres of all types, and of products containing asbestos fibres, is prohibited under the EU Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation. It further provides information on health and safety legislation governing the removal and disposal of asbestos and on the duties of owners of residential property (Safety, Health and Welfare at Work (Construction) Regulations 2013). The Waste Management Act transposing the EU Waste Framework Directive places the responsibility for asbestos waste management on the holder and or the owner of any waste, including costs for removal and disposal.

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

As regards accidents the Committee recalls that States must take steps to prevent them. The main sorts of accident covered are road accidents, domestic accidents, accidents at school, accidents during leisure time, including those caused by animals (Conclusions 2005, Moldova). Accidents at work are examined from the standpoint of health and safety under Article 3 of the Charter.

The Committee notes that the Government provides information solely on accidents at work. However, as indicated the Committee examines such accidents under Article 3 and it refers to its most recent conclusions in respect of these provisions (Conclusions 2013, Ireland). As the Government provides no information on the main sorts of accidents examined under Article 11 the Committee reiterates its conclusion that it has not been established that adequate measures were in place to prevent and reduce accidents.

### *Conclusion*

The Committee concludes that the situation in Ireland is not in conformity with Article 11§3 of the Charter on the ground that it has not been established that adequate measures were in place to prevent and reduce accidents (such as road accidents, domestic accidents, accidents at school and accidents during leisure time).

## **Article 13 - Right to social and medical assistance**

### *Paragraph 1 - Adequate assistance for every person in need*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Ireland in response to the conclusion that it had not been established that foreign nationals, legally resident in Ireland, have adequate access to medical assistance (Conclusions 2013).

The Committee recalls that foreigners who are nationals of States Parties and are lawfully resident or working regularly in the territory of another Party must enjoy an individual right to appropriate assistance on an equal footing with nationals (Statement of interpretation on Article 13, Conclusions XIII-4).

The Committee previously noted that the Health Service Executive (HSE) makes determinations on an individual's eligibility for health services on the basis of the person being "ordinarily resident" in Ireland and it raised a series of questions on the notion of being ordinarily resident (see Conclusions 2009 and Conclusions 2013).

The report first of all emphasises that Irish legislation relating to social assistance schemes does not contain any nationality conditions, and applies equally to nationals and non-nationals. It then explains that the condition of being ordinarily resident differs to the habitual residence condition applied in respect of social services. A foreign national should be regarded as ordinarily resident in Ireland if he/she satisfies the HSE that it is his/her intention to remain in Ireland for a minimum period of one year. Examples of the evidence which may be sought in this context include: proof of property purchase or rental, including evidence that the property in question is the applicant's principal residence; evidence of transfer of funds, bank accounts, pensions; work permits or visas, statements from employers, etc.

The report further states that no data exists as to the number of cases where medical assistance has been refused on the basis of a failure to satisfy the requirement to be ordinarily resident. In any event, according to the report refusals of medical assistance do not occur where there is a need as determined by a medical practitioner.

On this basis, the Committee considers that the situations as regards access to medical assistance is in conformity with the Charter. It asks, however, that the next report provide updated information on the discretion exercised by the local health manager, if necessary by collecting relevant data on an *ad hoc* basis. It also wishes to receive up-dated information on the nature and scope of the medical assistance provided to ordinarily resident foreigners in need.

The Committee finally takes note of the information in respect of foreigners not ordinarily resident, but lawfully present in the territory, and decides to examine it under Article 13§4.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ireland is in conformity with Article 13§1 of the Charter as regards access to medical assistance.

## **Article 13 - Right to social and medical assistance**

### *Paragraph 4 - Specific emergency assistance for non-residents*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Ireland in response to the conclusion that it had not been established that all foreign nationals, legally or irregularly present in Ireland, have adequate access to emergency medical assistance (Conclusions 2013, Ireland).

The Committee recalls that the beneficiaries of the right to emergency social and medical assistance under Article 13§4 are foreign nationals who are lawfully present in a particular country but do not have resident status (Statement of interpretation on Article 13§4, Conclusions XIV-1 (1998)). Moreover, the Committee has extended the scope of the right to emergency social and medical assistance to foreigners in an irregular situation (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §32). In its previous conclusion the Committee had notably asked for information on the nature and extent of urgent medical care granted to persons who are not ordinarily resident (Conclusions 2013).

The report firstly states that non-residents from other member states within the EU/EEA area are entitled to necessary healthcare in line with the EU Regulations where they satisfy the criteria that they are not insured in Ireland and are on temporary stay. This cohort is provided with healthcare which permits the person to continue their stay in Ireland or else until the person is well enough to return home. The treatment does not extend to non-urgent or elective treatment which can reasonably be postponed until they return to their own member state. Entitlement is granted by having a valid European Health Insurance Card issued by another member state and although not resident here they are granted full eligibility.

Any other person lawfully present and not ordinarily resident are granted healthcare at the discretion of the local health manager (for an individual service when s/he considers this to be justified on hardship grounds) under Section 45(7) of the Health Act 1970, to allow them to continue their stay in Ireland or else until the person is well enough to return home. The treatment does not extend to non-urgent or elective treatment which can reasonably be postponed until they return to their own country. Such discretion is not prescribed, however in practice, there is no question of urgent medical care being refused to persons who are not ordinarily resident and neither is distinction made as to whether the person is legally present or otherwise. The person presenting with an urgent medical need, as determined by a medical practitioner, is given the necessary treatment regardless of status in respect of being legally present. Consequently, no data exists as to the number of cases where medical assistance has been refused on the basis of a failure to satisfy the requirement to be ordinarily resident – as such refusals do not occur. Denial of access to care for any group is not an option.

The level of care provided in such cases is such as is necessary to allow them to continue their stay in Ireland or else until the person is well enough to return home. The treatment does not extend to non-urgent or elective treatment which can reasonably be postponed until they return to their own country. However, treatment which a clinician considers as being immediately necessary, or urgent enough that it is not advised to wait until the person has returned to their home country, will always be provided without reference to whether or not that person is ordinarily resident or legally present.

The report further explains that the person's status regarding being ordinarily resident is however determined when it comes to the treatment provider's attempts to recoup the costs of the treatment provided, due to those persons as described above being liable to be

charged for the economic cost of treatment received. Section 45(7) of the Health Act 1970 provides discretion to the local health manager in determining if paying for the service provided will cause the person undue hardship. This does not mean that the treatment is provided free of charge. An appropriate charge is raised and hospitals must take reasonable steps to recover any such charge, but may, on direction of the local health manager, not actively pursue recovery of that charge where it is considered not to be cost effective to do so.

The Committee considers that the nature and extent of the emergency medical assistance provided to persons lawfully present in the territory is compatible with the requirements of Article 13§4. The Committee understands the Government's explanations referred to above to imply that also migrants in an irregular situation will benefit from urgent medical care in case of need. The Committee asks that the next report confirm this understanding.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ireland is in conformity with Article 13§4 of the Charter.



## **Article 14 - Right to benefit from social services**

### *Paragraph 1 - Promotion or provision of social services*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Ireland in response to the conclusion that it had not been established that there was an effective and equal access to social welfare services and that the quality of social welfare services met users' needs (Conclusions 2013, Ireland).

As regards effective and equal access to services the Committee recalls that the information specifically requested concerned up-dated information on the fees for social services. It further recalls that social services may be provided subject to fees, fixed or variable, but the they must not be so high as to prevent effective access to these services. For persons lacking adequate financial resources in terms of Article 13§1 services should in any event be provided free of charge (Statement of interpretation on Article 14§1, Conclusions 2009).

As the Government provides no information on fees for social services, the Committee reiterates that it has not been established that the situation is in conformity on this point.

With respect to the quality of social welfare services, the Committee based its previous conclusion on the lack of information on the total amount of annual spending on social services and on the total number of social services staff. It recalls that social services must have resources matching their responsibilities and the changing needs of users, which entails, inter alia, that staff shall be qualified and in sufficient numbers (Conclusions 2005, France). While noting the information provided on spending on the Local Community Development Programme and on the Senior Alerts Scheme, it considers this only to be a partial answer to the request for spending information. Moreover, the Government provides no information on the number (and qualifications) of social services staff. The Committee therefore reiterates its conclusion that it has not been established that the situation is in conformity with the Charter.

### *Conclusion*

The Committee concludes that the situation in Ireland is not in conformity with Article 14§1 of the Charter on the grounds that it has not been established that:

- there is an effective and equal access to social welfare services (fees);
- the quality of social welfare services meets users' needs (total spending and staff).

## **Article 14 - Right to benefit from social services**

### *Paragraph 2 - Public participation in the establishment and maintenance of social services*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Ireland in response to the conclusion that it had not been established that measures were taken to encourage individuals and voluntary organisations to participate in the establishment and running of social welfare services (Conclusions 2013, Ireland).

The Committee recalls that Article 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services (Conclusions 2005, Statement of Interpretation on Article 14§2). This does not imply a uniform model, and States may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The "individuals and voluntary or other organisations" referred to in paragraph 2 include the voluntary sector (non-governmental organisations and other associations), private individuals, and private firms. Moreover, in order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms, an effective preventive and reparative supervisory system is required.

In its previous conclusions the Committee had specifically inquired into the steps taken to foster user participation in the management of social services, the monitoring of standards applicable to social services providers and the enactment of the legislation on charities. It had also requested information on the issue of discrimination in respect of social services provided by private sector actors.

The report explains that the Department of the Environment, Community & Local Government has lead responsibility for developing the relationship between the State and the Community and Voluntary Sector. This includes implementation of the White Paper on a Framework for Supporting Voluntary Activity and for developing the relationship between the State and the Community and Voluntary Sector. The White Paper committed the Government to provide a range of funding measures to support the Community and Voluntary Sector.

The Committee notes the information on funds allocated to 55 national organisations in the framework of the Scheme to Support National Organisations in the Community and Voluntary Sector. The scheme aims to provide multi-annual funding to national organisations towards core costs associated with the provision of services. The first scheme ran in the period 2008-2011, with the second scheme running until 30 June 2014. The current scheme commenced on 1 July 2014 and will run for a period of 2 years. Priority is given under this scheme to supporting national organisations which provide coalface services to disadvantaged target groups. It also notes the information on the Community Services Programme the purpose of which is to support non-governmental community businesses and social enterprises by funding local services and employment opportunities where public and private sector services are lacking, either through geographical or social isolation.

The Committee reiterates its question on user participation in the management of social services.

While noting the information on the Charities Regulatory Authority (CRA) which was established on 16 October 2014, under the terms of the Charities Act 2009, the Committee asks how the quality of the services delivered by the community and voluntary sector providers is monitored and what are the remedies available to users in case of shortcomings.

The Government does not reply to the question on how non-discrimination is ensured in respect of social services provided by the community and voluntary sector and the Committee therefore repeats the question.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ireland is in conformity with Article 14§2 of the Charter as regards the measures taken to encourage individuals and voluntary organisations to participate in the establishment and running of social services.



January 2016

# **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**ITALY**

*This text may be subject to editorial revision*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Italy which ratified the Charter on 5 July 1999. The deadline for submitting the 14<sup>th</sup> report was 31 October 2014 and Italy submitted it on 15 June 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns information requested by the Committee in Conclusions 2013 in respect of its conclusions of non-conformity due to a repeated lack of information<sup>1</sup>:

- Right to social security – Existence of a social security system (Article 12§1)
- Right to social security – Development of the social security system (Article 12§3)
- Right to social and medical assistance – Adequate assistance for every person in need (Article 13§1)
- Right of the elderly to social protection (Article 23)
- Right to be protected against poverty and social exclusion (Article 30)

The Committee adopted five conclusions of non-conformity.

The next report by Finland will deal with the accepted provisions of the thematic group "Employment, training and equal opportunities":

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

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- Right of workers to be informed and consulted (Article 21)
- Right of workers to take part in the determination and improvement of working conditions and working environment (Article 22)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter)

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<sup>1</sup>Italy also submitted a report on follow-up to decisions on the merits in collective complaints. The Committee's findings in this respect are available in a separate document

## **Article 12 - Right to social security**

### *Paragraph 1 - Existence of a social security system*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee notes that the report submitted by Italy contains no new information in response to the conclusion that it had not been established that the minimum level of sickness benefit was adequate (Conclusions 2013, Italy).

In the absence of the requested information, the Committee reiterates its finding of non-conformity in this respect.

### *Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 12§1 of the Charter on the ground that it has not been established that the minimum level of sickness benefit is adequate.

## **Article 12 - Right to social security**

### *Paragraph 3 - Development of the social security system*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee notes that the report submitted by Italy contains no new information in response to the conclusion that it had not been established that measures were taken to raise the system of social security to a higher level (Conclusions 2013, Italy).

In the absence of the requested information, the Committee reiterates its finding of non-conformity in this respect.

### *Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 12§1 of the Charter on the ground that it has not been established that measures are taken to raise the system of social security to a higher level.



## **Article 13 - Right to social and medical assistance**

### *Paragraph 1 - Adequate assistance for every person in need*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee notes that the report submitted by Italy contains no new information in response to the conclusion that it had not been established that medical assistance was provided for everybody in need (Conclusions 2013, Italy).

In the absence of the requested information, the Committee reiterates its finding of non-conformity in this respect.

### *Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 13§1 of the Charter on the ground that it has not been established medical assistance is provided for everybody in need.

### **Article 23 - Right of the elderly to social protection**

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee notes that the report submitted by Italy contains no new information in response to the conclusion that it had not been established that there was an adequate legal framework to combat age discrimination outside employment (Conclusions 2013, Italy).

In the absence of the requested information, the Committee reiterates its finding of non-conformity in this respect.

#### *Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 23 of the Charter on the ground that it has not been established that there is an adequate legal framework to combat age discrimination outside employment.

### **Article 30 - Right to be protected against poverty and social exclusion**

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee notes that the report submitted by Italy contains no new information in response to the conclusion that it had not been established that there was an overall and coordinated approach to combating poverty and social exclusion (Conclusions 2013, Italy).

In the absence of the requested information, the Committee reiterates its finding of non-conformity in this respect.

#### *Conclusion*

The Committee concludes that the situation in Italy is not in conformity with Article 30 of the Charter on the ground that it has not been established that there is an overall and coordinated approach to combating poverty and social exclusion



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**LATVIA**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Latvia which ratified the Charter on 26 March 2013. The deadline for submitting the 1st report was 31 October 2014 and Latvia submitted it on 18 December 2014.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

Latvia has accepted all provisions from the above-mentioned group except Articles 19§2, 19§3 and 31.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Latvia concern 32 situations and are as follows:

– 24 conclusions of conformity: Articles 7§1, 7§2, 7§3, 7§4, 7§6, 7§7, 7§8, 7§9, 8§1, 8§3, 8§4, 8§5, 17§1, 17§2, 19§1, 19§4, 19§5, 19§7, 19§8, 19§9, 19§11, 27§1, 27§2 and 27§3

– 4 conclusions of non-conformity: Articles 8§2, 16, 19§6 and 19§10

In respect of the other 4 situations related to Articles 7§5, 7§10, 19§12 and 31§1, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Latvia under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

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

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 Latvia.

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 it is prohibited to employ children in permanent work (Article 37 (1) of the Labour Law). The Labour Law defines a child as a person who is under 15 years of age and who until reaching the age of 18 continues to acquire a basic education.

However, according to Article 37 (2) of the Labour Law, in exceptional cases children from the age of 13 may be employed outside of school hours for performing light work not harmful to the safety, health, morals and development of the child, if one of the parents (guardian) has given written consent. Such employment shall not interfere with the education of the child. The report indicates that the Regulation of Cabinet of Ministers No.109 of 8 January 2002 "Regulations regarding Work in which Employment of Children from the Age of 13 is permitted" lists the types of work in which employment of children from the age of 13 is permitted outside the school hours, such as picking of flowers; wrapping and packaging of goods; planting and maintenance of trees, flowers and plants; delivery of goods at home; retailing of food and non-food products on the street etc.

The Committee notes that the performance of the work of a domestic is listed among the activities permitted for children from the age of 13. The Committee recalls that domestic work and work within the family also come within the scope of Article 7§1 of the Charter. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate. The supervision required of States must, in such cases, concern not just the Labour Inspectorate but also the educational and social services (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §§27-28). The Committee asks how the authorities monitor work done at home by children and domestic work and which are their findings in this respect.

The report further indicates that in exceptional cases if one of the parents (guardian) has given written consent and a permit from the State Labour Inspectorate has been received, a child as a performer may be employed in cultural, artistic, sporting and advertising activities if such employment is not harmful to the safety, health, morals and development of the child and does not interfere with the education of the child. The procedures for issuing permits for the employment of children as performers in cultural, artistic, sporting and advertising activities, as well as the restrictions to be included in such permits with respect to working conditions and employment conditions, are determined by the Regulation of the Cabinet of Ministers No.205 of 28 May 2002 "Procedures for Issuing Permits for Employment of Children as Performers in Cultural, Artistic, Sporting and Advertising Activities, and Restrictions to be included in Permits". According to this Regulation, the employer shall submit a written submission to the State Labour Inspectorate for the receipt of a permit, attaching the written consent of one of the parents (guardian). Prior to the granting of a permit, the State Labour Inspectorate has the right: (i) to request a statement from an educational institution in order to ascertain that the employment of the child will not interfere with the education of the child; and (ii) to request that the employer shall ensure a safe work environment and work conditions in order not to create a risk to the safety and health of the child.

The State Labour Inspectorate shall issue a permit for employment of the child or take a decision not to issue the permit, and within a period of five days after the receipt of the submission shall inform the employer regarding the decision. The State Labour Inspectorate shall specify in the permit: (i) the given name, surname, personal identity number and address of the place of residence of the child; (ii) the type and place of employment; (iii) the intended working and rest time; (iv) the duration of employment; (v) the time period of validity of the permit; and (vi) information regarding the consent of parents (guardians). The State Labour Inspectorate shall specify in the permit the activities which are prohibited to children such as: activities taking place under water, underground or without supervision on water; activities related to the production, testing, storage and marketing of weapons, combat equipment, explosives, alcoholic beverages and tobacco products; activities related to the recycling of secondary raw materials and waste paper; activities taking place in municipal waste landfills, waste water stations and precipitation drainage wells etc.

The report indicates that the State Labour Inspectorate shall supervise and control observance of the requirements of the regulatory enactments governing employment relations and labour protection. Article 41(1) of the Latvian Administrative Violations Code provides that in case of a violation of regulatory enactments governing employment relations, a warning shall be issued or a fine shall be imposed on the employer in an amount of € 35 to € 350 for a natural person or an official and in an amount of € 70 to € 1100 for a legal person. If the violations occur again within a year after the imposition of an administrative sanction, a fine shall be imposed on the employer in an amount of € 350 to € 700 for a natural person or an official, and of € 1100 to € 2900 for a legal person.

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 the next report to provide information on the activities and findings of the Labour Inspectorate of monitoring the prohibition of employment under the age of 15 and whether the conditions for involving children in light work from the age of 13 are met. The Committee requests information on the violations detected and sanctions applied in practice by the State Labour Inspectorate with regard to the illegal employment of children.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Latvia is in conformity with Article 7§1 of the Charter.



## **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 Latvia.

In application of Article 7§2, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work (Conclusions 2006, France).

The report indicates that Article 37(4) of the Labour Law provides that it is prohibited to employ adolescents in jobs in special conditions which are associated with increased risk to their safety, health, morals and development. The Labour Law defines a child as a person who is under 15 years of age and who until reaching the age of 18 continues to acquire a basic education. An adolescent shall mean a person between the ages of 15 and 18 who is not to be considered a child within the meaning established by the Labour Law.

The report indicates that the Regulation of Cabinet of Ministers No. 206 of 28 May 2002 ("Regulations regarding Work in which Employment of Adolescents is prohibited and Exceptions when Employment in such Work is Permitted in Connection with Vocational Training of the Adolescent") prescribes a list of types of hazardous works which are prohibited for adolescents. Section 3 of the same Regulation provides that the employment of an adolescent under the age of 18 in hazardous work is only permissible in exceptional cases and subject to the following requirements: if it is related to vocational training of the adolescent, if the work is performed in the direct presence of a supervisor or a trusted representative, and if compliance with regulatory enactments related to labour protection has been ensured.

The Committee notes from the report that according to Article 37(5) of the Labour Law, an employer has the duty, prior to entering into an employment contract, to inform one of the parents of the adolescent about the assessed risk of the working environment and the labour protection measures at the relevant workplace. Persons under 18 years of age shall be employed only after a prior medical examination and they shall, until reaching the age of 18, undergo a mandatory medical examination once a year (Article 37(6) of the Labour Law).

The Committee recalls that if such hazardous work proves absolutely necessary for their vocational training, young persons may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary. The Labour Inspectorate must monitor these arrangements (Conclusions 2006, Norway). The Committee asks information on the activities of the State Labour Inspectorate of monitoring the exceptional cases when employment in dangerous or unhealthy activities is permitted in connection with vocational training of the adolescent.

The report describes the measures taken by the Free Trade Union Confederation of Latvia (ESF) of organising programmes for young persons and teachers in vocational schools for the purpose of promoting understanding of labour legislation and occupational health and safety. Teachers of the vocational education institutions were trained on labour protection issues for young people in vocational education institutions in different sectors.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activities and findings of the State Labour Inspectorate in relation to the prohibition of employment under the age of 18 for dangerous or unhealthy activities and the exceptions permitted, including the number of violations detected and sanctions applied.

*Conclusion*

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

The report indicates that it is prohibited to employ children in permanent work (Article 37 (1) of the Labour Law). The Labour Law defines a child as a person who is under 15 years of age and who until reaching the age of 18 continues to acquire a basic education. The Committee refers to its conclusion on Article 7§1 where it noted that in exceptional cases, children from the age of 13 may be employed outside of school hours for performing light work or cultural, artistic, sporting and advertising activities if such work is not harmful to the safety, health, morals and development of the child (Article 37 (2) and (3) of the Labour Code).

With regard to the actual age of completion of compulsory schooling, the Committee notes from another source that basic education should be completed between the ages of 14 and 16 (Direct Request (CEACR) – adopted 2009, published 99th ILC session (2010), Minimum Age Convention, 1973 (No. 138) – Latvia (Ratification: 2006).

The Committee recalls that during school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework (Conclusions 2006, Albania). It also recalls that work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work”, especially the maximum permitted duration and the prescribed rest periods so as to allow supervision by the competent services (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §31).

The Committee notes from another source that according to Article 132 (2) of the Labour Law, children who have reached the age of 13 years may not be employed (ILO-NATLEX, Labour Law, consolidated version on 31 March 2011):

- for more than two hours a day and more than 10 hours a week if the work is performed during the school year; and
- for more than four hours a day and more than 20 hours a week if the work is performed during a period when there are holidays at educational institutions.

Noting the above mentioned maximum permitted duration of light work for children, the Committee considers that the situation is in conformity with the requirements of Article 7§3 of the Charter on this point.

As regards supervision, the report indicates that the State Labour Inspectorate shall supervise and control observance of the requirements of the regulatory enactments governing employment relations and labour protection. The Committee would like to receive information on the activities and findings of the State Labour Inspectorate, including on violations detected and sanctions applied, in relation to work performed by children who are still subject to compulsory education.

The Committee refers to its Statement of interpretation on Article 7§3 (Conclusions 2011) and recalls that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays. Its duration shall not be less than 2 weeks during the summer holidays (Statement of interpretation on Article 7§3, Conclusions 2011). The Committee asks if children who are still in compulsory education benefit of two consecutive weeks free from any work during the summer holidays. Pending receipt of the information requested, the Committee reserves its position on this point.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Latvia is in conformity with Article 7§3 of the Charter.

## **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 Latvia.

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

The report indicates that according to Article 132 (3) of Labour Law, adolescents may not be employed for more than seven hours a day and more than 35 hours a week. The Committee notes that within the meaning of the Labour Law, an adolescent shall mean a person between the ages of 15 and 18 who is not subject to compulsory education (Article 37(4) of Labour Law).

The report further indicates that if persons who are under 18 years of age continue to, in addition to work, acquire primary education, secondary education or an occupational education, the time spent on studies and work shall be summed and may not exceed seven hours a day and 35 hours a week (Article 132 (4) of Labour Law). If persons who are under 18 years of age are employed by several employers, the working time shall be summed (Article 132 (5) of Labour Law).

The Committee recalls that the situation in practice should be regularly monitored. It asks that the next report provide information on the activity of the State Labour Inspectorate, its findings and sanctions applied in cases of breach of the applicable rules to reduced working time of young workers who are no longer subject to compulsory education.

### *Conclusion*

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

## **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 Latvia.

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.

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).

### **Young workers**

The Committee recalls that 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 report indicates that the monthly salary for adolescents working within the working time limits as described under conclusion on Article 7§4, shall not be less than the minimum monthly salary within the scope of normal working time as specified by the Cabinet. The report states that the minimum monthly salary within the scope of normal working time was € 320 as established by the Regulation of Cabinet of Ministers No. 665 of 27 August 2013 "Regulations on minimum monthly wage and minimum hourly wage rate" which came into force on 1 January 2014. The report also indicates that during the first quarter of 2014, the gross average monthly wage was €742.

The report adds that when an adolescent works and attends secondary or occupational education, the adolescent shall be paid for the work done in conformity with the time worked. In such case, the hourly wage rate specified for the adolescent may not be less than the minimum hourly wage rate specified by the Cabinet for work within the scope of normal working time. The Regulation of Cabinet of Ministers No.665 specifies that the minimum hourly wage rate for adolescents is € 2.209.

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

The Committee notes from the information provided in the report that in the present case, the remuneration of adolescents (defined as persons between the ages of 15 and 18 who are not subject to compulsory education) is at the same level as the adult workers’ wage.

In order to assess on the conformity of the situation with the Charter, the Committee requests information on net values of both minimum and average wages 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. In the meantime, the Committee reserves its position on this point.

### **Apprentices**

The Committee recalls that apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired,

the allowance should be gradually increased throughout the contract period (Conclusions II (1971), Statement of Interpretation on Article 7§5), starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (Conclusions 2006, Portugal).

The report does not provide any information on the allowances paid to apprentices during the reference period. The Committee asks whether there is a legal framework on the status of apprentices in Latvia. In order to assess on the conformity of the situation with Article 7§5 of the Charter, the Committee requests to be provided with the net values of the allowances paid to apprentices (after deduction of social security contributions) at the beginning and at the end of the apprenticeship. Pending receipt of the information requested, the Committee reserves its position on this point.

*Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

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

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

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 Article 137 (2) of the Labour Law provides that for employees who, on the basis of an order of the employer, concurrently are acquiring an occupation (profession, trade), the time spent on studies and work shall be summed and shall be regarded as working time. Furthermore, Article 132 (4) of the Labour Law specifies that if persons who are under the age of 18 continue to, in addition to work, acquire primary education, secondary education or an occupational education, the time spent on studies and work shall be summed and may not exceed seven hours a day and 35 hours a week.

The Committee asks confirmation that the time spent on training mentioned in the above situations is thus remunerated as normal working time.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity and findings of the State Labour Inspectorate in relation to the inclusion of time spent on vocational training in the normal working time.

### *Conclusion*

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

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.

The report states that according to Article 149 of the Labour Law, all employees, including young workers under 18 years of age, have the right to annual paid leave which shall not be less than four calendar weeks, with public holidays excluded. The Committee asks confirmation that this right cannot be waived by young persons under 18, in exchange for additional pay.

The Committee asks whether young workers who suffer from illness or temporary incapacity during their holiday are entitled to take the days lost at another time.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity and findings of the State Labour Inspectorate in relation to the paid annual holidays of young workers under 18.

### *Conclusion*

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

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. It is up to national laws or regulations to define the period of time considered as being "night"

The report indicates that according to Article 138 (6) of the Labour Law, it is prohibited to employ at night persons who are under 18 years of age. The Committee notes that the Labour Law provides that night work shall mean any work performed at night for more than two hours. Night-time shall mean the period of time from 22 to 6 o'clock (Article 138 (1)).

The Committee asks whether exceptions are made with regard to certain occupations or sectors and, if this is the case, which is the number/proportion of young workers concerned by such derogations.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity of the State Labour Inspectorate, its findings and sanctions imposed in relation to possible illegal involvement of young workers under 18 in night work.

### *Conclusion*

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

In application of Article 7§9 of the Charter, domestic law must provide for compulsory regular medical check-ups for under-eighteen year olds employed in occupations specified by national laws or regulations. The obligation entails a full medical examination on recruitment and regular check-ups thereafter.

The report indicates that Article 37 (6) of the Labour Law specifies that persons under 18 years of age shall be employed only after a prior medical examination and they shall, until reaching the age of 18, undergo a mandatory medical examination once a year.

The Committee recalls that the medical examinations must be adapted to the specific situation of young workers and the particular risks to which they are exposed (Conclusions (2006) Albania). The Committee asks how the medical examinations of young workers are organised in practice.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity and findings of the State Labour Inspectorate in relation to the medical examination of young workers under 18.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

### **Protection against sexual exploitation**

The Committee recalls that under Article 7§10 of the Charter, States 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. The following are the minimum obligations:

- as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised. In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts. Furthermore, States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.
- a national action plan combating the sexual exploitation of children should be adopted.

An effective policy against commercial sexual exploitation of children should cover primary and interrelated forms: child prostitution, child pornography and trafficking in children.

- child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration;
- child pornography is given an extensive definition and takes account of the fact that new technology has changed the nature of child pornography. It includes the procurement, production, distribution, making available and simple possession of material that visually depicts a child engaged in sexually explicit conduct.
- trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.

The Committee notes from the report that Latvia has ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in 2014. According to the report, before the Convention was signed in 2013 significant legislative changes had been adopted.

The Committee further notes (Addendum to the Replies to the General Overview Questionnaire, Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, Latvia) that when transposing the provisions of Directive 2011/92/EU of the European Parliament and of the Council of December 13, 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, the *Saeima* adopted amendments to Articles 159, 160, 161, 162, 164, 165 and 166 of the Criminal Code.

The Committee observes that Articles 159-166 deal with sexual exploitation of minors, including the definition of the age of sexual consent (16). Article 161 criminalises sexual intercourse with a person who has not attained the age of 16 while Article 162(1) criminalises encouragement of a person who has not attained the age of 16 to involve in sexual acts using information or communications technologies or other types of communication. According to Article 164 the use of the prostitution of a minor is punishable with deprivation of liberty; for a term from 3 to 5 years. Article 166 criminalises attending, demonstration of pornographic performance or production of material which contains child pornography or involvement of a minor person in the pornographic performance or production of pornographic materials.

The Committee asks whether the law criminalises all acts of sexual exploitation of children described above, including *simple possession* of child pornography until the age of 18 (and not only until the age of 16). It notes that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity.

### ***Protection against the misuse of information technologies***

In light of the fact that new information technologies have made the sexual exploitation of children easier, States must adopt measures in law and in practice to protect children from their misuse. As for example the Internet is becoming one of the most frequently used tools for the spread of child pornography, States parties must take measures to combat this, such as by providing that Internet service providers be responsible for controlling the material they host, encouraging the development and use of the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.).

The Committee asks for full information concerning supervisory mechanisms and sanctions for sexual exploitation of children through the information technologies. It further asks whether legislation or codes of conduct for Internet service providers is foreseen in order to protect children.

### ***Protection from other forms of exploitation***

The Committee recalls that under Article 7§10 States must prohibit the use of children in other forms of exploitation such as, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs. States Parties must also take measures to prevent and assist street children. States parties must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that this legislation is effective in practice.

In its Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Latvia, the Group of Experts against Trafficking in Human Beings (GRETA) considered that the Latvian authorities should step up their efforts to inform the general public about the problem of trafficking in human beings in its various forms. GRETA noted that according to Article 154§2 of the Criminal Code when a victim of trafficking is a minor, there is no need to prove the use of any means to establish the offence of trafficking.

However, pursuant to Section 3 of the Act on the Protection of the Rights of the Child, a minor is a person below 18 years of age, with two exceptions: a person who has not attained 18 years of age, but has been declared of legal age in accordance with the law, or has entered into marriage, is no longer considered a child. Therefore, the Latvian authorities have indicated that Article 154§2 of the Criminal Code would not apply to children who are considered as adults before they attain 18 years of age.

The Committee asks in this respect whether protection against trafficking has been extended to all children, including those who have attained majority before 18 years of age.

The Committee notes from the report that the Law on Protection of the Rights of the Child defines street children as children who have insufficient connection with family and who spend the greater part of their time on the streets or in other circumstances inappropriate for the development of a child. A municipality local government and a town local government shall analyse the situation in the field of observance of the rights of the child, and shall develop and implement a programme for the protection of the rights of the child in the administrative territory of the municipality or the city. The municipality shall provide assistance and support to families in which there are children, guaranteeing shelter, clothing, and nutrition appropriate to the age and state of health of each child residing in the territory of municipality.

The Committee wishes to be informed about the implementation of this act in practice.

*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 Latvia.

### **Right to maternity leave**

The Committee previously noted that the Labour Law (Article 154) provides for a total of at least 16 weeks (112 days, up to 140 in certain cases) of maternity leave, including however only two weeks of postnatal compulsory leave (Article 37(7) of the Labour Law) instead of six as required under Article 8§1 of the Charter. It accordingly asked what legal safeguards exist to avoid any undue pressure on employees to shorten their maternity leave, whether there is an agreement with social partners on the question of postnatal leave which protects the free choice of women, and whether collective agreements offer additional protection. In addition, it asked for information on the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave).

In response to these questions, the report indicates that, in addition to the regular four weeks of annual paid leave which the mother can take after her maternity leave (Article 150(4) of the Labour Law), the father is entitled to 10 days paid paternity leave within the first two months after birth (Article 155 of the Labour Law) and either parent can take a parental leave, in a single period or in parts, up to a total period of one and a half years, until the child is eight years old (Article 156 of the Labour Law). The Committee notes from MISSOC and ILO databases that the benefit (*vecāku pabalsts*) granted for parental leave during the first year of life of the child should correspond to 70% of the average gross wages upon which contributions have been paid during 12 months (during a period ending two months before the month in which the payment of the benefit started), but not less than €171 per month. However, the Committee notes that between 2010 and 2013, the amount of parental benefits was restricted: a person was allowed 100% of the benefit if the daily allowance did not exceed €16.38 per calendar day (Section 12 of the Law on State benefits payment during the period 2009-2014) and 50% of the daily allowance exceeding that ceiling. Between 2013 and end 2014, the reference amount was €32.75 instead of €16.38 (Section 14 of the Law on State benefits payment during the period 2009-2014). According to data presented in the report, the average length of maternity paid leave was 105.33 days in 2010 (including 60.30 days after birth), 106.33 days in 2011 (including 59.62 days after birth), 108.52 days in 2012 (including 60.53 days after birth) and 107.31 days in 2013 (including 59.15 days after birth). The Committee asks the next report to indicate the proportion of women taking less than 42 days of postnatal paid leave.

The Committee also notes from the report that the respect of the rules concerning maternity leave is supervised by the State Labour Inspectorate, which can provide consultations to employers and employees, examine claims pertaining to the respect of employment rules and, in case of breach of such rules, issue warnings and fines from €35 to €350 for a natural person or an official and from €70 to €1100 for a legal person, up to respectively €350-€700 and €1100-€2900 in case of repeated breach after a first finding of a violation.

The Committee furthermore notes from the European Network of Legal Experts in the field of Gender Equality (Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood – The application of EU and national law in practice in 33 European countries, 2012) that Article 29.5 of the Labour Code expressly provides that less favourable treatment on the grounds of pregnancy or in connection with the use of the right to maternity or paternity leave is to be considered as direct discrimination on the grounds of sex. It asks the next report to provide information on any relevant case-law on complaints of discrimination based on pregnancy or maternity leave. It also reiterates its request for information on any guarantees related to maternity leave which might be enshrined in collective agreements or result from agreements with social partners.

As the report does not reply to the question of whether the same rules on Maternity leave apply to employees of the public sector, the Committee reiterates it and holds that, should the next report not provide this information, there will be nothing to establish that the situation is in conformity in this respect.

### ***Right to maternity benefits***

The Committee notes that the report does not provide any information on this point. It notes however from the MISSOC and ILO databases, as well as from the official website of the State Social Insurance Agency that the Maternity benefit scheme was modified in 2011, during the reference period. According to the Law on Maternity and Sickness Insurance, as amended, all employed women are entitled to Maternity benefit, which is paid before and after childbirth for a maximum of 140 days (56 or 70 days before and after childbirth). The amount of benefit, which was previously 100% of the average wages paid over the six months prior to leave, corresponds since 2011 to 80% of the average insurance contributions salary of the worker, calculated over a period of 12 calendar months ending two months before the month in which the pregnancy leave began. The Committee considers that the situation remains in conformity with the Charter on this point.

As the report does not reply to the question of whether the same rules on Maternity benefits apply to employees of the public sector, the Committee reiterates it.

With reference to its Statement of Interpretation on Article 8§1 (Conclusions 2015), the Committee furthermore asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

### ***Conclusion***

Pending receipt of the requested information, the Committee concludes that the situation in Latvia is in conformity with Article 8§1 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

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

### ***Prohibition of dismissal***

Under Articles 101 and 109 of the Labour Law, employers cannot serve a notice of termination of an employment contract on a pregnant woman, during maternity leave, during a period of one year following childbirth or during the whole breastfeeding period. However, the Committee previously noted that exceptions to this rule existed when:

- the employee has without justified cause significantly violated the employment contract or the specified working procedures;
- the employee, when performing work, has acted illegally and therefore has lost the trust of the employer;
- the employee, when performing work, has acted contrary to moral principles and such action is incompatible with the continuation of employment legal relationships;
- the employee, when performing work, is under the influence of alcohol, narcotic or toxic substances;
- the employee has grossly violated labour protection regulations and has jeopardised the safety and health of other persons;
- the employer – legal person or partnership – is being liquidated;
- the employee does not perform work due to temporary incapacity for more than six months, if the incapacity is uninterrupted, or for one year within three years, if the incapacity repeats with interruptions, excluding a prenatal and maternity leave in such period, as well as a period of incapacity, if the reason of incapacity is an accident at work or occupational disease.

The Committee recalls that Article 8§2 of the Charter allows, as an exception, dismissal of pregnant women and women on maternity leave in certain cases such as misconduct which justifies breaking off the employment relationship, if the undertaking ceases to operate or if the period prescribed in the employment contract expires. Exceptions are however strictly interpreted by the Committee. In this respect, the report does not provide the clarifications, repeatedly requested (Conclusions XVI-2 (2005), XVII-2 (2006), XIX-4 (2011)), on how the domestic courts interpret and apply the exceptions set by the law (for example: what is considered to be a "significant violation of the employment contract or of the specified working procedures" or "an action contrary to moral principles incompatible with the continuation of the employment relationship", whether any illegal action, irrespective of their seriousness, can be considered to breach the employer's trust, whether a pregnancy-related long-term absence can lead to a dismissal under Article 101.11), nor does it explain whether the same regime applies to women working in the public sector, in particular those employed with temporary contracts. In the absence of the information requested, the Committee reiterates its questions and, in the meantime, it considers that it has not been established that the situation is in conformity with Article 8§2 of the Charter.

### ***Redress in case of unlawful dismissal***

The report refers to the guarantees available, under Articles 122 to 127 of the Labour Law, in case of dismissal. In particular, if the court, seised in accordance with Article 122, finds that the notice of termination of employment is invalid, the employee is entitled to reinstatement in his/her previous work (Article 124). It is up to the employer to prove that the notice of termination of an employment contract has a valid legal basis and complies with the specified procedures (Article 125). The Committee previously noted that, according to Article 126, an employee who has been unlawfully dismissed is entitled to be paid average earnings for the whole period of forced absence from work, whether he or she chooses to be reinstated or not. Additional compensation for moral damages can be awarded by a court,



seised under Article 29 of the Labour Law, if the dismissal qualifies as gender-based discrimination. It is up to the employer to prove that the treatment complained of is based on objective circumstances not related to the gender of the employee, including as regards the granting of prenatal, maternity or paternity leave.

The Committee notes from the report that the number of claims for reinstatement before first instance courts decreased from 447 in 2010 to 175 in 2013. The number of such cases concluded before first instance courts also decreased in the same period from 560 to 176. The number of claims before the appeal courts went from 241 in 2010 (and 195 concluded, including reviewed side claims) to 101 in 2013 (and 110 concluded, including reviewed side claims). According to the data provided, most of the claims were assessed within 6 months. The Committee asks the next report to provide updated data and to clarify the number of claims for reinstatement concerning specifically employees dismissed during pregnancy or maternity leave.

With reference to its previous conclusions (Conclusions XIX-4 (2011)), the Committee asks again whether the same regime applies to women working in the public sector, in particular those employed with temporary contracts.

#### *Conclusion*

The Committee concludes that the situation in Latvia is not in conformity with Article 8§2 of the Charter on the ground that it has not been established that there is adequate protection against unlawful dismissals during pregnancy or maternity leave.

## **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 Latvia.

It previously noted (Conclusions XVII-2 (2005)) that Article 146 of the Labour Law provides that additional breaks of at least 30 minutes (one hour in case of two or more children) every three hours should be granted, upon request, to nursing employees until the child is 18 months old. The length of the breaks shall be determined by the employer in consultation with the staff representatives, taking into account as far as possible the wishes of the employee. Breaks for feeding a child may be added to regular work breaks or, if so requested by the employee, transferred to the end of the day, thus shortening the length of the working day. Breaks for feeding a child are considered as working time and therefore remunerated as such. Employees for whom a piecework salary has been specified for such time shall be average earnings.

The report does not answer the Committee's question of whether the same regime applies to women employed in the public sector. The Committee therefore reiterates it and holds that, should the next report not provide this information, there will be nothing to establish that the situation is in conformity in this respect.

### *Conclusion*

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

It previously noted that night work, i.e. work performed for more than two hours in the period of time from 10 pm to 6 am, is regulated by Article 138 of the Labour Law, which prohibits to employ at night pregnant women and women having given birth for a period of up to one year following childbirth which can be extended, upon medical certification, to the whole nursing period. All employees who work at night undergo a medical examination before starting night work and on a regular basis afterwards and must be transferred to an appropriate daytime post if so required for medical reasons. Furthermore, an employee who has a child under three years of age may be employed at night only with his or her consent.

The Committee notes that this situation, which it had previously found to be in conformity with the Charter, has not changed. However, the report fails to clarify, as requested, whether the same protection applies to women employed in the public sector. Accordingly, the Committee reiterates its question and holds that, should the next report not provide this information, there will be nothing to establish that the situation is in conformity in this respect.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Latvia is in conformity with Article 8§4 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

It previously noted that under Article 37 of the Labour Law, women cannot be employed during pregnancy, during a period of up to one year following childbirth or during the nursing period if according to a doctor's note the work of the women concerned present a threat on their safety and health or that of their child.

The report points out that the Regulation of the Cabinet of Ministers No. 660 of 2 October 2007 obliges the employer not only to carry out a risk assessment of the work environment in general, but to assess in particular the risks to which pregnant women, women who have just given birth or are nursing might be exposed (Part IV of the Regulation). These categories of women should not be employed in underground work (shafts) and work which would expose them to specific hazards in relation with physical (blows, vibrations, noise, carrying of heavy loads, extreme temperatures, radiation etc), biological and chemical factors. The Committee finds that these regulations are sufficiently detailed for the purposes of Article 8§5 of the Charter.

In addition, Article 99 of the Labour Law provides that, in order to prevent risks on the health and safety of pregnant women, employers must adapt the working time and conditions in such a way that pregnant women will not suffer adverse effects on their health and safety in their work. If this is not possible, the women concerned must be transferred to a different post without loss of pay. Should no transfer be possible, the employees concerned must be granted paid leave. This also applies to women having given birth for up to one year after childbirth and to women who are nursing during the whole nursing period. Upon request, the employer might also transfer the employees concerned to part-time work, in accordance with Article 134(2) of the Labour Law.

As the report fails to clarify, as requested, whether the same protection applies to women employed in the public sector, the Committee reiterates its question and holds that, should the next report not provide this information, there will be nothing to establish that the situation is in conformity in this respect.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Latvia is in conformity with Article 8§5 of the Charter.

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

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

### ***Social protection of families***

#### ***Housing for families***

Latvia has accepted Article 31§1 of the Charter on the right to access to adequate housing. As this aspect of housing of families covered by Article 16 is also covered by Article 31§1, for states that have accepted both articles, the Committee refers to Article 31§1 on matters relating to access to adequate housing of families.

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction.

On alternative solutions to eviction, the report states that:

- if a low-income tenant is evicted due to the failure to pay the rent on a residential space or a fee for general services and if the tenant lives with at least one minor child, the execution of the court order regarding eviction from the residential space is suspended until the municipality provides the tenant with another residential space fit for living;
- if the tenant is evicted as a result of the demolition of the residential house or in the event of transforming the residential house into a non-residential house, the owner of the house has the duty to provide the tenant and his/her family members with another equivalent residential space.

To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards protection against unlawful eviction, the Committee asks for the second time for information on all the other aforementioned points. Should the next report not provide the requested information, there will be nothing to show that the situation is in conformity with the Charter in this respect.

### ***Childcare facilities***

The Committee recalls that as Latvia has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

### ***Family counselling services***

The Committee recalls that families must be able to consult appropriate social services, particularly when they are in difficulty. States are required in particular to set up family counselling services and services providing psychological support for children's education.

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee asked for information on family counselling services. In view of the lack of response, the Committee reiterates its question. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter in this respect.

### ***Participation of associations representing families***

The report indicates that many NGOs representing families are represented in the Council of Demographic Affairs established in April 2011. The Council is an advisory state institution, which evaluates and coordinates the implementation of family policies.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)) for an overall description of rights and obligation of spouses. It considered the situation to be in conformity with the Charter.

The report indicates that since 1 February 2011 marriage can also be dissolved by a sworn notary when a joint submission of both spouses regarding the divorce is received.

#### ***Mediation services***

The report indicates that the Law on Mediation entered into force on 18 June 2014 (outside the reference period).

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 considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided. The Committee asks the next report to provide information on all these points.

#### ***Domestic violence against women***

The Committee takes note of the introduction of the following legislations:

- in May 2009 the Parliament approved amendments to the Law on Social Services and Social Assistance, which provides for the introduction of state funded social rehabilitation services for both victims of domestic violence and persons who have committed an act of domestic violence. The report indicates that because of limited financial resources such services will be available from 1st January 2015;
- since 2011, Criminal Procedure Code ensures legal protection for victims of domestic violence via private prosecution outside the frame of marriage;
- amendments to the Law on Police expand police powers in domestic violence cases;
- in 2011 a new aggravating circumstance was introduced in criminal law in case of violent crimes, crimes against moral and sexual crimes committed against a relative, intimate partner or former intimate partner;
- in 2013 amendments to Civil Procedure Code introduced the right for a person suffering from domestic violence to request the court to issue a restraining order against the perpetrator on her own initiative. In case of violation of this restraining order, the perpetrator incurs criminal liability.

It also notes the following measures:

- in 2009 and 2010, state financed support groups for women who have suffered from domestic violence were organised;

- in 2011, a pilot project developing a model providing support to persons who have committed violence against a spouse or a partner was initiated;
- since 2005, annual state financed trainings on domestic violence have been provided to different kinds of professionals, including police, judges, social workers, etc.;
- since 2003, the Law on Social Services and Social Assistance establishes crisis center in case of domestic violence.

In view of the foregoing, the Committee considers that the situation has been brought into conformity with the Charter. The Committee however wishes the next report to indicate the measures of prevention against domestic violence and continues to provide information on the objectives already stated.

### ***Economic protection of families***

#### ***Family benefits***

According to Eurostat, the monthly median equivalised income in 2013 was €388. MISSOC indicates that the amount of child benefit per month was €11.38. The Committee notes that the child benefit is 2.9% of the monthly median equivalised income in 2013.

The Committee considers that, in order to comply with Article 16, child benefit must constitute an adequate income supplement, which is the case when it represents an adequate percentage of the median equivalised income. It considers therefore that the situation is not in conformity on the ground that family benefits are not of an adequate level for a significant number of families.

#### ***Vulnerable families***

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee asked what concrete measures were taken to ensure the economic protection of Roma families.

The report indicates that there were 66 projects aimed at Roma social inclusion in the framework of the State programme "Roma in Latvia" (2007-2009) supported by the State budget. It stresses that the most significant achievement is the preparation and involvement of teacher assistants with Roma background into the mainstream education system. It also mentions other activities related to the level of education. The Committee asks the next report to indicate the objectives that are being set in this field as well as the results that are achieved.

#### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee considered that the situation was not in conformity with the 1961 Charter on the ground that equal treatment of nationals of other States Parties regarding the payment of family benefits was not ensured because the length of residence requirement of five years was excessive.

The report does not provide information in this respect. The Committee however notes from the Governmental Committee's report of 2013 (Report concerning Conclusions XIX-4 (2011)) that no modification to the existing legislation is foreseen. It therefore considers that the situation remains in non-conformity with the Charter.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

#### ***Conclusion***

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

- family benefits are not of an adequate level for a significant number of families;
- equal treatment of nationals of other States Parties regarding the payment of family benefits is not ensured because the length of residence requirement is excessive.



## **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 Latvia.

### ***The legal status of the child***

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.

### ***Protection from ill-treatment and abuse***

The Committee notes from the Global Initiative to End Corporal Punishment that the law reform has been achieved. Corporal punishment is prohibited in all settings, including the home.

### ***Rights of children in public care***

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee asked for updated statistics regarding numbers of children in institutions, including apartment-type premises and in foster care/guardianship.

The report states that according to the Law on Social Services and Social Assistance orphans and children left without parental care shall be provided with care in a family-like environment, such as a foster family, a guardian, and only if this is not possible care shall be provided at a long-term social care and social rehabilitation institution. Long-term social care and social rehabilitation institution is a social institution which provides orphans and children left without parental care with housing, full care and rehabilitation. In a childcare institution social workers, social educators, social care takers, nurses registered in the register of nurses entitled to practice and care takers shall work with clients. During the stay of an orphan or a child left without parental care at a long-term social care and social rehabilitation institution, the municipality social service office and orphan's court, in co-operation with the employees of the institution, shall take measures to promote the return of the child to the family, to maintain contact between the child and parents or, if this is not possible, to seek a possibility to ensure care for the child in another family.

The Committee notes that at the end of 2013 there were 594 foster families with 1,262 children while in 2010 these numbers stood at 531 and 884 respectively. It also notes that in 2013 1,854 children were in long-term social care and social rehabilitation institutions, including state financed institutions, local municipalities financed orphanages and state financed institutions for children with severe mental impairments. The Committee also notes that in 2013 1,122 children exited the long-term social care and social rehabilitation institutions, of whom 341 were returned to parents and 156 went to foster families and 113 were transferred to guardianship.

The Committee wishes to be kept informed about the further development of foster care and de-institutionalisation of children in public care.

In its previous conclusion the Committee also asked what was the criteria for the restriction of custody or parental rights and what procedural safeguards existed to ensure that children were removed from their families only in exceptional circumstances.

The Committee notes that the report does not provide this information. It holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity.

### ***Right to education***

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

### ***Young offenders***

In its previous conclusion the Committee asked whether young offenders could be detained and sentenced together with adults and whether young offenders had a statutory right to education.

The Committee takes note of the numbers of convicted minors as regards the length of imprisonment as well as the number of minors in pre-trial detention. However, the report does not reply to the Committee's previous question whether young offenders can be placed together with adults or whether they have a statutory right to education. The Committee also asks what is the maximum length of a pre-trial detention for minors and holds that if this information is not provided in the next report there will be nothing to establish that the situation is in conformity.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in an irregular situation to protect them against negligence, violence or exploitation.

### ***Conclusion***

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

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

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

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

The Committee recalls that Article 17 requires States to establish and maintain an education system that is both accessible and effective. The Committee recalls in this respect that under Article 17§2 of the Charter in order for there to be an accessible and effective system of education there must be *inter alia* a functioning system of primary and secondary education provided free of charge, including an adequate number of schools fairly distributed over the geographical area. Class sizes and the teacher pupil ratio must be reasonable.

The Committee further recalls that under Article 17§2 all hidden costs such as books or uniforms must be reasonable, and assistance must be available to limit their impact on the most vulnerable population groups so as not to undermine the goal being pursued (European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 82/2012, decision on the merits of 19 March 2013, §31) .

The Committee notes in this respect that while young people in Latvia have enough opportunities to obtain education, some young people face socio-economic problems in the process of education and quit schooling without obtaining their age-appropriate education. Proportional deduction of such young people aiming at achieving of no more than 10% of premature early school leavers by 2030 was outlined in the development programming document "Latvija 2030" and "Europe 2020".

According to the report, since 2009, the share of early school leavers in Latvia has decreased. In 2012, the respective rate reached as little as 10.5%, which is significantly better than the average in Europe (12.8%). In the 2011-2012 academic year of all children of age of compulsory education 95.1% were registered in an educational institution.

The Committee further recalls that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that states parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2, Conclusions 2011).

The Committee asks whether unlawfully present children have a right to education.

The Committee recalls that under Article 17§2 States have positive obligations to ensure equal access to education for all children. In this respect particular attention should be paid to vulnerable groups, such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, etc.

The report states in this respect that education opportunities are provided for the children of persons obtaining the refugee and asylum seeker status and migrant workers' children of age of compulsory education. In 2007 such opportunity was given to one asylum seeker, in 2008 to five asylum seekers, in 2009 to seven asylum seekers, in 2010 to eight asylum seekers and in the first half of 2011 to seven asylum seekers. In the 2011-2012 academic year 10 underage asylum seekers were studying in general education institutions.

The Committee further recalls that under Article 17§2 as regards education of children of Roma origin, even though educational policies for Roma children may be accompanied by flexible structures to meet the diversity of the group and may take into account the fact some

groups lead an itinerant or semi-itinerant lifestyle, there should be no separate schools for Roma children. Special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group (Conclusions 2011, Slovak Republic).

The Committee notes from the report in this respect that improvement of the education level of Roma children and expanded possibilities to engage such children in the education process were provided. The teaching guide "Latvian teacher experience of working with Roma children" was published and teachers' assistants of Roma origin were trained for working in pre-school and general educational institutions. To promote improvement of Roma students' quality of education, the Ministry of Education and Sciences, in cooperation with the city and regional Education Departments, has carried out the monitoring of situation.

According to the 2011 population census, 6, 489 Roma were registered in Latvia, including 2, 103 children and young people under 19. 6, 515 Roma children were registered in 2012. The number of Roma children integrated into general education in 2010-2011 school year dropped to 1,182 students, but in 2011-2012 school year there was a slight increase up to 1,213 children.

As regards the integration of children with disabilities into mainstream education the Committee refers to its conclusion under Article 15§2 (Conclusions 2012).

#### *Conclusion*

The Committee concludes that the situation in Latvia is in conformity with Article 17§2 of the Charter.

## **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 Latvia.

### ***Migration trends***

According to the Central Statistical Bureau of Latvia, the population of Latvia peaked in around 1990, and has decreased since the collapse of the Soviet Union. Latvia became a member of the European Union on 2004. At that time, the population of Latvia was 2.25 million, while in 2013 it was 2.02 million. The main reason for the reduction in population has been emigration for economic reasons. In particular, emigration spiked during 2008 – 2010 (when nearly 40,000 residents emigrated), during the early economic crisis, but has reduced each year after that.

In 2012, 13,300 people arrived to Latvia from other countries (3,100 more than in 2011), while 25,200 people moved from Latvia to permanent residence in other countries (5,100 less than the previous year). The Committee asks for information specifically concerning the nationality and ethnic origins of these migrants.

According to data of the Population Register 2011, the largest national/ethnic communities, including both settled and migrant persons, in Latvia include the following: Russian (27.4% of the population), Byelorussian (3.53%), Ukrainian (2.45%), Polish (2.3%), Lithuanian (1.32%), Jewish (0.43%) and Roma (0.38%); 20,195 people did not affiliate to any ethnicity (0.9%).

### ***Change in policy and the legal framework***

The Guidelines on National Identity, Civil Society and Integration Policy (2012–2018) were drawn up by the Ministry of Culture and adopted by the Government on 11 October 2011.

The principal courses of action set out in the document are: development of civic society; strengthening various forms of civic participation; reducing discrimination of socially marginalised groups and promoting their inclusion; increasing the role of the media in society integration through support for diverse, modern and high quality journalism; improving the proficiency of Latvian among ethnic minorities, non-citizens, new immigrants, and the Latvian diaspora.

The Committee notes the Resolution CM/ResCMN(2014)9 on the implementation of the Framework Convention for the Protection of National Minorities by Latvia, which highlights that ‘the Integration Guidelines adopted in October 2011 are widely criticised as ethno-centric and unconstructive in promoting social cohesion, as they differentiate between ethnic Latvians and others. Attention must be paid to involve closely minority representatives in the implementation of the Guidelines and ensure that measures are aimed at the promotion of a cohesive society with respect for diversity, rather than cultural integration of minorities into the “Latvian nation State”.

The Committee requests that the next report provide a full and up-to-date description of the legal and policy framework regarding migration and integration. In particular, it wishes to receive details of the implementation of the National Identity, Civil Society and Integration Policy 2012-2018 and any similar developments.

### ***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 concerning job opportunities is available online, though most of the material is in Latvian (<http://www.nva.gov.lv/>). There are also 28 regional State Employment Agency (SEA) branch offices where information can be obtained.

Administrative bodies are required to develop websites to make information available on the internet. Information on the visa application process as well as the society, history and culture of Latvia can be accessed in Latvian, English and Russian on the Ministry of Foreign Affairs website. There is also a telephone service provided, and information can be obtained in person by employers and employees alike. Latvian consulates in other States are also able to provide information.

Further information concerning working and living conditions, and assistance in finding job vacancies, is provided by EURES through their online portal in both Latvian and English, and also by consultants in several SEA branches.

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. The Committee considers that Latvia satisfies this requirement.

The Act on Support for Unemployed Persons and Persons Seeking Employment makes provision for support to all residents of Latvia, be they Latvian citizens, EU citizens, or third-country nationals with permanent or temporary residence permits, including refugees and beneficiaries of temporary (subsidiary) protection status and victims of human trafficking. The Committee asks what support measures are given to such employment seekers. It notes that discrimination on the grounds of gender, race or ethnic origin is prohibited in the implementation of active employment measures to reduce unemployment.

The Committee considers that the situation with regard to the provision of free services and information to migrant workers is in conformity with the Charter.

### ***Measures against misleading propaganda relating to emigration and immigration***

The report does not provide any specific information relating to combatting misleading propaganda.

The Committee notes from the third Migration Policy Index (MIPEX III) that Latvian law does not explicitly prohibit religious or nationality discrimination in all areas of life (unlike racial/ethnic discrimination). It notes that MIPEX III also criticised the enforcement mechanisms in place to follow up incidents of discrimination. The Committee requests that the next report provide details of the bodies responsible for preventing and responding to these issues, and examples of their activities. It also asks whether police and other public servants receive training on issues of racism and discrimination.

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 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). The Committee stresses the importance of promoting responsible reporting by the media. It considers that in order to combat misleading propaganda, there must be effective organs to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.

The Committee notes from the report of the European Commission against Racism and Intolerance (ECRI) (adopted 2011), that in 2010 a provision was introduced whereby an MP's speech may be interrupted in case of breach of the Code, which contains a general

prohibition on the use of, *inter alia*, “race”, gender, skin colour and nationality to support MP’s arguments and sanctions the violation of this norm with the exclusion from one or more parliamentary sessions, subject to a vote of the Parliament. According to the authorities, the sanction has been applied twice – albeit not for racist statements. However, other sources have highlighted that the above provision has frequently been breached by MPs who have directed intolerant statements against particular groups in society, especially Russian speakers, non-Latvians and “non-citizens”.

The Ombudsman has in a few instances asked the media to abstain from racial stereotyping. In addition, under the aegis of the IUMSILS and with the co-financing of the EU Commission, two activities on media diversity and on monitoring hate speech on the Internet were organised.

The Committee notes from the follow-up conclusions of ECRI (adopted December 2014) that the trend of cutting the budget of the Latvian Ombudsman’s office has been stopped and reversed. The budget increased from €794,355 in 2010 to € 813,597 in 2011 and to € 1,007,911 in 2012. The budgetary planning for the period 2013 – 2016 foresees between approximately € 1,000,000 and € 1,150,000 per year. The number of staff in the Ombudsman’s office also increased between 2010 and 2013.

The Committee recalls that to be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia. 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 (Conclusions XV-1 (2000), Austria). Authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia). It asks for complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings.

The Committee notes from the abovementioned ECRI Conclusions that “an Action Plan for the implementation of the Policy Guidelines for the Integration of Society in Latvia has been formulated and is in the process of being implemented. Awareness-raising campaigns have been organised notably for younger people, including members of national/ethnic minorities, and training seminars have been held for civil servants and local government staff. Seminars have also been organised for employers and journalists, on tolerance and social exclusion, management of diversity and intercultural competences. Furthermore, events for the general public have been organised to encourage tolerance towards foreigners and to promote their integration into society. NGOs have also been supported to enhance the access of Roma to public services.

The Committee requests that the next report provide a full and up-to-date description of the situation in Latvia, in particular any legislation and policy initiatives which aim to combat and reduce misleading propaganda concerning migrant workers and their families, and the training of law enforcement officers and public officials who are liable to deal with migrants. In the meantime, the Committee considers that progress is demonstrated by the abovementioned reports, and accordingly finds that the situation is in conformity with the Charter.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Latvia is in conformity with Article 19§1 of the Charter.

## **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 Latvia.

### ***Remuneration and other employment and working conditions***

The report states that in Latvia the principle of equal treatment shall be applied in the employment legal relations. Equal employment conditions shall be ensured to everyone, who is legally employed in Latvia and which employment legal relations are regulated by the Labour Law (also to foreigners). Moreover, in case of violation of his/her employment rights, the employee has a possibility to apply to a court or to the State Labour Inspectorate for redress. The SLI supervises and controls observance of the requirements of the regulatory enactments regarding employment legal relationships and labour protection, as well as controls how employers and employees mutually fulfil the obligations specified in employment contracts and collective labour agreements.

Article 7(1) of the Labour Law determines that everyone has an equal right to work, to fair, safe and healthy working conditions, as well as to fair work remuneration. The rights provided for in this Article shall be ensured without any direct or indirect discrimination – irrespective of a person's race, skin colour, gender, age, disability, religious, political or other conviction, ethnic or social origin, property or marital status, sexual orientation or other circumstances (Article 7(2) of the Labour Law).

Article 29 of the Labour Law regulates prohibition of differential treatment in the employment legal relations. Besides that Article 29(1) provides that differential treatment based on the gender of an employee is prohibited when establishing employment legal relationships, as well as during the period of existence of employment legal relationships, in particular when promoting an employee, determining working conditions, work remuneration or occupational training or raising of qualifications, as well as when giving notice of termination of an employment contract. Both direct and indirect discrimination is prohibited (Article 29(6)).

If in case of a dispute an employee indicates conditions which may serve as a basis for his/her direct or indirect discrimination based on gender, the employer has a duty to prove that the differential treatment is based on objective circumstances not discriminatory. The Committee notes that the burden of proof in cases of discrimination is thus shifted onto the employer.

The Committee recalls that compensation for all acts of discrimination including discriminatory 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 making good the loss suffered and from being sufficiently dissuasive is proscribed. (Conclusions 2012, Article 1§2, Albania). It notes that Article 29(8) states that “if the prohibition against differential treatment and the prohibition against causing adverse consequences is violated, an employee in addition to other rights specified in this Law, has the right to request compensation for losses and compensation for moral harm. In case of dispute, a court at its own discretion shall determine the compensation for moral harm.” The Committee asks for further information on the calculation of compensation, in particular in cases relating to migrant workers.

The Committee notes from the Migration Policy Index 2011 (MIPEX III) that Section 3 of the Education Law 2010 grants all third-country nationals with a residence permit (including temporary), equal access to education, training and study grants.

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

The Committee notes that pursuant to Article 8(1) of the Labour Law, employees as well as employers have the right to freely unite, without any direct or indirect discrimination, in organisations and to join them in order to defend their social, economic and occupational



rights and interests and use the benefits provided by such organisations. Affiliation of an employee with such organisations or the desire of an employee to join them may not serve as a basis for refusal to enter into an employment contract, for termination of an employment contract or for otherwise restricting the rights of an employee (Article 8(2) of the Labour Law).

The new Trade Unions Law came into force on 1 November, 2014. The provisions of the new law determine that everyone has the right freely, without any discrimination, to form trade union and to join it, taking into account the trade union statutes. The Committee asks for information about steps taken to implement the new law in practice.

The Committee refers to the Statement of Interpretation in the General Introduction (Conclusions 2015) and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

### ***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 view of the lack of information, the Committee asks the next report to indicate how the right to accommodation of migrant workers and their families is ensured both in law and practice.

### ***Conclusion***

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

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

### *Paragraph 5 - Equality regarding taxes and contributions*

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

The Committee notes from the report that Section 14(1) of the Law on State Social Insurance stipulates that the object of mandatory contributions of an employer and employee shall be all calculated employment income from which personal income tax must be deducted without deduction of the non-taxable minimum, tax concessions and eligible expenses for which the taxpayer has the right to reduce the taxable income.

Section 3 of the Law provides that domestic taxpayers shall pay tax on their monthly income, except the non-taxable portion, eligible expenditure, and certain tax reliefs.

Non-residents do not have a right to the tax relief specified in this section, except for non-residents who are paid a pension granted in accordance with the regulatory enactments of the Republic of Latvia and those non-residents, who, being residents of another Member State of the European Union or a European Economic Area state have in the taxation year acquired more than 75% of their total income in Latvia.

Section 5(4) of the Law on State Social Insurance provides that a person is socially insured for occupational accident insurance, insurance against unemployment, invalidity insurance, maternity and sickness insurance and parents' insurance, and he or she must make mandatory contributions (regarding thereof) from the day when such person has acquired the status referred to in para. 1 of this Section, except for the status of a self-employed person. A person shall be socially insured for pension insurance if mandatory contributions have been actually made.

Section 15(2) of the Law on Personal Income Tax stipulates that the payer of the salary tax shall pay a rate of tax in the amount of 25% from the monthly taxable income.

According to Section 12(2) of the Law on Personal Income Tax, the non-taxable minimum is not applicable for non-residents, except for a non-resident, being a resident of another European Union member state or a European Economic Area state, whom in a taxation period has gained more than 75% of his or her total annual income in Latvia. The Committee wishes to know what the non-taxable minimum is, and how it is applied. In particular it wishes to know whether the denial of this benefit to non-resident foreigners results in a greater tax liability for migrant workers.

Section 12(3) defines the taxable income of the non-resident foreign taxpayer. The Committee notes in particular that non-residents are not entitled to personal income tax allowances mentioned in Section 13 of the Law on Personal Income Tax (for dependent persons and additional allowances of personal income tax), except for such non-residents receiving pensions under the laws of the Republic of Latvia and those non-residents who are residents of another European Union member state or European Economic Area state that have gained in Latvia at least 75% of their annual taxable income. The Committee wishes the next report to contain greater detail on the values and purposes of the allowances specified under that section. In the meantime, it considers that there is not sufficient information provided in the report for it to assess the situation properly.

The Committee notes that Latvia has concluded Double Taxation Prevention treaties with the majority of States party to the Charter, excluding Andorra, Bosnia and Herzegovina and Cyprus. However, since the annual non-taxable minimum is not applicable for non-resident workers, it considers that their total tax liability in both non-resident and resident countries may be inflated, and therefore the treaties do not have the effect of nullifying the discriminatory environment engendered by the failure to apply the non-taxable minimum to non-resident workers.

The Committee asks what contributions are payable in relation to employment, and whether migrants are treated equally with nationals.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Latvia is in conformity with Article 19§5 of the Charter.

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

### *Paragraph 6 - Family reunion*

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

The Committee notes from the Migration Integration Policy Index 2011 (MIPEX III) that family members in Latvia are critically insecure about their application and status. Authorities have wide grounds for discretion for rejection and withdrawal. In procedures the decision maker is not required to consider families' personal circumstances, nor is there provision for judicial oversight.

The Committee asks for further details on the decision making process and what factors must be taken into account. It considers that all the circumstances of the application must be considered on a case by case basis, with particular regard to importance of the fundamental right to family reunion. The Committee considers that it is important that in practice the authorities in charge of issuing residence permits following applications for family reunion take account of the fact that "the principle of family reunion is but an aspect of the recognition in the Charter (Article 16) of the obligation of states to ensure social, legal and economic protection of the family (...) Consequently, the application of Article 19, paragraph 6, should in any case take account of the need to fulfil this obligation" (Statement of interpretation – Conclusions VIII (1984)). The Committee further asks for information regarding any right of family members to appeal the decision or to have it reviewed.

### **Scope**

Family members of foreigners may request temporary residence permits pursuant to the Immigration Law, as amended. Under Section 24, family members include minor children of either partner, spouses, and parents. Family members may initially apply for a one year permit, followed by renewal for four years, and then they may apply for permanent residence permits. Under Section 23(4), family members of foreigners with temporary residence permits may also request family reunion for the duration of the permit issued to the migrant.

The Committee also recalls that migrant worker's family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these family members have an independent right to stay in the territory (Conclusions XVI-1 (2002), Netherlands). It asks whether family members retain their right to stay in Latvia upon deportation of the migrant worker who sponsored them.

The Committee notes that under Section 25(2) of the Immigration Law, the temporary permit of the spouse of a Latvian citizen or non-citizen shall be annulled if the marriage has ended in divorce, unless there is a child to the marriage who is left to the spouse by a court. In such a case, the spouse shall receive a permanent residence permit. The permits of former spouses of foreigners with permanent residence permits shall be annulled upon divorce (Section 26). The Committee finds that the denial of a continuing right to remain on the basis that the marriage has ended in divorce, particularly where this may occur even if there is a child whose interests may be affected, is not in conformity with the Charter. Furthermore, if the sponsor (Latvian citizen, non-citizen or foreigner) of a spouse holding a temporary residence permit should die, a new temporary permit will not be issued and the current one will not be registered, except in cases where there is a child to the marriage of a Latvian citizen or non-citizen. The Committee finds that the situation is not in conformity on the grounds that the family members of migrant workers who have benefitted from family reunion in Latvia are not granted an independent right to remain.

### **Conditions governing family reunion**

The Committee acknowledges that States may take measures to encourage the integration of migrant workers and their family members. It notes the importance of such measures in promoting economic and social cohesion. However, the Committee considers that

requirements that family members pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may impede rather than facilitate family reunion and therefore are contrary to Article 19§6 of the Charter where they have the potential effect of denying entry or the right to remain to family members of a migrant worker, or otherwise deprive the right guaranteed under Article 19§6 of its substance, such as by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments (Statement of interpretation on Article 19§6, Conclusions 2015).

Section 24(5) of the Immigration Law provides that a family member has the right to receive a permanent residence permit if he or she has acquired the official language. The level of knowledge of the official language, the procedures for the testing of knowledge of the official language and the exemptions in the completion of testing of knowledge of the official language (...) shall be determined by the Cabinet. The Committee asks what level of language is necessary in order to receive a permanent residence permit. Section 24(5) states that a foreigner shall pay a State fee in the amount and according to the procedures stipulated by the Cabinet. The Committee asks what the level of this fee is.

Under Section 34 of the Immigration Law, the issue or registration of a residence permit shall be refused if a foreigner does not have the necessary financial resources for residence in the Republic of Latvia. The Committee asks what the necessary financial means are for the purposes of family reunion. It recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied to sponsor a relative for the purposes of family reunion (Conclusions 2011, Statement of interpretation on Article 19§6).

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

Another ground for refusal under Section 34(5) is where a foreigner has such a health disorder or disease that endangers the safety of the public and the health of the members thereof, or there is a reason to believe that the foreigner may cause a threat to public health, except in the case where the foreigner with the consent of the Ministry of Health enters for medical treatment of the relevant health disorder or disease. The Cabinet shall determine a health disorder and disease list. 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). These are the diseases requiring quarantine which are stipulated in the World Health Organisation's International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis (Conclusions XV-1 (2000), Finland). The Committee asks for details of the illnesses included on the list drawn up by the cabinet. In the meantime it reserves its position on this issue.

Finally, the Committee notes that Section 34(12) states that a foreigner who has joined a foreign military service will be refused a residence permit. The Committee asks under what circumstances this ground for refusal would apply, and whether family members who have previously served in a foreign military service remain eligible for family reunion.

The Committee considers 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. The Committee asks what appeal mechanisms exist to challenge decisions against the grant of family reunion.

*Conclusion*

The Committee concludes that the situation in Latvia is not in conformity with Article 19§6 of the Charter on the ground that family members are not granted an independent right to remain.

## **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 Latvia.

The report states that under the Constitution, everyone who is located in Latvia, including a citizen, a non-citizen, a stateless person, as well as other citizens have the right to legal aid.

Legal aid is ensured for civil, administrative and criminal matters. Section 5 of the State Ensured Legal Aid Law determines that the state shall ensure legal aid for the out-of-court and in-the-court settlement of matters of legal nature or for the protection of infringed or contested rights of a person or his/her interests protected in the cases, ways and amounts provided for by this Law.

The report indicates that the Latvian state shall ensure legal aid in cross-border disputes outside the court and in the court (including legal consultations and interpreter service).

The Committee 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, and that whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter (Conclusions 2011, Statement of interpretation on Article 19§7). The Committee asks whether legal aid covers the provision of interpretation for migrants, and to what extent interpreters are available to assist them.

The state shall ensure legal aid for an asylum seeker in the appeals procedures during the process of granting an asylum. The Committee refers to the Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid assistance.

Furthermore, foreigners who have resided and worked unlawfully in Latvia have the right to request a temporary residence permit, if the foreigner has turned to the court with an application regarding recovery of the unpaid work remuneration from the employer. The first and repeat temporary residence permit shall be issued for one year.

Pursuant to Section 3 of the State Ensured Legal Aid Law, natural persons have the right to request legal aid if:

1. they have obtained the status of a low- income or needy person in accordance with the procedures specified in the regulatory enactments regarding the recognition of a natural person as a low-income or needy person; or
2. they find themselves suddenly in a situation and material condition which prevents them from ensuring the protection of their rights (due to a natural disaster or force majeure or other circumstances beyond their control), or are on full support of the State or municipality.

The Committee notes that in 2013, 2,443 applications for legal aid were received, and 262 were refused, whilst another 580 were adjourned. The Committee asks for the next report to describe in detail the regulations for determining whether someone qualifies for legal aid.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Latvia is in conformity with Article 19§7 of the Charter.

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

### *Paragraph 8 - Guarantees concerning deportation*

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

The report states that according to the provisions of Section 6(1), Sections 1, 4, 41 and 46 of the Immigration Law, a voluntary return decision or a removal order may be adopted only if the stay of the foreigner in Latvia is illegal.

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' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate (Statement of interpretation on Article 19§8, Conclusions 2015).

The Committee asks under what circumstances a foreigner's stay may become illegal, and what procedures regulate the issuing of expulsion orders. It also asks whether all aspects of the non-nationals' behaviour as well as the circumstances and length of time of his/her presence in the territory of the state will be taken into account in determining whether a migrant should be expelled.

States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake (Conclusions V (1977), United Kingdom). The Committee notes that, under Section 4<sup>1</sup>, a decision not to allow entry is appealable to a court. It asks whether all decisions concerning voluntary return or removal orders are also subject to appeal to a court.

The Committee recalls that national legislation should reflect the legal implications of Article 18§1 of the Charter read in conjunction with Article 19§8 as informed by the case-law of the European Court of Human Rights: foreign nationals who have been resident for a sufficient length of time in a state, either legally or with the tacit acceptance of their illegal status by the authorities in view of the host country's needs, should be covered by the rules that already protect other foreign nationals from deportation (Statement of interpretation on Article 19§8, Conclusions 2011). The Committee repeats its request for information on the law and practice pertaining to the expulsion of migrants who are citizens of other States party to the Charter, who have been long-term residents in Latvia and established significant ties there.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Latvia is in conformity with Article 19§8 of the Charter.



## **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 Latvia.

The Committee notes from the report and from information collected by the World Bank (Profile of Migration and Remittances, Latvia 2012) that there is no evidence that any restrictions exist on the transfer of earnings and savings of workers to or from the Republic of Latvia. The Committee asks for confirmation that this is the case.

The report states that Latvia implements Council Regulation No. 1899/2005 requiring any natural person entering or leaving the European Community to declare cash over the value of €10,000 through the Law on Declaration of Cash at the State Border.

The Committee recalls that migrants must be allowed to transfer money to their own country or any other country. With reference to its Statement of interpretation on Article 19§9 (Conclusions 2011), the Committee asks whether there are any restrictions on the transfer of the movable property of migrant workers.

### *Conclusion*

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

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

### *Paragraph 10 - Equal treatment for the self-employed*

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

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

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

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

### *Conclusion*

The Committee concludes that the situation in Latvia is not in conformity with Article 19§10 of the Charter as the ground of non-conformity under Article 19§6 applies also to self-employed migrants.

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

### *Paragraph 11 - Teaching language of host state*

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

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

The report states that citizens and non-citizens, including stateless persons, refugees and those with temporary protection, all have the right to education pursuant to Section 3 of the Law on Education.

The minor child of an asylum seeker also has the right to compulsory education, and to continued education after reaching the age of majority. A minor third-country national or stateless person who has no legal basis to stay in Latvia also has the right to acquire basic education during the time period prior to voluntary exit or during the period when expulsion is suspended.

The report indicates that minority education programmes exist which are targeted towards migrants and others whose first language is not Latvian, and teachers receive support and training. The Committee notes from the Migration Integration Policy Index 2011 (MIPEX II) that Latvia has few policies to ensure all newcomer pupils, whatever their background, participate and achieve like others, or to help all to learn how to live in a diverse society. Financial and targeted assistance to newcomers was ad hoc and largely EU funded. Students can learn the language of their family and of instruction, while standard courses were being developed by the Latvian Language Agency. However, projects linking mainstream and bilingual schools have been affected by funding cuts. The Committee asks for updated information on the funding and teaching of Latvian in schools.

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

The Committee asks whether specific courses in the Latvian language are included in the curricula, or provided outside of regular schooling, for all students whose first language is not Latvian.

Differential treatment between students may only be permitted if it is objectively substantiated with a legal purpose, the means selected for the achievement of which are proportionate. In case of a dispute, the burden of proof is on the provider of the educational programme to demonstrate that the prohibition of differential treatment has not been violated. In the case of unlawful differential treatment, the subject of the violation can require the situation to be remedied.

The Committee recalls that Article 19§11 requires that States shall encourage the teaching of the national language in the workplace, in the voluntary sector or in public establishments such as universities. Such services shall be free of charge so as not to exacerbate the disadvantaged position of migrant workers in the labour market (Conclusions 2002, France).

The Committee recalls that a requirement to pay substantial fees is not in conformity with the Charter. States are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible (Conclusions 2011, Norway).

The report states that the State Employment Agency (SEA) offers occupational training, retraining and acquisition of non-formal education for unemployed persons. This includes Latvian language courses for foreigners. Pursuant to Regulation of Cabinet Ministers No. 75 of 2011, the training courses are free provided the unemployed person does not withdraw from the programme without good reason.

The report states that language courses for the employed are available, however, the committee notes that in 2010, only five people participated, in 2011, 33, in 2012, seven and in 2013, eleven. The Committee asks for more details on the arrangement of these courses and funding opportunities for adult learners of Latvian. It notes from another source that the National Integration Centre offers language courses up to level C1 free of charge. The Committee asks for details of any other language learning opportunities. It notes the progress made in various Acts which have extended the right to education and training to all foreigners and their families. However, it considers that the implementation of these reforms during the reference period, in particular for adult migrants, does not appear significant, and wishes the government to comment on the low number of learners enrolled. In the meantime, it reserves its position on this issue.

#### *Conclusion*

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

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

*Paragraph 12 - Teaching mother tongue of migrant*

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

The undertaking of States under this provision is to promote and facilitate the teaching, in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory (Conclusions 2011, Armenia).

The Committee notes the existence of bilingual schools for children of foreign origin. It asks what languages are available in these schools. It also asks whether mother tongue language courses are available in the mainstream school system, and how the mainstream and bilingual schools are organised.

The Committee considers that States should also promote and facilitate the teaching of the languages most represented among the migrants present on their territories within their school systems or in other contexts such as voluntary associations or non-governmental organisations (Conclusions 2011, Statement of interpretation on Article 19§12). It asks whether any non-governmental organisations provide teaching of migrants' languages, and whether they receive support.

In the meantime, the Committee considers that the information provided in the report is not sufficient for it to assess the situation.

*Conclusion*

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

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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

The Committee recalls that the aim of Article 27 is to promote the reconciliation of professional and family responsibilities by providing people with family responsibilities with equal opportunities in respect of entering, remaining in and re-entering employment. Article 27 requires States Parties to take specific measures in the field of vocational guidance and training, so as to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities and to assist them in advancing in economic activity (Conclusions 2007, Armenia).

To be able to return to professional life, such persons may need special assistance in terms of vocational guidance and training. However, if the standard employment services (those available to everyone) are well developed, the lack of extra services for people with family responsibilities cannot be regarded as a human rights violation (Conclusions 2003, Sweden).

According to the report the principle of equal treatment is applied in employment relations, including to workers with family responsibilities. General labour market policy applies to workers with family responsibilities. The Committee takes note of the Support for Unemployment Persons and Persons Seeking Employment Law which aims at providing support for unemployed persons or persons subject to the risk of unemployment. Section 3§1 of this law ('active employment measure') provides different measures for specified groups of persons, including persons six months after the end of parental leave and persons who care for a family member.

The Committee takes note of active employment measures taken by the State Employment Agency (SEA) through its network of 28 regional offices that provide career guidance advice and counselling free of charge to jobseekers, the employed and persons planning to return to education. Persons concerned registered with the SEA can choose group or individual career and /or counselling. The Committee takes note of various measures, such as vocational training, re-qualification and qualification improvement, measures to enhance competitiveness, career counselling and vocational guidance, measures to support self-employment, lifelong learning etc. The Committee notes that the employment rate of women with one, two or three children is higher than the EU 28 average. It also notes that the share of persons after childcare leave in the total number of unemployed represented 2.1% in 2010 and 2,9% in 2013.

### ***Conditions of employment, social security***

The Committee recalls that implementing Article 27§1 may also require the adoption of measures concerning length and organisation of working time. Workers with family responsibilities should be allowed to work part time or to return to full employment (Conclusions 2005, Estonia). These measures cannot be defined unilaterally by the employer but should be provided by a binding text (legislation or collective agreement).

Workers with family responsibilities should be entitled to social security benefits under different schemes, in particular health care, during the periods of parental/childcare leave. Legislation or practice should provide for arrangements entitling workers to time off from work on grounds of urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable.

The legislation should provide guarantees to grant a parent raising a child or nursing a sick family member part time work when requested and provide for arrangements enabling

parents to reduce or cease their professional activity because of serious illness of a child. The Committee asks whether the legislation complies with these standards.

The Committee further recalls that Article 27§1 requires State Parties to take account of the needs of workers with family responsibilities in terms of social security. Workers should be entitled to social security benefits under the different schemes, in particular health care, during periods of parental/childcare leave. Periods of leave due to family responsibilities should be taken into account for determining the right to pension and for calculating the amount of pension. Crediting of periods of childcare leave in pension schemes should be secured equally to men and women.

According to the report the Law on State Social Insurance (Section 6) the State covers social insurance contribution payments for pension insurance on behalf of persons who take care of a child who has not reached one and a half years of age and who receive parental benefit. The Committee seeks confirmation that periods of leave due to family responsibilities are taken into account for determining the right to pension equally for men and women.

### ***Child day care services and other childcare arrangements***

The Committee recalls that under Article 27§1 affordable, good quality childcare facilities should be made available. Child day care may be arranged in many ways, for example in crèches, kindergartens, family day care or as a form of pre-school. Moreover, day care may be private or public. In all cases, the Committee examines if there is a sufficient provision of childcare places, and whether services are affordable and of high standard (quality being assessed on the basis of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and the amount of the financial contribution parents are asked to make).

According to the report, the Law on Education prescribes that municipalities shall ensure equal access to pre-school educational services for all children aged 1.5-5 years of age in their administrative territory. Due to the lack of an infrastructural base and/or intensive inter-regional migration (rapid increase of registered children in the capital Riga) many municipalities have faced the problem of long waiting lists. Since the beginning of 2013 the municipalities that are unable to provide pre-school educational services for children in their administrative territory, are partly paying for those children who are acquiring education in private pre-school educational institutions. The allowance is between € 70 and 260 per month.

In 2012-2013 municipalities consequently implemented many measures in order to increase the enrolment of children in formal child care system, e.g. investments in pre-school educational groups, building new kindergartens using EU structural funds; financing, optimising cooperation between municipalities and private kindergartens, increasing municipalities' co-financing or purchasing of places for children on the waiting lists ad providing support to nannies.

According to the report, practice shows that local actors are capable of solving some structural problems of early child care and of the education system by implementing unaccustomed and novel incentives. However, according to the report, due to the lack of finances and political willingness this problem is still topical or even crucial in many municipalities in Latvia. The Committee wishes to be kept informed about the measures taken to resolve this problem.

In September 2013 the Government started a pilot project to provide financial support for parents who need child care support for their children aged 1,5-4 years who are not benefiting from public childcare (as from 5 years on municipalities have a legal obligation to provide primary education to children). The purposeful financing will be provided for three years – till the end of 2015 in order to solve the problem of long waiting lists for public kindergarten registration and help parents to return to work at the same time providing safe

conditions for the child. The state funding for 2014 and 2015 is planned at €13,6 million per year.

State support (cash transfer) will be provided to private service providers that are included in the Education Register (private kindergartens) or Child Supervision Services Providers Registry (nannies, child care centres and other forms of child care, except private kindergartens) providing full-time service (at least 8 hours per working day).

In accordance with the amended Section 50(3) of the Law on Protection of the Rights of the Child, Regulation of the Cabinet of Ministers No. 404 was adopted on 16 July 2013 on the "Requirements for Providers of Child Supervision Services and Procedures for Registration of Providers of Child Supervision Services". The Regulation prescribes the professional qualification and safety requirements for provision of child supervision services, procedures for the registration of service providers in Child Supervision Services Providers registry.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Latvia is in conformity with Article 27§1 of the Charter.



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

### *Paragraph 2 - Parental leave*

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

The Committee recalls that the focus of Article 27§2 are parental leave arrangements which are distinct from maternity leave and come into play after the latter. National regulations related to maternity or paternity leave fall under the scope of Article 8§1 and are examined under that provision. The States should provide the possibility for either parent to obtain parental leave.

Consultations between social partners throughout Europe show that an important element for the reconciliation of professional, private and family life are parental leave arrangements for taking care of a child. Whilst recognising that the duration and conditions of parental leave should be determined by States Parties, the Committee considers important that national regulations should entitle men and women to an *individual right* to parental leave on the ground of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided to each parent and at least some part of it should be non-transferable.

The Committee recalls that under Article 27§2 of the Charter the States are under a positive obligation to encourage the use of parental leave by either parent. The States shall ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave.

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

The Committee asks what financial compensation or benefits are provided during the period of parental leave.

According to the report the provisions of parental leave are regulated by Article 156 of the Labour Law. Every employee has the right to parental leave which shall be granted for a period not exceeding one and a half years up to the day the child reaches the age of eight years (§1) . Parental leave, upon the request of an employee shall be granted as a single period or in parts (§2). The time spent by an employee on parental leave shall be included in the total length of service (§3). The previous job of an employee who makes use of parental leave shall be retained. It is possible for either parent to obtain parental leave.

The Committee asks whether fathers have a right to an non-transferable leave and if so, what is its length.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Latvia is in conformity with Article 27§2 of the Charter.

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

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

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

### ***Protection against dismissal***

The Committee recalls that under Article 27§3 family responsibilities must not constitute a valid ground for termination of employment

According to the report, under Articles 101 and 109 of the Labour Law, employers cannot give a notice of termination of an employment contract to a pregnant woman, during maternity leave or during a period of one year following childbirth. Article 101 of the Labour Law prescribes a list of concrete conditions that can serve as a basis for notice of termination by an employer. The latter has the right to give a written notice of termination of an employment contract only on the basis of circumstances related to the conduct of the employee (significant violation of the employment contract), his/her abilities or economic organisational, technological measures.

### ***Effective remedies***

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 (Statement of Interpretation on Articles 8§2 and 27§3 (Conclusions 2011) .

In pursuance with Article 124(1) of the Labour Law if a notice of termination by an employer has no legal basis or the procedures prescribed for termination of an employment contract have been violated, such notice in accordance with a court judgment shall be declared invalid. An employee, who has been dismissed from work on the basis of a notice of termination by an employer, shall in accordance with a court judgment be reinstated in his/her previous work (Article 124(2) of the Labour Law).

According to Article 126(1) of the Labour Law an employee who has been dismissed illegally and reinstated in his/her previous work shall in accordance with a court judgment be paid average earnings for the whole period of forced absence from work. An employee who has been transferred illegally to other lower paid work and afterwards reinstated in his/her previous work shall in accordance with a court judgment be paid the difference in average earnings for the period when he/she performed work at lower pay. Additional compensation for moral damages can be awarded by a court, under Article 29 of the Labour Law, if the dismissal qualifies as gender-based discrimination. It is up to the employer to prove that the treatment complained of is based on objective circumstances not related to the gender of the employee, including as regards the granting of prenatal, maternity or paternity leave.

### *Conclusion*

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

## **Article 31 - Right to housing**

### *Paragraph 1 - Adequate housing*

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

Under Article 31§1 of the Charter, the Committee requires that the States Parties shall guarantee to everyone the right to housing and shall promote access to adequate housing. States must take the legal and practical measures which are necessary and adequate for the effective protection of the right in question. They enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, § 35).

More particularly, in connection with the means of ensuring steady progress towards achieving the goals laid down by the Charter with regard to the right to housing, the Committee has emphasised that implementation of the Charter requires State Parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein (International Movement ATD Fourth World (ATD) v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, § 61).

### ***Criteria for adequate housing***

The Committee recalls that for the purpose of Article 31§1, the notion of adequate housing must be defined in law.

It asks if such a definition exists and requests that the next report indicate in which legal text it may be found.

It further recalls that under Article 31§1, “adequate housing” means a dwelling which is safe from a sanitary and health point of view, i.e. it must possess all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity and must also be structurally secure, not overcrowded and with secure tenure supported by the law (see Conclusions 2003, France and Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 43).

The standards of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock. They must also be applied to housing available for rent as well as to owner occupied housing (Conclusions 2003, France).

The Committee asks the next report to specify whether this is the case in Latvia.

### ***Responsibility for adequate housing***

The Committee recalls that it is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also limit against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

The Committee asks the next report to indicate how public authorities ensure that housing is adequate.

### ***Legal protection***

The Committee recalls that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to

affordable and impartial judicial or other remedies (administrative review, etc.) (Conclusions 2003, France). Any appeal procedure must be effective (European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §§ 80-81).

Given the lack of information in this regard, the Committee asks for detailed information in the next report on all the above-mentioned points.

### ***Measures in favour of vulnerable groups***

The Committee reiterates that States Parties shall guarantee equal treatment with respect to housing on the grounds of Article E of the Charter. Article E prohibits discrimination and therefore establishes an obligation to ensure that, in the absence of objective and reasonable justifications, any individual or groups with particular characteristics enjoys in practice the rights secured in the Charter. Moreover, Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Discrimination may also arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all (International Association Autism-Europe (Autism) v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 52 and Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, § 35).

As regards the right to housing the Committee has held that equal treatment must be assured to the different groups of vulnerable persons, particularly low-income persons, unemployed, single parent households, minors, persons with disabilities including mental health problems, persons internally displaced due to wars or natural disasters, etc. (Conclusions 2003, France). Furthermore, in its Conclusions 2006, it also drew particular attention on the situation of Roma and Travellers and “asked for national reports to provide comprehensive information on any measures introduced to take account of the fact that certain groups of the population, such as nomads, are particularly vulnerable and to secure for them the effective enjoyment of the rights enshrined in the Charter.”

Moreover, with regard to Roma in particular, the Committee has held that as a result of their history, the Roma have become a specific group of disadvantaged group and vulnerable minority. They therefore require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community (Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40).

The report indicates that the Law on Local Governments ensures social assistance to residents who are socially vulnerable, such as poor families, old people in old-age homes, etc. Municipalities have an autonomous function concerning the assistance to persons in housing matters in accordance with the procedures laid down in relevant laws and regulations. Social assistance is provided by the procedure laid down in the Law on Social Services and Social Assistance, while assistance in solving housing issues is laid down in the Law on Assistance in Solving Apartment Matters. It is defined as a benefit in cash or in kind, the granting of which is based on the evaluation of the material resources of persons who lack the means to satisfy basic needs.

The Committee takes note of the Strategy on Social Safety Net 2009-2011, which launched the implementation of emergency safety measures notably in housing through the payment of housing allowance costs. Due to the economic crisis, for the period 1 October 2009 – 30 April 2012 the State co-financed the housing allowance. In 2013, there were 158,893 recipients of housing allowance, who represented 7.22% of the population.

As far as Roma people are concerned, the report indicates that there are no projects/programmes focusing on housing for Roma. The report indicates that assistance in housing matters is provided irrespective of ethnic origin. In view of its case-law which requires special protection for Roma people, the Committee asks the next report to indicate which measures are taken to protect their right to housing.

*Conclusion*

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



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**LITHUANIA**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Lithuania which ratified the Charter on 29 June 2001. The deadline for submitting the 12th report was 31 October 2014 and Lithuania submitted it on 4 February 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report also contains information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to protection of health – advisory and educational facilities (Article 11§2)

Lithuania has accepted all provisions from the above-mentioned group except Articles 19§2, 19§4, 19§6, 19§8 19§12 and 31§3.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Lithuania concern 31 situations and are as follows:

– 23 conclusions of conformity: Articles 7§2, 7§4, 7§6, 7§7, 7§8, 7§9, 7§10, 8§1, 8§3, 8§4, 8§5, 11§2, 17§2, 19§1, 19§3, 19§5, 19§7, 19§9, 19§10, 19§11, 27§1, 27§2 and 27§3

– 7 conclusions of non-conformity: Articles 7§1, 7§3, 8§2, 16, 17§1, 31§1 and 31§2

In respect of the remaining situation related to Article 7§5, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Lithuania under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 16**

Adoption on 26 May 2011 of the Law on Protection against Domestic Violence, which defines the concept of domestic violence, establishes the rights and liabilities of subjects of domestic violence, implements preventive and protective measures and provides for assistance in the event of domestic violence.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),



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

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to a fair remuneration – increased remuneration for overtime work (Article 4§2)
- the right to bargain collectively – negotiation procedures (Article 6§2)
- the right to dignity in the workplace – moral harassment (Article 26§2)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 notes from the information provided in the report submitted by Lithuania that there have been no changes to the situation which it has previously found to be in conformity with Article 7§1 of the Charter.

The report provides statistics on the findings of the Labour Inspectorate regarding the illegal work of minors during the reference period. The Committee notes that the main economic sectors of illegal employment of minors were agriculture, manufacturing, construction, wholesale and retail trade and repair of motor vehicles and motorcycles. The report indicates that the amount of fines imposed by the Labour Inspectorate in cases involving illegal employment of young persons under 18 was of 72,225 Lithuanian litas (LTL, €20,917).

The Committee recalls that the situation in practice should be regularly monitored and asks the next report to provide information on the monitoring activities and findings of the State Labour Inspectorate in relation to illegal employment of children under the age of 15.

With regard to light work during school holidays, the Committee notes from the Governmental Committee's Report concerning Conclusions 2011 that, according to Section 36 of the Law on Occupational Safety and Health, during holidays, young persons under 15 years of age may work up to 7 hours per day and 35 hours per week and young persons who have reached the age of 15 may work up to 8 hours per day and 40 hours per week.

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

The Committee considers that the situation is not in conformity with Article 7§3 on the ground that during school holidays the daily and weekly working time for children subject to compulsory education is excessive and therefore cannot be qualified as light work.

### *Conclusion*

The Committee concludes that the situation in Lithuania is not in conformity with Article 7§1 of the Charter on the ground that during school holidays the daily and weekly working time for children under 15 years of age is excessive and therefore cannot be qualified as light work.

## **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 notes from the information provided in the report submitted by Lithuania that there have been no changes to the situation which it has previously found to be in conformity with Article 7§2 of the Charter. It asks the next report to provide a full and up-to-date description of the situation in law and in practice.

The Committee recalls that the situation in practice should be regularly monitored. It therefore asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment under the age of 18 for dangerous or unhealthy activities.

### *Conclusion*

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

In its previous conclusion, the Committee found the situation to be in breach of Article 7§3 of the Charter on the ground that the legal framework did not limit the period of work during summer holidays for children subject to compulsory education (Conclusions 2011). The report indicates that the Government Resolution No. 138 of 29 January 2003 has been amended in the sense that from 1 May 2014 children under the age of 16 shall be guaranteed 14 consecutive calendar days of rest during summer school holidays. The Committee asks that the next report provide information on how this new rule is implemented into practice and the supervision exercised by the Labour Inspectorate in this sense. Pending receipt of the information requested, the Committee reserves its position on this point.

The report indicates that children of the age of 14 are allowed to perform light work in the sphere of culture, arts, sports, advertising, trade, accommodation and food services, information and communication, financial and insurance, administration and service, household, agricultural fields, if one of the parents or another child's legal representative has given the written consent and his/her physician has issued certificate that the child is suitable to perform such work.

With regard to working time during school holidays, the Committee notes from the Governmental Committee's Report Concerning Conclusions 2011 that, according to Section 36 of the Law on Occupational Safety and Health, during holidays, young persons under 15 years of age may work up to 7 hours per day and 35 hours per week during holidays and young persons who have reached the age of 15 may work up to 8 hours per day and 40 hours per week.

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

The Committee considers that the situation is not in conformity with Article 7§3 on the ground that during school holidays the daily and weekly working time for children subject to compulsory education is excessive and therefore cannot be qualified as light work.

The Committee recalls that the situation in practice should be regularly monitored. It therefore asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment of children subject to compulsory education.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 4 - Working time*

The Committee notes from the information provided in the report submitted by Lithuania that there have been no changes to the situation which it has previously found to be in conformity with Article 7§4 of the Charter.

The Committee asked for updated information on the situation in practice in relation to working time for young workers (Conclusions 2011). The report indicates that the State Labour Inspectorate identified 4 violations of the regulations regarding the working and rest time in 2010, 2 violations in 2011, 1 violation in 2012 and 2 violations in 2013.

The Committee recalls that the situation in practice should be regularly monitored and therefore asks that the next report provide information on the monitoring activities and findings of the State Labour Inspectorate in relation to working time for young persons under 18.

### *Conclusion*

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

## **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 Lithuania.

### **Young workers**

The Committee noted previously that young employees are entitled to the same wages as adults (Conclusions 2004). In its previous conclusion, the Committee found that the situation is not in conformity with Article 7§5 of the Charter on the ground that the minimum wage for young workers is not fair since the minimum net wage amounted up to only 40.2% of the net average wage (Conclusions 2011).

The Committee previously asked information on the net minimum wage and the net average wage (Conclusions 2011). The report indicates that during the reference period, the Government, based on a recommendation of the Tripartite Council approved /set the minimum monthly wage at 850 Lithuanian litas (LTL, €246) on 1 August 2012. The report provides the values of the net minimum monthly wage and net average monthly wage for each year of the reference period. The Committee notes that for example in 2012 the net monthly minimum wage amounted to 43% of the net average monthly wage and in 2013 the net monthly minimum wage amounted to 47.7% of the net average monthly wage.

Under Article 7§5 of the Charter, wages paid to young workers between 16 and 18 years of age can be reduced by as much as 20% compared to a fair adults' starting or minimum wage. Therefore, if young workers were paid 80% of a minimum wage in line with the Article 4§1 fairness threshold (60% of the net average wage), the situation would be in conformity with Article 7§5 (Conclusions XVII-2 (2005), Spain). In the present case, as the young workers' wage is at the same level as the adult workers' wage, the Committee examines whether the net minimum wage of young workers represents 80% of the minimum threshold required for adult workers (60% of the net average wage). Noting that according to the data provided in the report, in 2013 the net monthly minimum wage comes close to the threshold required under Article 7§5, the Committee considers that the situation is in conformity with the Charter as regards the wages paid to young workers.

The report indicates that during the reference period, the State Labour Inspectorate did not identify any violations concerning the payment of minimum wages to minors. The Committee recalls that the situation in practice should be regularly monitored and asks the next report to provide information on the monitoring activities and findings of the State Labour Inspectorate in relation to wages paid to young workers. It also asks that the next report provide the net minimum wage and the net average wage for the reference period.

### **Apprentices**

Concerning the apprentices, the Committee noted previously that the Vocational Education and Training Act of 1997 stipulates that students on practical placements with employers must be paid in accordance with the conditions in their contracts, but not less than the minimum monthly wage set by the Government (Conclusions 2006).

The Committee asks whether all apprentices receive an allowance which cannot be less than the minimum monthly wage indicated in the report. It also asks to be provided with examples of allowances paid to apprentices at the beginning and at the end of the apprenticeship.

The Committee recalls that the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period (Conclusions II (1971), Statement of interpretation on Article 7§5), starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (Conclusions 2006, Portugal).

Pending receipt of the information requested, the Committee reserves its position on this point.

*Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

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

The Committee notes from the information provided in the report submitted by Lithuania that there have been no changes to the situation which it has previously found to be in conformity with Article 7§6 of the Charter. It asks the next report to provide a full and up-to-date description of the situation in law and in practice.

The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide information on the monitoring activities and findings of the State Labour Inspectorate in relation to inclusion of time spent on vocational training in the normal working time.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania 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 notes from the information provided in the report submitted by Lithuania that there have been no changes to the situation which it has previously found to be in conformity with Article 7§7 of the Charter.

The report indicates that during the reference period the State Labour Inspectorate did not identify any violations of the regulations related to paid annual holiday for employees under 18. The Committee recalls that the situation in practice should be regularly monitored and asks the next report to provide information on the monitoring activities and findings of the State Labour Inspectorate in relation to paid annual holiday for young persons under 18.

### *Conclusion*

The Committee concludes that the situation in Lithuania 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 notes from the information provided in the report submitted by Lithuania that there have been no changes to the situation which it has previously found to be in conformity with Article 7§8 of the Charter.

The report indicates that in 2010 the State Labour Inspectorate identified 2 violations of the regulations prohibiting night work for persons under 18. The report adds that during 2011-2013, no violations related to night work were detected.

The Committee recalls that the situation in practice should be regularly monitored and asks the next report to provide information on the monitoring activities and findings of the State Labour Inspectorate in relation to prohibition of night work for young persons under 18.

### *Conclusion*

The Committee concludes that the situation in Lithuania 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 notes from the information provided in the report submitted by Lithuania that there have been no changes to the situation which it has previously found to be in conformity with Article 7§9 of the Charter.

The report indicates that in 2010 the State Labour Inspectorate identified 7 violations concerning absence of health checks; 11 violations in 2011 and 2 violations in 2012. The report adds that there were no violations regarding medical examination of young workers in 2013.

The Committee recalls that the situation in practice should be regularly monitored and asks the next report to provide information on the monitoring activities and findings of the State Labour Inspectorate in relation to regular medical examination of young workers.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

### ***Protection against sexual exploitation***

The Committee notes that the legislative framework which it has previously (Conclusions 2006, Conclusions 2011) found to be in conformity with the Charter has not changed.

The Committee asks the next report to provide statistical information on the extent of sexual exploitation of children, including through trafficking.

### ***Protection against the misuse of information technologies***

The Committee notes that the situation which it has previously found to be in conformity with the Charter has not changed. The Committee wishes to receive updated information as regards measures taken to strengthen protection of children against sexual exploitation by means of information technologies.

### ***Protection from other forms of exploitation***

The Committee notes from the Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Lithuania (Group of Experts on Action against Trafficking in Human Beings (GRETA, 2015) that as regards child victims of trafficking, three were identified in 2011, eight in 2012, and 10 in 2013. Guidelines on risk assessment and indicators for identifying victims of trafficking among children were distributed to municipal child protection services by the State Child Rights Protection and Adoption Service at the beginning of 2014. They were drafted in co-operation with Lithuanian Caritas, the IOM Office in Vilnius and the Office of the Ombudsman for Children, on the basis of recommendations of the Ministry of the Interior. The guidelines include information about the national and international legal framework and measures aimed at protecting and promoting the rights of victims of trafficking.

The Committee notes that GRETA has urged the Lithuanian authorities to strengthen their efforts to provide assistance to victims of trafficking, and in particular to ensure that all child victims of trafficking benefit from the assistance measures, including appropriate accommodation, specialised support services and access to education.

The Committee wishes to be informed of measures taken to assist child victims of trafficking.

### *Conclusion*

The Committee concludes that the situation in Lithuania is in conformity with Article 7§10 of the Charter.

## **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 Lithuania.

### ***Right to maternity leave***

Article 179 of the Labour Code, which applies both to the private and the public sector, provides for 126 days maternity leave, namely 70 days leave before the birth and 56 days following the birth.

However, the Committee previously noted that there is no compulsory postnatal maternity leave and asked what legal safeguards exist to avoid any undue pressure on employees to shorten their maternity leave; whether there is an agreement with social partners on the question of postnatal leave that protects the free choice of women, and whether collective agreements offer additional protection. In addition, it asked for information on the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave).

In response to these questions, the report refers to Article 180 of the Labour Code, which provides for parental leave, to be taken by either parent as a single period or distributed in portions until the child is three years old. The Committee notes from the information provided in the report under Article 27§2 that parental leave is paid up to a period of two years. As from July 2011, the beneficiary of parental leave can either choose to receive benefits corresponding to 100% of the compensated wage, but only during the first year, or to receive lower amounts of benefits for a longer period, namely 70% of the wage for the first year and 40% of the wage during the second year. These benefits are subject to a ceiling, up to 3.2 times the national average insured income set by the Government for the year during which the leave began. In 2010 and 2011 such insured income was LTL 1,170 (€339), in 2012 and 2013 it was LTL 1,488 (€430).

The Committee furthermore notes from other sources (MISSOC and ILO databases) that, in addition to maternity and parental leave, fathers are entitled to 28 days of paid leave after childbirth. It asks the next report to provide further information in this respect, for example as regards the eligibility and other requirements, the rate of payment etc.

According to the report, additional protection can also be granted by collective agreements (Article 61 of the Labour Code); the Committee asks the next report to provide relevant examples of such clauses.

The Committee notes from another source (European Network of Legal Experts in the field of Gender Equality, Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood – The application of EU and national law in practice in 33 European countries, 2012, p.169) that if the employee is not entitled to maternity allowance or the allowance is not high enough, the maternity leave is usually left unused. It asks the next report to provide further information on the legislative framework protecting employees from discriminatory treatment related to maternity or parental leave as well as statistical data concerning the average length of maternity leave and the number and percentage of employed women, in the private as in the public sector, who take less than six weeks leave after birth.

### ***Right to maternity benefits***

The report confirms that are entitled to a maternity allowance all employed women, in the private as in the public sector, who are insured, are granted pregnancy and child-birth leave and have paid at least 12 months of social insurance contributions in the last 24 months. The Committee recalls that, under Article 8§1 of the Charter, the right to benefit may be subject to conditions such as a minimum period of contribution and/or employment. However, these conditions must be reasonable; in particular, if qualifying periods are required, they should allow for some interruptions in the employment record (Statement of interpretation,

Conclusions 2015). The Committee accordingly asks the next report to clarify how the qualifying period is calculated and whether it includes interruptions in the employment record. It furthermore asks whether employed women who do not fulfil the qualifying conditions for maternity benefit are entitled to other benefits.

The amount of maternity allowance paid during maternity leave equals 100% of the beneficiary's compensatory wage, subject to a ceiling corresponding, since 2011, to 3.2 times the national average insured income set by the Government for the year during which the leave began. In 2010 and 2011 such insured income was LTL 1170 (€339), in 2012 and 2013 it was LTL 1488 (€430). Since 1 July 2011, no additional benefits apply in case of multiple births. The Committee recalls that for high salaries, a significant reduction in pay during maternity leave is not, in itself, contrary to Article 8§1. Various elements are taken into account in order to assess the reasonable character of the reduction, such as the upper limit for calculating benefit, how this compares to overall wage patterns and the number of women in receipt of a salary above this limit. In the light of these elements, it asks the next report to provide further information on the proportion of women concerned by a maternity allowance lower than their wage. With reference to its abovementioned Statement of Interpretation, the Committee furthermore asks whether the minimum rate of the maternity allowance corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

#### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Lithuania is in conformity with Article 8§1 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

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

### ***Prohibition of dismissal***

Pursuant to Article 132 of the Labour Code, which applies both to the private and public sector, a pregnant woman may not be dismissed from the day she notified her employer of her pregnancy and until a month after the expiry of her maternity leave, except in the following cases (Articles 136(1) and (2) of the Labour Code):

- (i) following a court sentence on the employee which prevents him or her from continuing work;
- (ii) when an employee is deprived of special rights to perform certain work in accordance with a procedure prescribed by law;
- (iii) upon request of bodies or officials authorised by law;
- (iv) when an employee is unable to perform his or her work further to a medical conclusion or conclusion of the Disability and Capacity for Work Establishment Office of the Ministry of Social Security and Labour;
- (v) when an employee under 14 to 16 years of age, one of his parents, or the child's statutory representative, or his attending paediatrician, or the child's school demand that the employment contract be terminated;
- (vi) upon the liquidation of an employer's activities.

Furthermore, an employment contract will expire upon the employer's death, if the contract was concluded for the purpose of providing services specifically to this person.

The Committee recalls that Article 8§2 of the Charter permits, as an exception, the dismissal of an employee during pregnancy and maternity leave in certain cases such as misconduct which justifies breaking off the employment relationship, if the undertaking ceases to operate or if the period prescribed in the employment contract expires. Exceptions are however strictly interpreted by the Committee. According to the report, the situations referred to under (i), (ii) and (iii) are mostly related to faults by the employee. However, the report does not explain how these provisions are interpreted and applied and the Committee is therefore not in a position to assess whether the situations referred to fall under the scope of the exceptions for misconduct allowed under the Charter. In particular, the Committee notes that the dismissal of an employee upon request of bodies or officials authorised by law raises problems of compatibility with Article 8§2 of the Charter. Similarly, the employee's inability to perform her work for reasons related to her health is not a circumstance which authorises dismissal under Article 8§2 of the Charter. Accordingly, the Committee reiterates its request for explanation, in the light of any relevant case law, on how these exceptions are interpreted and applied. In the meantime, it finds that the grounds for dismissal without notice of an employee during pregnancy or maternity leave go beyond the admissible exceptions and the situation is therefore not in conformity with Article 8§2 of the Charter.

The Committee takes note of the authorities' engagement to submit the Committee's conclusions to a working group dealing, inter alia, with the improvement of regulation of labour relations, with a view to bringing the situation in conformity with the Charter and asks the next report to provide updated information on any relevant amendments introduced.

### ***Redress in case of unlawful dismissal***

The Committee previously noted that, under Article 297 of the Labour Code, employees can contest their dismissal before a court; if the court finds that they have been dismissed without a valid reason or in violation of the procedure established by law, they can be reinstated in their post and awarded a sum corresponding to their average wage for the entire period during which they were off work. The report confirms, in the light of the relevant legislation (in particular, Article 44 of the Law on Public Service and Articles 38 of the

Constitution) and decisions of the Constitutional Court (in particular, Resolution of 27 February 2012), that this also applies to women employed in the public sector.

When the competent court establishes that an employee may not be reinstated in her previous post due to economic, technological, organisational or similar reasons, or because she may be put in unfavourable work conditions, it will recognise the termination of the employment contract as unlawful and award the employee a severance pay in the amount specified in Article 140§1 of the Labour Code as well as the average wage for the period during which the employee was off work from the day of dismissal until the date at which the court decision became effective. According to Article 140§1, the severance pay depends on the length of service: (i) under 12 months – one monthly average wage; (ii) 12 to 36 months – two monthly average wages; (iii) 36 to 60 months – three monthly average wages; (iv) 60 to 120 months – four monthly average wages; (v) 120 to 240 months – five monthly average wages; (vi) over 240 months – six monthly average monthly wages.

In response to the Committee's request for clarification about the compensation, the report clarifies that the abovementioned provisions – and the ceiling to compensation – only concern material damage and do not preclude an employee from claiming non-pecuniary damage under the relevant provisions of the Civil Code. Article 6.250(2) of the Civil Code states that the court in assessing the amount of non-pecuniary damage shall take into consideration the consequences of the damage sustained, the gravity of the fault committed by the perpetrator, his/her financial status, the amount of pecuniary damage suffered by the victim and any other circumstances which are relevant to the case, in the light of the criteria of good faith, justice and reasonableness. Accordingly, the report states that there are no upper limits to compensations and both types of compensation can be awarded by the same court if the employee includes in her request a claim for non-pecuniary damage. The report points out that the court has the discretion to select the most appropriate remedy in each specific case (judgment by the Kaunas Regional Court in civil case No. 2A-1775-259/2014, proceedings No. 2-69-3-20210-2013-1). The Committee asks the next report to provide examples of case law relating to compensation claims in case of unlawful dismissal of employees during pregnancy or maternity leave.

### *Conclusion*

The Committee concludes that the situation in Lithuania is not in conformity with Article 8§2 of the Charter on the ground that exceptions to the prohibition of dismissal of employees during pregnancy or maternity leave are excessively broad.



## **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 Lithuania.

According to the report, there have been no substantial changes to the situation which the Committee previously found to be in conformity with Article 8§3 of the Charter (Conclusions 2005 and Conclusions 2011): pursuant to Article 278(8) of the Labour Code, employees in the private as in the public sector are entitled, in addition to their regular breaks, to additional nursing breaks of at least 30 minutes every three hours. At the employee's request, such additional breaks may be added to the regular breaks or used to shorten the working day. These breaks are considered as working time and remunerated as such. The Committee previously noted that there was no time-limit on the entitlement to nursing breaks.

### *Conclusion*

The Committee concludes that the situation in Lithuania 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 Lithuania.

It notes that there have been no changes to the situation which it has previously found to be in conformity with Article 8§4 of the Charter: pursuant to Articles 154(4) and 278(10) of the Labour Code, pregnant women, women who have recently given birth and nursing women may only be assigned to night work with their consent. If they do not consent to it, and upon presentation of a medical certificate that such work would affect their safety and health, they are entitled to be transferred to day-time work. Where, for objective reasons, such transferral is not possible, they shall be granted a paid leave on the basis of their average salary until they go on maternity leave, or a child-care leave until the child is one year old. As regards the rules applicable to night-work, the Committee refers to its finding of conformity under Article 2§7 (Conclusions 2014, Lithuania). It notes from the report that this legal framework also covers women employed in the public sector.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

The report confirms, in response to the Committee's question, that the relevant rules applying to women employed in the private sector, also apply to women employed in the public sector.

In particular, Article 278(1) of the Labour Code prohibits the employment of pregnant women, women who have recently given birth and women who are nursing in conditions which may be dangerous for the health of the mother or the child. The Committee previously noted that the list of hazardous conditions and dangerous factors prohibited for these women was drawn up by the Government and included a prohibition, for pregnant and nursing women, as well as women having recently given birth, to perform underground mining work (Conclusions 2005, Conclusions 2011). The Committee also noted that this list also explicitly prohibits the employment of the women concerned in occupations involving exposure to certain substances or materials, such as benzene or lead, as well as exposure to certain work processes. According to the report, there have been no substantial changes in this respect. The Committee asks nevertheless the next report to provide updated information on the list detailing the hazardous conditions of work and dangerous factors for which specific protection rules exist in favour of women who are pregnant, have recently given birth or are nursing. It asks in particular to specify what restrictions apply in respect of the employment of these categories of women in occupations involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents.

The employer must assess the nature and duration of the occupational risks which might affect the safety and health of employees who have recently given birth or are nursing (Article 278(2) of the Labour Code) and must eliminate such risks. If this is not possible, the employer must ensure that employees who have recently given birth or are nursing are not exposed to risks, either by adapting their working conditions or transferring them to another post (Article 278(3) of the Labour Code), without loss of pay (Article 278(4) of the Labour Code).

When no transfer is technically possible, pregnant employees must be granted a leave, paid at the level of their average salary, until the beginning of their maternity leave (Article 278(5) of the Labour Code). In the case of employees who have recently given birth or are nursing, Article 278(6) of the Labour Code provides for up to one year leave, paid as prescribed by the law. In response to the Committee's request for clarifications on this point, the report explains that the women concerned are entitled to take a child care leave until their child is one year old. The benefit paid in such case corresponds to 100% of the compensated wage during the first year of life of the child (or, upon the concerned parent's choice, 70% of the wage for the first year and 40% of the wage during the second year) and is subject to a ceiling, up to 3.2 times the national average insured income set by the Government for the year during which the leave began. In 2010 and 2011 such insured income was LTL 1,170 (€339), in 2012 and 2013 it was LTL 1,488 (€430).

### *Conclusion*

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

## **Article 11 - Right to protection of health**

### *Paragraph 2 - Advisory and educational facilities*

In application of the reporting system adopted by the Committee of Ministers at the 1996th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information provided by Lithuania in response to the conclusion that it had not been established that prevention through screening was used as a contribution to the health of the population (Conclusions 2013, Lithuania).

The Committee recalls that there should be screening, preferably systematic, for all the diseases that constitute the principal causes of death (Conclusions 2005, Republic of Moldova). The Committee has ruled that "where it has proved to be an effective means of prevention, screening must be used to the full" (Conclusions XV-2 (2001), Belgium).

The report indicates that there are currently five national screening programmes in Lithuania: four cancer screening programmes (for cervical cancer, breast cancer, prostate cancer and colorectal cancer) and one programme for cardiovascular screening. The screening programmes are financed by the National Health Insurance Fund (NHIF).

The cervical cancer screening programme started as a nationwide programme in 2004. The target group of this programme is women between 25 and 60 years of age. There are about 887,447 women in the target population. The screening interval is 3 years.

Screening for breast cancer (mammography) was introduced at national level in 2005 and aims at women between 50-69 years. The programme includes information about the value of mammography and an invitation for screening, then examination. There are about 432,957 women in the target population. Each woman is offered screening once every two years.

The colorectal cancer screening programme was initiated in the two largest regions of Lithuania – Vilnius and Kaunas districts – in 2009 as a pilot project and in 2012 implementation of the programme was extended to another two regions – Klaipeda and Siauliai. It targets individuals 50–75 years of age for biannual checks.

The prostate cancer screening programme was begun in 2006. Aimed at men between 50-75 years, the programme includes information about the early diagnosis of prostate cancer and PSA detection service, specialist-urologist consultation and prostate biopsy service. There are about 395,265 men in the target population.

Finally, the cardiovascular screening programme began in 2006 and is aimed at men between 40-55 years and women between 50-65 years belonging to a high risk group in respect of cardiovascular diseases. Screening is performed once a year.

The Committee notes that in 2011, the Ministry of Health and the NHIF organised research in order to evaluate the effectiveness of the screening programmes. The programmes were evaluated according to how they met WHO parallel programming principles, pre-established performance evaluation criteria, targets and the cost-effectiveness criteria and taking into account experiences of other countries. According to the report, the evaluation confirmed the positive effect of these programmes. It also notes that the screening programmes are supervised on a continuous basis by national-level coordinating committees, consisting of pathologists, specialised doctors, GPs, epidemiologists and representatives from NHIF and the Ministry of Health, for example with a view to making any necessary changes to the guidelines for the screening programmes.

The Committee asks that the next report contain up-dated information on coverage rates (number of persons screened from the target population and on the impact of the screening programmes (impact on early diagnosis rates, survival rates, etc.).

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 11§2 of the Charter as regards prevention through screening.

## **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 Lithuania.

### ***Social protection of families***

#### ***Housing for families***

Lithuania has accepted Article 31 of the Charter on the right to housing. As all aspects of housing of families covered by Article 16 are also covered by Article 31, for states that have accepted both articles, the Committee refers to Article 31 on matters relating to the housing of families.

#### ***Childcare facilities***

The Committee notes that as Lithuania has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

#### ***Family counselling services***

The report indicates that non-governmental organisations provide complex services to families, including individual psychological, social and legal consultations, psychological education group sessions for spouses, formation on parental skills, etc. In this regard, in 2012, the Ministry of Social Security and Labour implemented the measure "Financing of the Projects of Non-Governmental Organisations Working in the Area of Family Welfare", which aimed at promoting the establishment of an independent and viable family based on mutual assistance and responsibility of family members and providing assistance in overcoming divorce crises. In 2013, 21 project implementers organised 5,603 different events for families, engaged couples and individual persons.

#### ***Participation of associations representing families***

The Committee refers to its previous conclusion (Conclusions 2011) for an overall description of the situation, which it found to be in conformity with the Charter.

It notes that for the period 2010-2013, the Communities Affairs Division of the Family and Communities Department of the Ministry of Social Security and Labour organised annual open grant competitions for NGOs mostly working in the area of local communities.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The Committee notes that the report provides no information on this issue. The latest information at its disposal dates back to 2006. It therefore asks the next report to provide a full and up-to-date description of the rights and obligations of spouses.

The Committee recalls that spouses must be equal, particularly in respect of rights and duties within the couple (reciprocal responsibility, ownership, administration and use of property, etc.) (Conclusions XVI-1 (2002), United Kingdom) and children (parental authority, management of children's property). It also states that in cases of family breakdown, Article 16 requires the provision of legal arrangements to settle marital conflicts and, in particular, conflicts relating to children: care and maintenance, custody and access to children.

#### ***Mediation services***

In its previous conclusion (Conclusions 2011) the Committee asked for information on access to mediation services, whether they are free of charge, how they are distributed across the country and how effective they are. The Committee considers that under Article

16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided.

The report provides no reply. The Committee therefore reiterates its request. Should the next report fail to provide the requested information there will be nothing to show that the situation is in conformity with the Charter in this respect.

### ***Domestic violence against women***

On the legislative framework, the Committee notes the adoption on 26 May 2011 of the Law on Protection against Domestic Violence, which defines the concept of domestic violence, establishes the rights and liabilities of subjects of domestic violence, implements preventive and protective measures and provides for assistance in the event of domestic violence. The Law lays out that violence shall incur criminal liability. It also provides that a police officer, who records a case of domestic violence, is obliged to take immediate measures to protect the abused person and to initiate an investigation without submission of an official complaint. Thus, perpetrators can be subject by court decision to immediate measures, such as removal from home as well as prohibition to approach the victim.

In practice, the Committee notes the operation since 2012 of the network of specialised assistance centres "SAC", which are administered by NGOs. Such centres operate in all municipalities and provide complex assistance to victims of violence. The centres receive a report from police officers then contact the victim. The report indicates that in 2013 SACs provided assistance to more than 5,000 victims of domestic violence. The Committee takes also note of the drafting of the National Programme for the Prevention of Domestic Violence and Provision of Assistance to Victims 2014-2020. It asks the next report to indicate the outcomes of this Programme. Finally, it takes note of public awareness raising activities.

### ***Economic protection of families***

#### ***Family benefits***

According to Eurostat data, the monthly median equivalised income in 2013 was €391. According to MISSOC, in 2013, the monthly amounts of child benefit were:

- €28 for each child raised in a family and who is between 0 and 2 years old, if the monthly income per family member is less than 1.5 times the amount of the State Supported Income ("SSI"), i.e. €152;
- €15 for each child raised in a family and who is between 2 and 7 years old (or between 2 and 18 years old in families raising three or more children), if the monthly income per family member is less than 1.5 times the amount of the SSI, i.e. €152.

Child benefit represented a percentage of the monthly median equivalised income as follows: 7.15% for a child between 0 and 2 years old; 3.8% for each child raised in a family and who is between 2 and 7 years old (or between 2 and 18 years old in families raising three or more children).

The Committee considers that, in order to comply with Article 16, child benefit must constitute an adequate income supplement, which is the case when it represents an adequate percentage of the monthly median equivalised income. On the basis of the figures indicated, the Committee considers that the situation is not in conformity on the ground that family benefits are not of an adequate level for a significant number of families.

### ***Vulnerable families***

The Committee asked in its previous conclusion (Conclusions 2011) what measures are taken to ensure the economic protection of Roma families. The report provides no information in this respect. The Committee reiterates its request. Should the next report fail to provide the requested information there will be nothing to show that the situation is in conformity with the Charter.

### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The Committee found in its previous conclusion (Conclusions 2011) that the situation was not in conformity with the Charter on the ground that, with regard to the payment of family benefits, equal treatment of nationals of other States Parties to the 1961 Charter or the Charter was not ensured due to an excessive length of residence requirement.

The report indicates that the personal scope of the Law on Child Benefit was amended in 2013. It now applies as follows:

- persons who reside permanently in Lithuania;
- aliens who reside in Lithuania and who, have been appointed guardians of a child who is a citizen of Lithuania, and alien children who reside in Lithuania and who, have been placed under guardianship in Lithuania;
- aliens who have been issued a temporary residence permit for the purpose of highly qualified employment;
- persons to whom the Law on Child Benefit must apply under the EU regulations on the coordination of social security systems.

The Committee notes that outside the reference period, the personal scope of the Law on Child Benefit was enlarged to include third-country nationals with temporary permit to reside and who have been authorised to work, who are in employment or who have been employed for a minimum period of six months and who are registered as unemployed, except for third-country nationals who have been admitted for study purposes.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

### ***Conclusion***

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

- family benefits are not of an adequate level for a significant number of families;
- equal treatment of nationals of other States Parties with regard to the payment of family benefits is not ensured due to an excessive length of residence requirement.



## **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 Lithuania.

### ***The legal status of the child***

The Committee notes that there have been no changes to the situation which it has previously found not to be in conformity with the Charter.

### ***Protection from ill-treatment and abuse***

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with the Charter as corporal punishment was not explicitly prohibited in the home, in schools and in institutions.

According to the report, corporal punishment was set to be explicitly prohibited by a new law on Child Protection, to amend the Act on the Fundamentals of Protection of the Rights of the Child. The draft Law was under preparation and available online since summer 2012 for consultation of civil society. Section 45 of the draft Law provided an extensive definition of child protection from violence, stating that the child shall be educated, trained and disciplined without violence and with respect for dignity.

However, according to the report, it was decided not to adopt a new law, but to amend the current Act.

The amendment of the current Act on the Fundamentals of Protection of the Rights of the Child has been prepared, according to which Section 43 (2) will establish administrative or criminal liability for the demonstration of physical or mental violence against children. The amendment is approved by all relevant national institutions and, according to the report, will be presented to the Government and the Parliament for the adoption. The Committee wishes to be kept informed of these developments.

In the meantime, the Committee notes from the Global Initiative to End Corporal Punishment of Children that prohibition is still to be achieved in the home, alternative care settings, day care, schools and penal institutions.

The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not changed. Prohibition of corporal punishment in the home, in schools and in institutions does not have a precise legal basis.

### ***Rights of children in public care***

According to the report, 2% of children are deprived of parental care. Despite the intensive work carried out with families at risk and providing assistance to children in such families, according to the report, many children are still separated from their parents.

The Committee notes that at the end of 2013 10,146 children were placed under guardianship. There are three forms of guardianship: a family (5,906 children placed), a social family (419 children) and institutions (3,821 children). The Committee notes that children under 10 years of age are mostly placed in families and social families while the majority of children placed under guardianship in an institution are 10-14 years and 15-17 years old.

The Committee notes from the report that the number of children placed in an institution has been consistently falling every year. In 2013 there were as few as 14 cases only.

In its previous conclusion the Committee asked about the criteria for 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. The Committee notes that the

report does not provide this information. It holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity.

The Committee also asks whether poor financial situation of a family may become a sole ground for restriction of parental rights.

### ***Right to education***

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

### ***Young offenders***

The Committee notes from the Concluding observations of the Committee on the Rights of the Child (UN-CRC) on the combined third and fourth periodic reports of Lithuania (2013) that under the ongoing process of court reform, a number of judges will be specialised in juvenile justice. The Committee also notes that some prosecutors are already specialised in juvenile justice and attend training and seminars on this issue.

The Committee asks for up-to-date figures on the number of young offenders in prison and in pre-trial detention facilities.

It also asks whether young offenders serving a prison sentence have a statutory right to education.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to foreign children present in the territory in an irregular manner to protect them against negligence, violence or exploitation.

### ***Conclusion***

The Committee concludes that the situation in Lithuania is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment is not prohibited in the home, in schools and in institutions.

## **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 Lithuania.

In its previous conclusion (Conclusions 2011) the Committee wished to be provided with statistics regarding enrolment, attendance and drop-out rates in compulsory education as well as measures taken with regard to the prevention of drop-outs and absenteeism.

The Committee notes from the UNESCO Institute of Statistics that in 2012 there were 3,095 children out of school in secondary and 2,465 in primary schools. The net enrolment rate in the primary schools stood at 95,8% in 2011 and 98% in the secondary school.

The Committee requests that each national report provide undated statistics regarding the enrolment as well as drop-out rates.

Under Article 17§2 all hidden costs such as books or uniforms must be reasonable, and assistance must be available to limit their impact on the most vulnerable population groups so as not to undermine the goal being pursued (European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 82/2012, decision on the merits of 19 March 2013, §31) .

The Committee asks whether such assistance is provided to vulnerable groups.

The Committee further recalls that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that states parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2, Conclusions 2011).

The Committee asks whether unlawfully present children have a right to education.

### *Conclusion*

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

## **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 Lithuania.

### ***Migration trends***

Lithuania is primarily a country of origin for migration. According to official figures provided in the report the population of Lithuania decreased from 3,483,972 in 2001 to 3,043,429 in 2011. The greatest proportional decrease was of Latvian nationals (31.5%), however the most significant outflows were of Lithuanians (345,979, 11.9% decrease), Poles (34,672, 14.8% decrease) and Russians (42,876, 19.5% decrease).

Immigration to the country suffered a reduction during the economic crisis period, but has since returned to previous levels. The total number of permits issued for third country nationals to work in the Republic of Lithuania between 2010 and 2013 was 14,798. There was a steady increase in the number each year, rising from 1,808 in 2010 to 5,036 in 2013.

### ***Change in policy and the legal framework***

The Constitution and many laws of the Republic of Lithuania governing various social relations stipulate the constitutional principle of equality of all individuals before the law.

In 2012, after adoption of the Law on Amending Articles and Annex of the Republic of Lithuania Law on the Legal Status of Aliens (Official Gazette *Valstybės žinios*, 2012, No. 85-4450), Council Directive 2009/50/EC of 25 May 2009 on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment was transposed into the Lithuanian Law.

### ***Free services and information for migrant workers***

Updated information on employment regulatory issues and labour mobility (legislation, applicable rules, formalities and procedures for EU nationals and non-EU nationals, living and working conditions, etc.) is available on the Lithuanian Labour Exchange website: (<http://www.ldb.lt/en>)

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. The Committee asks that the next report provide details of any other services providing information for migrant workers.

There is no information contained within the report on measures taken to provide information to emigrants. The Committee asks what services and assistance are available to workers wishing to leave Lithuania.

### ***Measures against misleading propaganda relating to emigration and immigration***

The Committee asked in its previous conclusion (Conclusions 2011) to be informed of the implementation of the National Anti-Discrimination Programme 2009-2011.

The report states that the Ministry of Social Security and Labour coordinated the implementation of the National Anti-discrimination Programme for 2009–2011. The purpose of this Programme was to increase mutual understanding and tolerance, to raise public awareness of manifestations of discrimination in Lithuania and its negative impact on opportunities for certain groups of society.

The Ministry of Social Security and Labour, the Ministry of Education and Science, the Ministry of Justice, the Ministry of Culture, the Ministry of the Interior, the Office of Equal

Opportunities Ombudsperson and the Prosecutor General's Office contributed to the implementation of the Programme. When implementing the measures of the Programme, training in equal opportunities and non-discrimination was organised for employees of different institutions, civil servants, police officers and judges; discussions were held with non-governmental organisations concerned with the protection of human rights; an advertising campaign against multiple discrimination was conducted; a programme of non-formal education for target groups on tolerance and respect for a human being was drawn up; and statistics on criminal acts committed in hatred on the grounds of race, nationality, religion, language or sexual orientation were regularly released. Events promoting tolerance and knowledge of other cultures were also organised; methodical recommendations on conducting the pre-trial investigation of criminal acts committed on racial, nationalist, xenophobic, homophobic or other discriminatory grounds were produced; and research with regard to tolerance of different social groups by children aged 3 to 12 and possible manifestations of discrimination in comprehensive schools was carried out.

The report states that the Government approved the Inter-institutional Action Plan to Promote Non-discrimination for 2012–2014. The purpose is to continue the progress of the previous action plan in implementing the policy of equal opportunities. The Ministry of Social Security and Labour is the coordinator of the implementation of the Plan. The Committee notes from the Conclusions of the European Commission against Racism and Intolerance (ECRI) (adopted 2014) that 9 training seminars were completed in 2012. The Ministry has also formed a working group for drafting the Inter-institutional Action Plan for Promotion of Non-discrimination 2015–2017. The Committee asks that the next report provide complete and up to date information on the implementation of these action plans, including examples of the initiatives carried out.

At the end of 2014, the survey of the change of public attitudes and discrimination causes and the analysis of results was performed. The Committee asks for the next report to provide its results and any other relevant data and information concerning the success of these action plans.

The Committee notes from the fourth report of ECRI (adopted 2011) that the Equal Opportunities Ombudsman exists to raise awareness and investigate incidents of discrimination. Since 2008 its mandate has included grounds such as race, ethnic origin and religion, national origin, language, convictions and social status. The Committee asks that the next report provide information on the activities of the Ombudsman.

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information. It considers that in order to combat misleading propaganda, there must be effective organs to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.

The Committee notes from the abovementioned report of ECRI that the Parliament has a code of ethics and has set-up a Permanent Commission of Ethics (the Commission) which can review MP's allegedly unethical behaviour, including racist speech. Violations of the code are made public and the Commission may sanction the MP involved.

Furthermore, the Committee also notes the existence of the Inspector of Journalists' Ethics, who can react to racist and misleading comments in the media, and has the power to issue warnings to editors of offending content, and to impose fines. The Committee asks that the next report provide further information concerning the Inspector of Journalists' Ethics.

The Committee recalls that States have an obligation to take measures or undertake programmes to prevent the dissemination of false information to departing nationals, as well

as to prevent the misinformation of foreigners wishing to enter the country. Authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia). The Committee asks for complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 19§1 of the Charter.

## **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 Lithuania.

The Committee previously asked for information on the existence of public and private social services and their form of co-operation (Conclusions 2011).

The report states that the National Health Insurance Fund under the Ministry of Health (NHIF) is also involved into implementation of EU Regulations (EC) No. 883/2004 and 987/2009. The NHIF acts as liaison body and competent institution for benefits in kind in the field of sickness, accidents at work, occupational diseases and long term treatment.

Furthermore, it is stated that notwithstanding the fact that Lithuania has not concluded special agreements with foreign countries on cooperation in the field of compulsory health insurance, the NHIF actively exchanges information and shares its experience with foreign competent institutions.

The NHIF specialists also participated in development of the Lithuanian National Contact Point website and prepared information on migrant's right to get necessary and planned healthcare under conditions established by EU Regulations (EC) No. 883/2004 and 987/2009, as well as the right to get reimbursement of cross-border healthcare costs.

The Committee recalls that several bodies, the Overseas Benefits Service, the Lithuanian Labour Exchange Office and the State Patient Fund, co-operate with counterpart institutions in other countries in the areas of social insurance benefits, unemployment benefits and sickness benefits, respectively (Conclusions 2006).

The Committee previously noted that as far as state social security agencies are concerned, most of the co-operation activities developed by Lithuanian authorities are being implemented in compliance with EU Regulations No. 883/2004 and No. 987/2009 on the co-ordination of the EU Member States' social security systems. In this framework, during the period 2005 – 2009 a number of electronic forms were issued by the competent territorial labour exchange offices. The Foreign Benefit Office – operating within the State Social Insurance Fund Board under the Ministry of Social Security and Labour – implements the above-mentioned regulations as well as intergovernmental agreements in relation to migrant workers. In particular, it receives information about social security of migrants, provides it to the competent authorities of other countries and co-operates with similar institutions of foreign States as well as international organisations. As far as unemployment and sickness benefits are concerned the liaison bodies are, respectively, the Lithuanian Labour Exchange and the authorities dealing with the State patients' Fund (Conclusions 2011).

The Committee recalls that 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).

The Committee recalls that a number of agreements were concluded by the State Labour Inspectorate with similar offices in Poland (2005), Norway, Estonia and Latvia (2007). These agreements allowed exchange of information, experts/staff, expertise about the implementation of EU legislation and the organisation of a number of events concerning labour issues (Conclusions 2011). The Committee requests complete and up-to-date information on any such agreements in the field of social service provision for the purpose of assisting migrants.

The Committee stresses that the next report must provide information on international agreements or networks, and specific examples of cooperation (whether formal or informal) between the social services of Lithuania and other origin and destination countries.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 19§3 of the Charter.



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

*Paragraph 5 - Equality regarding taxes and contributions*

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

The report states that there have been no substantial changes to the situation which the Committee previously considered to be in conformity with the Charter (Conclusions 2011).

The Committee asks that the next report provide a full and up-to-date description of the applicable legal framework concerning employment taxes and contributions and any actions taken to ensure its implementation.

*Conclusion*

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

## **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 Lithuania.

The report states that legal aid is granted to all persons lawfully residing in Lithuania regardless of their nationality by virtue of Section 11 of the State Guaranteed Legal Aid Act 2005.

The report specifies that migrant workers are entitled to both primary and secondary legal aid under the same conditions as Lithuanian nationals. Under Section 11(1), nationals of any state lawfully residing in Lithuania, along with EU nationals residing in any EU state and other persons covered by international treaties, are eligible for primary legal aid. Under Section 11(2), natural persons lawfully residing in Lithuania whose property and income do not exceed the levels established for the provision of legal aid, or who are eligible regardless of their income, are eligible for secondary legal aid. The report states that 'expenses covered by the state include counsel expenses providing secondary legal aid'. The Committee asks for clarification of the meaning of primary and secondary legal aid, and for further details of the levels set for eligibility for secondary legal aid, along with any exemptions provided for.

The report also states that those who do not know the official language shall be provided with an interpreter in any court hearing, and such interpretation shall be free pursuant to Article 11(2) and (3) of the Civil Procedure Code.

The Committee recalls from its Statement of interpretation (Conclusions 2011) that States are required to provide legal counsel to migrant workers when the interests of justice so require, and they do not have sufficient means to pay for assistance themselves. Furthermore, migrant workers must have the free assistance of an interpreter if they cannot properly understand or speak the language used in the proceedings. The Committee considers that these requirements are satisfied in Lithuania.

The Committee refers to the Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid.

### *Conclusion*

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

**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 Lithuania.

The report states that there have been no substantial changes to the situation which the Committee previously considered to be in conformity with the Article 19§9 (Conclusions 2011).

With reference to its Statement of Interpretation on Article 19§9 (Conclusions 2011), the Committee asks whether there are any restrictions on the transfer of the movable property of migrant workers.

*Conclusion*

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

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

*Paragraph 10 - Equal treatment for the self-employed*

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

The Committee notes from the report that no essential changes were made to the situation regarding social insurance of self-employed persons.

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

*Conclusion*

The Committee concludes that the situation in Lithuania is in conformity with Article 19§10 of the Charter.

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

### *Paragraph 11 - Teaching language of host state*

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

The Committee recalls that the number of migrants in Lithuania is not particularly significant. However, it notes from the report that a number of national minority schools exist, which teach primarily in the minority languages and partially in Lithuanian. The Committee asks whether the curriculum at such schools includes teaching of Lithuanian specifically to assist children for whom it is not their first language and who therefore need extra assistance in order to integrate effectively. It asks for further details concerning the number of such schools, the minorities represented, and the number of children enrolled in these establishments.

Furthermore, the Committee requests that the next report provide complete and up-to-date information concerning additional assistance in Lithuanian language schools for children of immigrants who have not attended primary school right from the beginning and who therefore lag behind their fellow students who are nationals of the country.

The Committee recalls from its previous conclusion (Conclusions 2011) that in 2005 a "Procedure for the Education of Children of Foreign nationals" was adopted by the Ministry of Education and Science. This provided for assistance through extra classes, language instruction and specific teaching materials. The Committee asks whether this programme continues to apply, and what the results have been.

The report states that adult migrants and persons belonging to national minorities, who are in receipt of social assistance, are able to attend a free course in the Lithuanian language at the House of National Minorities (Vilnius). Since 2005, over 600 people have completed this course. The Committee notes that this programme applies only to those who receive social assistance, and asks whether similar courses are available to workers of minority background to assist their integration.

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

The Committee considers that under Article 19§11, States shall encourage the teaching of the national language in the workplace, in the voluntary sector or in public establishments such as universities (Conclusions 2002, France). A requirement to pay substantial fees is not in conformity with the Charter. States are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible (Conclusions 2011, Norway).

The Committee asks that the next report provide a full and up-to-date description of the situation, in relation to both migrant workers and their families, including adults. Should the next report fail to furnish the requested information, the Committee considers that there will be nothing to show that the situation is in conformity with the Charter.

### *Conclusion*

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

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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

According to the report, the Law on Support of Employment provides that employment support measures are implemented in line with the principles of equal opportunities for men and women and non-discrimination. According to this law, pregnant women, a mother (adoptive mother) or a father (adoptive father), a guardian or a custodian who actually raises a child under 8 years of age or a disabled child under 18 years of age, as well as persons who are taking care of ill or disabled family members (those whose need is confirmed officially) are considered to be additionally supported in the labour market and in that capacity they can participate in employment support measures (notably in the subsidised employment).

The Committee also refers to its conclusion under Article 10§3 (Conclusions 2012) and considers that the situation is in conformity on this point.

### ***Conditions of employment, social security***

In its previous conclusion the Committee asked the next report to describe other working conditions, besides part-time work, that may facilitate a reconciliation of working and private life, such as working from home, flexible working hours or working for a limited period of time.

According to the report, several provisions of the Labour Code concern reconciliation of working and private life, such as the possibility for teleworking (Article 115), flexibility with annual holidays, special-purpose leave and unpaid leave (Article 185).

The Committee previously asked whether the periods of childcare leave that are unpaid were also counted for the purposes of pension schemes. In notes from the report in this respect that according to the Law on State Social Insurance those raising a child under 3 years of age are covered by state social pension insurance and unemployment social insurance, which means that those periods in which a parent does not receive the maternity benefit is still included in state social pension insurance. The Committee observes that the Law on Reform of the Pension System of 2012 introduced amendments, according to which the State pays contributions to the pension fund for a parent who is raising a child under 3 years.

In reply to the Committee's question in the previous conclusion (Conclusions 2011), the report states that according to Article 6 of the Law on Health Insurance, pregnant women on maternity leave or parents of a child under 8 years of age are insured by the State, who pays contributions on their behalf.

### ***Child day care services and other childcare arrangements***

The Committee wishes to receive updated information on the provision of childcare places, and whether services are affordable and of high standard (quality being assessed on the basis of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and the amount of the financial contribution parents are asked to make).

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Lithuania is in conformity with Article 27§1 of the Charter.

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

*Paragraph 2 - Parental leave*

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

The Committee notes that the situation which it has previously (Conclusions 2011) found to be in conformity with the Charter has not changed.

In its previous conclusion the Committee asked whether the third year of parental leave was completely unpaid or if some income was made available via social security schemes.

In notes from the report in this regard that the third year of parental leave is unpaid. Nevertheless, depending on family income, child benefit and cash social assistance benefits can be applicable.

*Conclusion*

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

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

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

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

### ***Protection against dismissal***

In its previous conclusion (Conclusions 2011) the Committee found that the dismissal protection provided for employees with family responsibilities was adequate. It asked however whether this protection covered the parents who had applied for or had taken childcare leave and if so, when the protection started and until when it applied.

In reply the report states that according to Article 180 of the Labour Code parental leave lasts until the child reaches three years of age. Moreover, if the employee decides to take shorter parental leave (e.g. two years), the provision concerning the termination of the employment contract without any fault is still in force until the child reaches three years of age.

### ***Effective remedies***

The Committee refers to its conclusion under Article 8§2 of the Charter and considers that the situation is in conformity on this point.

### ***Conclusion***

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



## **Article 31 - Right to housing**

### *Paragraph 1 - Adequate housing*

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

### ***Criteria for adequate housing***

The Committee notes from its previous conclusion (Conclusions 2011) that "adequate housing" in Lithuania means a dwelling that is suitable for living for a person or a family, complies with the requirements of construction and special norms (sanitary, fire protection, etc.) and useful floor space per family member (i.e. more than 14 m<sup>2</sup>, with the exception of subsidised housing where the useful floor space is set at 10 m<sup>2</sup>). In this regard, the Committee asked in which legislative act this definition was laid down. It notes from information provided to the Governmental Committee (Report concerning Conclusions 2011) that housing related requirements and standards are set forth in the Act on Construction (No. I-1240, 19 March 1996) as well as operational technical construction regulations.

As regards health and safety, the Committee notes from the Governmental Committee's report that the rules concerning the control of exposure to lead and asbestos are regulated by orders of the Minister of Health in the form of hygiene standards, which include requirements in relation to allowed minimum concentration of hazardous substances.

On statistics with respect to adequacy of dwellings, the report indicates that, in 2011, 70.8% of all conventional dwellings had all conveniences (hot water, bath or shower, flush toilet, piped water, sewerage) and they were inhabited by 74.3% of all persons living in conventional dwellings. The Committee asks the next report to continue to provide statistics with respect to adequacy of dwellings and also indicate what measures have been taken and are planned to improve the situation of inadequately housed persons. Meanwhile, it reserves its position on this issue.

### ***Responsibility for adequate housing***

The Committee refers to its previous conclusion for a description of the State Territorial Planning and Construction Inspectorate under the Ministry of Environment in charge of enforcing housing standards.

In its previous conclusion, the Committee asked for the number of structures restored to comply with the necessary adequacy of housing requirements following inspections finding shortcomings. The report provides no information. The Committee therefore reiterates its question. Should the next report fail to provide the requested information, there will be nothing to show that the situation is in conformity with the Charter in this respect.

The Committee recalls that it is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also limit against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

### ***Legal protection***

The Committee recalls that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial judicial or other remedies (administrative review, etc.) (Conclusions 2003, France). Any appeal procedure must be effective (European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §§ 80-81).

The report stresses that any individual considering that his/her rights have been infringed may defend these rights before courts. The Committee asks in which legislative act this right is laid down. The Committee also asks whether such judicial remedies are affordable. It further wishes to know whether there are other remedies, such as administrative review. Finally, it requests information on appeal procedures.

### ***Measures in favour of vulnerable groups***

The report stresses that Roma people are treated equally to nationals when it comes to accessing social housing. It also indicates that the Subsidised Housing Division of the Department of Social Affairs and Health of the Municipal Government Administration of Vilnius City notified that 85 families living in Roma encampments in Kirtimai were included in the list for subsidised housing rent. Moreover, it states that between 2005-2012 Vilnius City Municipality rented 33 apartments to Roma families. The Committee asks the next report to indicate the number of Roma families living in Lithuania.

While taking note of these measures, the Committee notes from the fourth Report of the European Commission against Racism and Intolerance (ECRI), adopted in 2011, that the problem of housing of Roma families is a matter of priority. ECRI recommends that a number of viable housing options, including social housing and subsidies for the rental of dwellings should be laid out and discussed with the Roma community.

In view of the low figures provided by the report and ECRI's recommendation the Committee considers that the situation remains in breach of the Charter on the ground that measures taken by public authorities to improve the substandard housing conditions of most Roma are insufficient.

Concerning refugees, the Committee notes from UNHCR Report on integration of refugees in Lithuania of 2013 that refugees encounter difficulties in accessing suitable and affordable housing preventing them from becoming homeless. As a remedy to this situation, UNHCR, for example, suggests the introduction of a system whereby a state agency or an NGO is assigned the responsibility for assisting refugees to find affordable housing and for facilitating the signing of the contract. In view of this, the Committee asks the next report to provide information on the steps taken to improve the housing situation of refugees.

### ***Conclusion***

The Committee concludes that the situation in Lithuania is not in conformity with Article 31§1 of the Charter on the ground that measures taken by public authorities to improve the substandard housing conditions of most Roma are insufficient.

## **Article 31 - Right to housing**

### *Paragraph 2 - Reduction of homelessness*

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

### ***Preventing homelessness***

The Committee notes from the information provided to the Governmental Committee (Report concerning Conclusions 2011) that in order to prevent homelessness, municipal authorities have established social housing rental terms and conditions and registered people in need of accommodation. In this regard, it notes that, for the period 2005-2011, the Municipal Social Housing Fund increased by 3,000 dwellings and 6,800 families had access to social housing. However, the said report underlined that due to the financial crisis public investment in the development of social housing fell sharply from 2008 onwards and that, correlatively, the demand for social housing increased. In view of this situation, it indicates that a draft law, under preparation, provides for the reimbursement of the rent to persons entitled to social housing. The Committee asks the next report to provide information on this law.

The Committee further notes from the report that municipal social housing were rented as follows: in 2011 to 949 families, in 2012 to 1,086 families and in 2013 to 1,053 families. The report further specifies that these families consist of: young families, families raising 3 or more children, orphans and children without parental custody, disabled persons, common list (i.e. individuals outside the above list) and social housing renters entitled to improve their housing environment. It also notes that in 2011 there were 650 homeless people living rough, representing 0.03% of the population.

While taking note of the measures taken to prevent homelessness, the Committee asks that the next report continue to provide relevant statistics and information on measures taken to remedy the situation of homelessness.

The Committee noted in its previous conclusion (Conclusions 2011) that families and persons who are granted a state supported housing loan but subsequently lose their housing for specific reasons due to their faulty behaviour, are no longer entitled (during 5 years) to municipal subsidised housing. It consequently asked what structures are in place to avoid that during these 5 years [and after] these persons become homeless. The report provides no information in this respect. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that it has not been established that there are measures in place to prevent persons having lost their right to municipal subsidised housing to become homeless.

### ***Forced eviction***

In its previous conclusion (Conclusions 2011) the Committee asked several questions regarding eviction:

- whether in case of eviction justified by the public interest there is an obligation to adopt measures to re-house or financially assist the persons concerned;
- whether there is an obligation to consult the parties affected in order to find alternative solutions to eviction;
- whether there is a prohibition to carry out evictions at night or during winter or any other specific rule protective of the human dignity of the persons concerned;
- whether there is accessibility to legal aid;
- whether there is compensation in case of illegal eviction.

The report provides no information on these issues. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that it has not been established that there exists legal protection for persons threatened by eviction.

### ***Right to shelter***

The report indicates that the number of people staying in shelters increased. In 2011, 1,891 homeless persons applied for shelter compare to 1,584 in 2009. According to the data provided in the report, in 2012 there were 23 shelters with a capacity of 1,598 places, which welcomed 2,281 persons.

In its previous conclusion (Conclusions 2011) the Committee asked clarifications on whether:

- shelters/emergency accommodation satisfy security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether they are equipped with basic amenities such as access to water and heating and sufficient lighting);
- shelter/emergency accommodation is provided regardless of residence status;
- the law prohibits eviction from shelters or emergency accommodation.

Furthermore, the Committee refers to its Statement of interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited.

The report provides no information on these issues. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that it has not been established that the right to shelter is adequately guaranteed.

### ***Conclusion***

The Committee concludes that the situation in Lithuania is not in conformity with Article 31§2 of the Charter on the grounds that it has not been established that:

- there are measures in place to prevent persons having lost their right to municipal subsidised housing to become homeless;
- there exists legal protection for persons threatened by eviction;
- the right to shelter is adequately guaranteed.



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**MALTA**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Malta which ratified the Charter on 27 July 2005. The deadline for submitting the 8th report was 31 October 2014 and Malta submitted it on 29 October 2014.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report contains also information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to safe and healthy working conditions – safety and health regulations (Article 3§1)
- the right to safe and healthy working conditions – occupational health services (Article 3§4)
- the right to social and medical assistance – adequate assistance for every person in need (Article 13§1)
- the right to social and medical assistance – prevention, abolition or alleviation of need (Article 13§3)
- the right to social and medical assistance – specific emergency assistance for non-residents (Article 13§4)

Malta has accepted all provisions from the above-mentioned group except Articles 8§3, 19§1-12, 27§1 and 31.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Malta concern 24 situations and are as follows:

– 15 conclusions of conformity: Articles 3§1, 3§4, 7§2, 7§6, 7§7, 7§9, 8§1 8§2 8§3 8§4 13§1, 13§2, 17§2, 27§2 and 27§3

– 6 conclusions of non-conformity: Articles 7§1, 7§4, 7§8, 13§4, 16 and 17§1

In respect of the other 3 situations related to Articles 7§3, 7§5 and 7§10 the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Malta under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

### **Article 7§8**

Since 2012 employers are obliged to conduct a risk assessment in accordance with the requirements of the General Provisions for Health and Safety at Work Regulations 2003, prior to assigning a worker to night work.

### **Article 8§1**

Pregnant employees are entitled to an uninterrupted period of fully paid maternity leave of 14 weeks (increased to 18 weeks as from 1 January 2013).

### **Article 8§4**

Following amendments in 2011 to Regulation 5 of the Protection of Maternity (Employment) a special allowance equivalent to the rate of sickness benefit is paid for the whole period necessary for the protection of the employee's health and safety.

### **Article 8§5**

The Protection of Maternity (Employment) Regulations (Legal Notice 439/2003) were amended in 2012 to the effect that employers are now obliged to conduct a risk assessment in accordance with the requirements of the General Provisions for Health and Safety at Work Regulations 2003 (Legal Notice 36/2003).

### **Article 16**

The entry into force of the Domestic Violence Act in 2013, which establishes a commission on domestic violence. The functions of this commission are to advise the Minister responsible for social policy on the issue of domestic violence.

### **Article 17§1**

- Article 712 *et seq.* of the Civil Code has been amended so that children of second (or subsequent) marriages or children who were adopted are not discriminated against.

- Corporal punishment is unlawful in the home under a 2014 amendment to the Criminal Code. Corporal punishment is unlawful in alternative care settings under article 339 of the Criminal Code, as amended by the Criminal Code (Amendment No. 3) Act 2014. Corporal punishment is unlawful in schools under Article 339 of the Criminal Code as amended in 2014.

- The age of criminal responsibility has been raised to the age of 14. The relevant provisions of the law have been changed (Article 35 of the Criminal Code) and now a child under the age of 14 shall be exempt from criminal responsibility for any act or omission. Hence the Article in the Criminal Code relating to mischievous discretion between the ages of 9 to 14 has been removed.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

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

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:]



- the right to just conditions of work – reasonable working time (Article 2§1)
- the right to just conditions of work – public holidays with pay (Article 2§2)
- the right to a fair remuneration – increased remuneration for overtime work (Article 4§2)
- the right to organise (Article 5)
- the right to bargain collectively – conciliation and arbitration – joint consent of the parties (Article 6§3)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 1 - Safety and health regulations*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Malta in response to the conclusion that it had not been established that there was an adequate occupational health and safety policy and that occupational risk prevention was organised at company level with assessment of work-related risks and with adoption of preventive measures geared to the nature of risks (Conclusions 2013, Malta).

The Committee recalls firstly that, under Article 3§1, States undertake to formulate and implement a national occupational health and safety policy with the primary focus of fostering and preserving a culture of prevention at the national level (Conclusions 2009, Armenia).

In reply to the Committee's question the report states that the EU Strategy on safety and health at work (2007-2012) was adopted in Malta through the publication of the national Occupational Health and Safety Strategic Plan: 2007 – 2012, which was published in 2007. This strategy aimed to ensure that the Occupational Health and Safety Authority (OHSA) fulfils its responsibilities in the field of occupational health and safety while continuing to instil a sense of responsibility and commitment from the relevant social partners. This strategy basically builds on the requirements of the EU strategy but takes into considerations local needs.

As regards the potential burden of health and safety regulations on employers, the report states that during 2014, OHSA embarked on a process of simplifying certain pieces of legislation, namely those focusing on construction and work equipment. An internal exercise is currently underway (as of June 2015) to identify potential burdensome and/or complex clauses in a number of Legal Notices. Once this process is concluded the findings will be included in a report, together with the suggested action, such as relevant legal amendments that are being proposed, and will be discussed with the social partners. A final report will in due course be presented to the Government for eventual publication of the necessary legal amendments.

With respect to Act No. XXVII/2000 of 3 May 2001 on the Occupational Health and Safety Authority, the Committee notes that the relevant legal amendments to the Act have been finalised and discussed with the social partners. The proposals will be sent to Ministry during June 2015, for eventual discussion in Cabinet and promulgation through Parliament.

In view of the above, the Committee considers that the situation as regards a national occupational health and safety policy is in conformity with the Charter.

Secondly, concerning risk prevention at company level the Committee recalls that this implies, in addition to compliance with protective rules, the assessment of work-related risks and the adoption of preventive measures geared to the nature of risks as well as information and training of workers (Conclusions 2009, Armenia).

The report states that the overall findings of the 2011 Research study on health and safety practices show similar trends with studies carried out in other EU Member States. Among others, similarities could for instance be noted when assessing health and safety practices across companies of different sizes. Findings revealed that generally, larger companies are better equipped to maintain and develop safe working practices, unlike smaller enterprises. Shortcomings in health and safety protection at enterprise level are found in all EU member states and not restricted to Malta, as evidenced by periodical EU wide reports on this matter. Both the EU Occupational Health and Safety Agency's ESENER report and the European

Commission's Labour Force Survey (ad-hoc module) show that in fact Malta compares well with other member states and is in fact better than the EU average in most areas of the respective findings. However, in line with its function to ensure that health and safety levels are maintained, where cases of non-compliance are observed, enforcement action as contemplated by law is taken by the authorities. This action varies from improvement notices, orders, issuing of administrative fines and even Court action.

The report further refers to training on health safety provided to employers to enable them to ensure health and safety at company-level. It also mention that although current health and safety legislation does not state the number of workers required for a workers' safety representative to be appointed, by policy OHSa enforces the appointment of such representatives in entities having 10 or more workers. The law also provides for an employer to consult individually all workers in employment when such a representative is not appointed at a place of work. This guarantees worker participation at all times.

While noting the above information, the Committee nevertheless asks that the report provide more detailed information on the extent to which risk assessment is carried out at company-level, including in small and medium-sized enterprises, as well as examples of measures taken to gear the preventive effort to the nature of risks identified.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 3§1 of the Charter.

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 4 - Occupational health services*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Malta in response to the conclusion that it had not been established that measures are taken to promote the progressive development of occupational health services (Conclusions 2013, Malta).

The Committee recalls that under Article 3§4 States must promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions. These services may be run jointly by several companies. The services must be efficient and should be able to identify, measure and prevent work-related stress, aggression and violence (see Statement of interpretation on Article 3§4, Conclusions 2013; also Conclusions 2003, Bulgaria). It further recalls that if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. Thus, States "must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Conclusions 2003, Bulgaria, Conclusions 2009, Albania).

The report states that under Regulation No. 36/2003 all employers are legally bound to ensure that workers are provided with health surveillance appropriate to the health and safety risks at work, and shall make all arrangements as are required to ensure that health surveillance shall be carried out whenever the risk assessments required to be performed by an employer reveal:

- an identifiable disease or adverse health condition related to the work involved;
- the likelihood that the disease or condition may occur under the particular conditions of work.

The report further explains that in practice there is a variation between the type of health surveillance carried out by large employers and that by smaller ones. Certain large companies employ company doctors who generally conduct a number of occupational health functions at the place of work such as in-house pre-employment screening, periodic medical examinations and guidance to management and workers on occupational health issues. Smaller employers tend to rely on government general health services and/or family doctors for advice and services.

The Government, as the largest employer, has set up an Occupational Health Unit which carries out pre-employment screening and some health surveillance of government employees. Private employers may also opt to make use of Government Health services for a number of occupational health matters (such as audiometric testing, blood tests, X-rays, etc.) or as part of a limited diagnostic approach. While health care in Malta is generally free of charge, occupational health services of private employers through the Government's Occupational Health Unit are normally against a charge.

Finally, the report states that there are 19 registered occupational medicine specialists on the Medical register of the Health Division, three of whom are retired and one works abroad.

The Committee asks that the next contain more precise information on the proportion of enterprises that provide occupational health services either through own services, government services or family doctors and on whether the risk assessments employers are required to make in practice lead to the result that certain enterprises or branches do not provide services at all. If the latter is the case, the Committee wishes to know what measures the Government is taking to ensure that occupational health services are

progressively introduced for all workers across all sectors of the economy. It also wishes to receive details on the nature of the services that are provided, whether they are limited to medical examinations or also include advice and counselling, adaptation of work and workplace, etc., and on whether workers' representatives are involved in risk assessment and in the organisation of occupational health services.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 3§4 of the Charter.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 1 - Prohibition of employment under the age of 15*

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

In its previous conclusion (Conclusions 2011), the Committee asked information on what is considered to be occasional or short-term work involving domestic services in a private household or work in a family undertaking and asked how Maltese law and practice ensured that the minimum age requirement for admission to self-employment was observed. The report indicates that the Maltese law does not apply to occasional or short term work involving domestic services in a private household or work in a family undertaking. The report states that, in practice, the authorities still require a risk assessment to see whether the tasks undertaken are not harmful, damaging or dangerous to a young person as it is required with regard to young persons working regularly.

The Committee recalls that the prohibition of employment of children under the age of 15 laid down in Article 7§1 of the 1961 Charter applies to all places of work including work within family enterprises and in private households, and all forms of economic activity including self-employed, unpaid family helpers or others (Conclusions I (1969), Statement of Interpretation on Article 7§1; International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §27-28). In the light of the information provided in the report, the Committee considers that the situation is not in conformity with the Charter on the ground that the prohibition of the employment of under 16 years olds does not apply to children employed in occasional or short-term work involving domestic service in a private household or work in a family undertaking.

The Committee previously asked for information on the activities carried out by the Inspectorate of the Employment and Training Corporation such as the number of inspections performed and infringements found and the sectors of economy included in these inspections (Conclusions 2011). The report indicates that the inspectors of the Employment and Training Corporation (ETC) carry out inspections in order to monitor if persons under 16 years who are self-employed or employed are working without the necessary permits issued by the Directorate of Educational Services and the Department of Industrial and Employment Regulations. The ETC informs the employers of the results of the inspection carried out at their premises. In the event that the ETC officers detect situations where persons under 16 years are working without the required permits, the cases are referred to the courts. The report provides the number of breaches related to employment of minors detected during the reference period (for example 12 violations in 2013).

### *Conclusion*

The Committee concludes that the situation in Malta is not in conformity with Article 7§1 of the Charter on the ground that the prohibition of employment of children under 15 does not apply to children employed in occasional or short-term work involving domestic service in a private household or work in a family undertaking.

## **Article 7 - Right of children and young persons to protection**

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

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

The Committee noted previously that under the Work Place (Protection of Young Persons) Regulations 1996 workers under the age of 18 years may not be assigned tasks beyond their physical or psychological capacity or perform work which exposes them to a series of hazards listed in the annex to the regulations (Conclusions 2005).

The Committee previously requested (Conclusions 2005; Conclusions 2011) that the authorities indicate how observance of the prohibition of the employment of young persons under the age of 18 was ensured in the areas of a) occasional or short-term work in domestic service in a private household and b) work which is carried out in a family undertaking.

The report indicates that Maltese law does not apply to occasional work or short-term work involving domestic service in a private household, or work in a family undertaking, "provided that, in either case, the work to be performed cannot be regarded as being harmful, damaging or dangerous to a young person" (Section 1(4) of Young Persons (Employment) Regulations, Legal Notice 440/2003).

The Committee recalls that in application of Article 7§2, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work (Conclusions 2006, France). However, if such work proves absolutely necessary for their vocational training, they may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary (Conclusions 2006, Norway). The Labour Inspectorate must monitor these arrangements. The Appendix to Article 7§2 also permits exceptions in cases where young persons under the age of 18 have completed their training for performing dangerous tasks and, thus, received the necessary information (Conclusions 2006, Sweden). The Committee asks the next report to provide a full and up-to-date description of the situation in law and in practice with regard to prohibition of employment of young persons under the age of 18 in occupations regarded as dangerous or unhealthy.

The Committee recalls that the situation in practice should be regularly monitored and reiterates its request to be informed on the specific rate of occupational accidents or diseases among workers under the age of 18 years in relation to different sectors of economy included in the relevant statistics.

### *Conclusion*

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

The Committee noted previously that no person may employ a minor of compulsory school age without the written permission of the Minister. The latter may give his permission after having made the necessary investigations and once he is of the opinion that there are sufficient reasons to justify the exemption from the regular attendance of the minor at school and when the Minister is also of the opinion that the employment of the minor would not be of harm to the health or normal development of that minor. The report indicates that the specific conditions are secured in law and practice and that any possible exemptions from the regular attendance of the minor at school are also based on the said conditions.

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

The report indicates that according to Regulation 7 of the Young Persons (Employment) Regulations (Legal Notice No. 440/2003), a child shall have an aggregate minimum of 21 days free of any work during school holidays. The Committee asks confirmation that children have 2 consecutive weeks free from work during the summer holiday.

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

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

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

In order to assess the situation, the Committee therefore asks which is the daily and weekly duration of light work that children subject to compulsory education are allowed to perform during school term as well as during school holidays. In the meantime, the Committee reserves its position on this point.



The Committee recalls that the situation in practice should be regularly monitored and asks information on the activities of the authorities of monitoring and detecting cases of possible illegal employment of young workers subject to compulsory education. It also wishes to know what sanctions are imposed in practice against the employers for infringements of the applicable legislation.

Should the next report not provide the information requested, there will be nothing to establish that the situation in Malta is in conformity with Article 7§3 of the Charter.

*Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 4 - Working time*

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

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

The Committee notes that in Malta a limit of eight hours per day and 40 hours per week are established with respect to the work performed by young workers under 16 years of age under a combined work, or training scheme or an in-plant work-experience scheme (according to the Schedule to Young Persons (Employment) Regulations (Legal Notice 440/2003 as amended by Legal Notices 427 of 2007 and 257 of 2012). It therefore concludes that the situation is not in conformity with Article 7§4 of the Charter on the ground that the daily and weekly working time for young workers under the age of 16 is excessive.

### *Conclusion*

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

#### **Young workers**

As regards young workers' wages, the report indicates that there have been no changes to the situation during the reference period. However no information is provided in the report on the minimum wages paid to adults and young workers during the reference period.

The Committee notes from another source that the national minimum wage in 2012 was € 158.11 per week for adults, € 151.33 per week for young workers aged 17 years and € 148.49 per week for young workers under 17 (National Minimum Wage National Standard Order). The Committee notes that the minimum wage per week of 17 year-olds, respectively of young persons under 17 corresponded to 95%, respectively 93% of the adult minimum wage per week.

The Committee recalls that under Article 7§5 of the Charter, wages paid to young workers of 16 and 17 years of age can be reduced by as much as 20% compared to a fair adult's starting or minimum wage. Therefore, if young workers were paid 80% of a minimum wage in line with the Article 4§1 fairness threshold, the situation would be in conformity with Article 7§5 (Conclusions XVII-2 Vol. 2 (2005) Spain).

In order to assess the situation, the Committee needs information on the minimum wage of young workers calculated net. It also requests information on the starting wages or minimum wages of adult workers as well as on the average wage. 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. In the meantime, the Committee reserves its position on this point.

#### **Apprentices**

The Committee considered previously that the apprentices' allowances were below the fairness threshold set in Article 7§5, and therefore were not in conformity with the 1961 Charter, unless apprentices were entitled to some kind of complementary allowances that would raise the overall level of their pay (Conclusions 2005). It therefore asked whether there are such allowances in Malta. In its previous conclusion, the Committee concluded that the situation in Malta is not in conformity with Article 7§5 of the Charter on the ground that it has not been established that the allowances paid to apprentices are fair (Conclusions 2011).

The report indicates that in addition to the weekly remuneration paid by the employer, apprentices are entitled to receive half of June's statutory bonus and half of December's bonus (€ 67.55 in June, respectively € 67.55 in December). The report indicates that apprentices are entitled to a Maintenance Grant (stipend) of € 86.01 every 4 weeks, throughout the whole year, for 2 years. No stipend will be paid in the third year, if the apprenticeship is of 3 year duration. The Maintenance Grant was increased through the 2013 Budget from € 86.01 to € 95.00. Apprentices receive a one-time grant of € 326.11 for educational material and equipment which is paid when the apprenticeship begins.

The report does not provide any information on the allowances paid to apprentices during the reference period. The Committee notes from the report of the Governmental Committee the values of gross remuneration payable by the employer to the apprentices during their 3 years of apprenticeship (Report Concerning Conclusions 2011). In order to assess whether the complementary allowances raise the overall level of the apprentices' pay so that the situation could be in conformity with Article 7§5 of the Charter, the Committee requests to be provided with the net values of the allowances paid to apprentices (after deduction of social security contributions) for the entire duration of their apprenticeship. It also asks information

on the net values of the starting wages or minimum wages of adult workers as well as on the net average wage. Pending receipt of the information requested, the Committee reserves its position on this point.

*Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

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

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

In its previous conclusion (Conclusions 2011), the Committee asked specific information, including figures and examples, related to the inspections carried out by the Department of Industrial and Employment Relations (DIER) with respect to the inclusion of time spent on vocational training in the normal working time. The report indicates that the DIER carried out routine inspections, but no specific inspections related to the inclusion of time spent on vocational training in the normal working time were carried out.

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

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 7 - Paid annual holidays*

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

The Committee noted previously that the Department of Industrial and Employment Relations (DIER) carries out inspections at the work places and monitors whether the regulations related to paid annual holidays of persons of under 18 years of age are applied (Conclusions 2011). The Committee asked detailed information on the inspections carried out by DIER, including figures and examples, as well as on any possible decisions of the Industrial Tribunal with respect to paid holiday of persons under 18 years of age.

The report indicates that the Industrial Tribunal does not hear cases related to annual leave. The report does not provide any figures and statistics with respect to paid annual holidays of persons under 18 years of age. The Committee recalls that the situation in practice should be regularly monitored and therefore reiterates its question.

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

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 8 - Prohibition of night work*

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

The report indicates that since 2012 employers are obliged to conduct a risk assessment in accordance with the requirements of the General Provisions for Health and Safety at Work Regulations 2003, prior to assigning a worker to carry out night work.

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

The Committee recalls that the situation in practice should be regularly monitored and therefore it asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of night work for young workers under the age of 18.

### *Conclusion*

The Committee concludes that the situation in Malta is not in conformity with Article 7§8 of the Charter on the ground that it has not been established that the exceptions to the prohibition of night work in some economic sectors are necessary for the proper functioning of these sectors and that the number of young workers concerned is not high.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 9 - Regular medical examination*

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

In its previous conclusion (Conclusions 2011), the Committee analysed the legal framework and concluded that the situation in Malta was in conformity with Article 7§9 of the Charter. It asked information, including figures, on the number of compulsory medical examinations of persons under 18 years of age in the cases provided by law.

The report indicates that the officers of the Occupational Health and Safety Authority may see copies of the reports of such compulsory medical examinations, while there is no obligation on the part of the employers to send a report to the Occupational Health and Safety Authority. The Committee asks that the next report provide information on the activity and findings of the monitoring authorities regarding the regular medical examination of persons under 18 years of age.

The Committee recalls that the medical examinations must be adapted to the specific situation of young workers and the particular risks to which they are exposed (Conclusions (2006) Albania). The Committee asks more information on how the medical examinations of young workers are performed in practice.

### *Conclusion*

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



## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

The Committee notes that Malta ratified the Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2010 but has not submitted its report yet.

### ***Protection against sexual exploitation***

In its previous conclusion (Conclusions 2011) the Committee found that it had not been established that children were protected from sexual exploitation.

The Committee notes that the report does not provide any new information on this issue. It notes however from the report of the Governmental Committee (Report concerning Conclusions XIX-4 (2011)) that protection against sexual abuse, child prostitution and child pornography is specifically provided for under Articles 204C (1), 204 D and 208A of the Criminal Code, which criminalise the following activities, among others:

- participation in sexual activities with persons under age, where recourse is made to child prostitution;
- compelling persons under age to perform sexual activities with another person;
- knowingly attending a pornographic performance involving the participation of a person under age.
- production, distribution, dissemination, import, export, offer, sell, transmission, making available, simple possession, procuring for oneself or for another any indecent material depicting a child.

The Committee recalls that with a view to guaranteeing 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.

An effective policy against commercial sexual exploitation of children should cover primary and interrelated forms: child prostitution (offer, procurement, use or provision of a child for sexual activities for remuneration or any other kind of consideration), child pornography (procurement, production, distribution, making available and a simple possession of material that visually depicts a child engaged in sexually explicit conduct) and trafficking in children (the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation). States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent.

The Committee asks whether all acts of sexual exploitation, including simple possession of child pornography, are criminalised for all children under the age of 18. In the meantime the Committee reserves its position on the issue of protection against sexual exploitation.

The Committee notes from the Concluding observations of the UN Committee of the Rights of the Child (UN-CRC) on the second periodic report of Malta (2013) that the UN-CRC regrets that Malta report provides no information on the extent and causes of child sex exploitation and is concerned about the insufficient data and awareness of the sexual exploitation of children in Malta. Furthermore, the UN-CRC is concerned that the State party does not have adequate mechanisms for ensuring the detection, investigation and prosecution of perpetrators of child sexual exploitation and abuse. The Committee asks the next report to comment on these observations.

The Committee asks whether child victims of sexual exploitation can be prosecuted for any act connected with this exploitation.

### ***Protection against the misuse of information technologies***

In its previous conclusion the Committee held that it had not been established that children were protected against misuse of information technologies.

The Committee notes from the report of the Governmental Committee (Report concerning Conclusions XIX-4 (2011) that Malta has a local hotline that provides a secure and confidential environment where the public can report online child abuse. There is a hotline Team which has multiple roles, such as organising awareness campaigns by participating in local media, as well as carrying out internet safety education programmes in schools. The hotline team works in liaison with the National Cybercrime Unit within the Malta Police Force which deals with cyber abuse complaints and the Child Protection Services which provide support to the victim. Besides, children are further informed and protected through various projects, seminars and initiatives taken locally such 'a safer internet centre for Malta' under the EU safer internet programme, which serves to inform children, parents and educators and makes them aware of the dangers of the internet.

The Committee asks whether internet service providers have an obligation to remove or prevent accessibility to illegal material of which they have knowledge.

### ***Protection from other forms of exploitation***

The Committee notes that Article 248D of the Criminal Code provides for protection against trafficking of children. The Protection of Minors (Registration) Act was enacted in January 2012 (Chapter 518 of the Laws of Malta), which, according to the report, is a major step forward in ensuring further transparency to the general public with regard to crimes which attack the well-being of children.

The Committee asks what measures are taken to assist street children.

### ***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 Malta.

### ***Right to maternity leave***

Under the Protection of Maternity (Employment) Regulations (Legal Notice 439 of 2003, as amended in 2004, 2007, 2011, 2012 and 2014) pregnant employees are entitled to an uninterrupted period of fully paid maternity leave of 14 weeks (increased to 18 weeks as from 1 January 2013), with 6 weeks compulsory postnatal leave. Employees on a fixed-term contract are entitled to the same rights, for the duration of the contract. In response to the Committee's question, the report indicates that the same regime applies both to the private and public sector.

### ***Right to maternity benefits***

Employed or self-employed women on maternity leave are entitled to fourteen weeks on full wages as maternity leave benefits (Section 7 of the Protection of Maternity (Employment) Regulations), without any qualifying period of contributions or employment. The same regime applies to both the private and public sector.

The Committee refers to its Statement of Interpretation on Article 8§1 (Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

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

### ***Prohibition of dismissal***

In accordance with Section 12 of the Protection of Maternity (Employment) Regulations (as amended by Legal Notices 3 of 2004, 427 and 431 of 2007, 130 and 503 of 2011, 258 of 2012 and 415 of 2014), it is unlawful for an employer to dismiss a pregnant employee from the moment she has formally notified her employer of her pregnancy, or because she avails herself of her right to maternity leave. According to the report, the same regime applies both to the private and public sectors and there are no exceptions to the prohibition on dismissal of pregnant workers. The Committee notes however that Section 12§2 of the Protection of Maternity (Employment) Regulations states that the prohibition of dismissal is without prejudice and shall not apply to cases falling under article 36(4) and (14) of the Employment and Industrial Relations Act, concerning respectively redundancy and "dismissal for good and sufficient cause". It notes that, in the latter case, the fact that an employee is pregnant with child or is absent from work during maternity leave cannot be considered a good and sufficient cause for dismissal.

The Committee recalls that under Article 8§2 of the Charter, the dismissal of a worker during pregnancy and maternity leave is permitted in certain cases such as misconduct which justifies the breaking off the employment relationship, if the undertaking concerned ceases to operate or if the period prescribed in the employment contract expires; however, such exceptions are to be strictly interpreted. It asks the next report to clarify, by providing relevant examples, under what circumstances a pregnant or nursing woman may be dismissed in conformity with Section 12§2 of Protection of Maternity (Employment) Regulations. It reserves in the meantime its position on this issue.

### ***Redress in case of unlawful dismissal***

Complaints for alleged unfair dismissal can be brought before the Industrial Tribunal. Under Article 12A(c) of the Protection of Maternity (Employment) Regulations, as amended in 2011, it is for the employer to prove that the employee was dismissed for a good and sufficient cause, failure of such proof being considered by the Tribunal as an inference that the dismissal was indeed related to the employee's pregnancy.

If the Industrial Tribunal finds that the dismissal was unfair, it can order the reinstatement, upon request of the worker and if such reinstatement is considered possible. If there is no specific request for reinstatement or re-engagement, or if the Tribunal decides not to make an order for it, the unfairly dismissed worker can be awarded a compensation, to be paid by the employer. In determining the amount of such compensation, the Tribunal shall take into consideration the real damages and losses incurred by the worker who was unjustly dismissed, as well as other circumstances, including the worker's age and skills as may affect the employment potential of the worker (Section 81 of the Employment and Industrial Relations Act).

The Committee previously asked for a full update of the situation, including in respect of women employed in the public sector, in particular those on temporary contracts. The report indicates that the Protection of Maternity (Employment) Regulations apply both to the private and public sectors. The Committee asks the next report to confirm that all categories of employed women, including those on fixed-term contracts, are covered by these provisions.

### ***Conclusion***

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 4 - Regulation of night work*

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

Under Regulation 5 of the Protection of Maternity (Employment) Regulations (Legal Notice 439 of 2003, as amended in particular by Legal Notice 258 of 2012), an employer who has received notification by means of a medical certificate that an employee should not perform night work during her pregnancy and during nursing for reasons relating to her health and safety, must transfer that employee to daytime work without any loss of employment rights or wages, as stipulated in the employment contract. If the employer is unable to comply with the requirement to transfer the employee to daytime work, as this is not technically and/or objectively feasible or cannot be required on duly substantiated grounds, the employee shall be given special maternity leave for the whole period necessary to protect her health and safety.

According to the report, following amendments in 2011 to the abovementioned Regulations, a special allowance equivalent to the rate of sickness benefit is paid for the whole period necessary for the protection of the employee's health and safety.

The report indicates that the Protection of Maternity (Employment) Regulations apply to all women who are pregnant, who have given birth or who are nursing, in the private as in the public sector.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

The Committee notes from the report that the Protection of Maternity (Employment) Regulations (Legal Notice 439/2003) were amended in 2012 to the effect that employers are now obliged to conduct a risk assessment in accordance with the requirements of the General Provisions for Health and Safety at Work Regulations 2003 (Legal Notice 36/2003). The basic principle of the regulations (Legal Notice 92/2000, Protection of Maternity at Work Places Regulations, as amended by Legal Notice 436/2012) remains that no pregnant employees, employees who have recently given birth or are nursing shall be required by the employer to perform any work which may endanger their health and safety, the safety or viability of their pregnancy or the health of their child, as the case may be. Accordingly, before assigning work to any pregnant or nursing worker or to a worker who has recently given birth, the employer shall conduct an assessment of the hazards that the worker is likely to be exposed to and shall take appropriate action.

An employer shall under no circumstance require a pregnant worker to perform duties for which the assessment has revealed a risk of exposure to the agents, processes or working conditions listed in Section A of the Second Schedule (work in hyperbaric atmosphere, including pressurized enclosures and underwater diving; exposure to Toxoplasma and Rubella viruses, unless the workers are proved to be adequately protected by immunization; exposure to risks related to lead and compounds of lead or to any other physical, biological or chemical agent regarded by the OHSAs as causing foetal lesions and/or is likely to disrupt placental attachment, and/or is likely to cause serious disease to a pregnant woman).

An employer shall under no circumstance require a nursing worker to perform duties for which the assessment has revealed a risk of exposure to the agents, processes or working conditions listed in Section B of the Second Schedule (any chemical agent capable of being absorbed by the human organism which can also pass to a child through breast milk, and which can have deleterious effect on the child; any other agent, process or work activity which can have a harmful effect on the ability of a mother to breastfeed).

The report points out that these requirements apply to all work places, to all sectors of activity, both public and private, and to all work activities.

The employer shall inform the workers involved or their representatives at the place of work, of the results of this risk assessment and of all the measures taken, or that are to be taken concerning health and safety at work. If the results of this risk assessment reveals a risk to health or safety, to the pregnancy, or to the child, the employer shall take the necessary steps to remove the worker from such exposures, either by temporarily adjusting the working conditions, and/or the working hours, or by assigning the worker to another job which is both suitable in relation to her and appropriate for her to do in the circumstances, under such terms and conditions of employment which are not less favourable than those stipulated in her contract of employment. Similar measures are provided for by Regulation 3 of the Protection of Maternity (Employment) Regulations (Legal Notice 439 of 2003, as amended), which specifies that if it is not possible to adjust the working conditions and/or working hours or to assign the worker to another post, a special maternity leave shall be granted. In response to the Committee's question, the report confirms that in this case the employer shall pay the employee, for the whole period necessary to protect the employee's safety or health, a special allowance equivalent to the rate of sickness benefit payable in terms of the Social Security Act.

### *Conclusion*

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

## **Article 13 - Right to social and medical assistance**

### *Paragraph 1 - Adequate assistance for every person in need*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Malta in response to the conclusion that it had not been established that social assistance was provided to everyone in need (Conclusions 2013, Malta).

The Committee recalls that under Article 13§1 of the Charter the system of social assistance must be universal in the sense that the benefits must be payable to any person on the sole ground that (s)he is in need (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 48/2008, decision on the merits of 18 February 2009, §38). In its previous conclusion the Committee noted in particular the absence of information on the reasons for classifying the non-contributory unemployment assistance benefits as social assistance. It requested information on the eligibility criteria for these benefits, on the notion of "suitable work", on what grounds are considered legitimate in refusing employment and what are the consequences of a non-valid refusal i.e., in particular, what forms of social assistance may be refused in case a person would refuse employment, whether the assistance is entirely withdrawn and whether the withdrawal of such assistance may amount to the deprivation of means of subsistence for the persons concerned. It finally asked for clarification of what forms of social assistance, if any, apply to people in need not falling within the social assistance categories indicated above and not eligible for unemployment benefits (such as, for example, workers whose salary would be insufficient to satisfy their basic needs and those of their family).

The report firstly recalls that the social security system provides for two schemes, namely the contributory and non-contributory scheme. Whereas the contributory scheme – sickness benefit, unemployment benefit, injury benefit, injury pension, retirement pension, widow pension, invalidity pension – is an insurance based scheme where qualification for all benefits depends on a contribution test, the non-contributory scheme – social assistance, medical assistance, carer's pension, social assistance carers and disability pensions – is a capital and income-tested scheme and is therefore based on the financial situation of the claimant and also on the outcome of a medical panel review. Unemployment assistance falls under the same conditions and a claimant is registering for work as a jobseeker with the Register of the Employment & Training Corporation. Therefore, the eligibility criteria for claimants falling under the non-contributory scheme are that they form a household on their own, satisfy the capital/incomes test and satisfy a medical panel review. The financial eligibility criteria for unemployment assistance claimants is the same but claimants must also be registering for work.

The report further explains that in the case of a beneficiary of unemployment assistance who is struck-off the work register for refusing employment, unemployment assistance is suspended but the other eligible members in his household have the right to apply for social assistance on their behalf and thus will continue to receive social assistance for the period commensurate with the strike-off duration. With respect to the notion of suitable work, the report emphasises that persons registering for work have an employability profile and any referral for employment will satisfy their employment profile.

Finally, the report mentions that persons in receipt of a non-contributory assistance automatically qualify for the maximum rate of child allowance where such a benefit is due or to the maximum rate of Supplementary Allowance if a child allowance is not in payment and to the energy benefit. Furthermore, persons with a low salary – up to the national minimum wage – also qualify for the maximum child allowance or supplementary allowance and to the energy benefit.

On the basis of the above information, the Committee considers that the situation is compatible with the Charter. However, it asks that the next report provide further details on the financial means-test applied and on whether and to what extent assistance is withdrawn in case of refusal of employment offered. It also wishes to receive up-dated information on the amounts of Supplementary Allowance and energy benefit paid to workers in need due to insufficient resources (e.g. low pay below the minimum wage).

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 13§1 of the Charter as regards the provision of social assistance to everyone in need.



## **Article 13 - Right to social and medical assistance**

### *Paragraph 3 - Prevention, abolition or alleviation of need*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Malta in response to the conclusion that it had not been established that services exist, offering advice and personal assistance to persons without adequate resources or at risk of becoming so (Conclusions 2013, Malta).

The Committee recalls that Article 13§3 concerns specifically services offering advice and personal assistance to persons without adequate resources or at risk of becoming so (Conclusions XVI-2, Hungary). In its previous conclusion the Committee specifically requested information on which types of advice and services (other than those provided to people in situation of need because of abuses, addictions or disability) were available specifically to people needing social assistance. It also wished to know what was the capacity of the social services to respond to requests for advice and personal assistance from persons in need.

The report primarily provides information on services provided to persons with addictions and to persons with disabilities as well as on services available to all members of society, for example services in respect of domestic violence and child abuse. Mention is made that Aġenzija APOGG through outreach programmes and social work interventions identify people at risk of poverty and social exclusion and assist them to integrate back into mainstream society. The Committee understands that the various types of services mentioned in the report are in principle available free of charge to persons in receipt of social assistance/unemployment assistance and it asks that the next report confirm this understanding as well as provide up-dated information on services such as advice and personal help, including on the number of beneficiaries. The Committee underlines that this information is necessary to fully assess the situation.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 13§3 of the Charter as regards advice and personal help.

## **Article 13 - Right to social and medical assistance**

### *Paragraph 4 - Specific emergency assistance for non-residents*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Malta in response to the conclusion that it had not been established that all foreign nationals, whether legally present or in an irregular situation, are entitled to emergency medical and social assistance in Malta. (Conclusions 2013, Malta).

The Committee recalls that Article 13§4 grants foreign nationals the right to emergency social and medical assistance. The beneficiaries of this right are foreign nationals who are lawfully present in a particular state but do not have resident status and those who are unlawfully present (Conclusions 2013, Montenegro).

The report contains information exclusively on asylum seekers. The Agency for the Welfare of Asylum Seekers (AWAS) offers a variety of services to assist asylum seekers in Malta. In practice, asylum-seekers in detention are provided with accommodation, food and clothing in kind. Asylum-seekers living in Open Centres are given a small food and transport allowance, free access to state health services and in cases of children, free access to state education services. Asylum-seekers in detention enjoy free state health services, clearly within the practical limitations created by their presence within a detention centre. AWAS provides different amounts of daily allowance, associated with the asylum seeker's status: €4.66 for asylum seekers, persons returned under the Dublin II Regulation receive €2.91, employed asylum-seekers receive nothing but are then granted €4.08 upon termination of employment and children receive €2.33 until they turn 17.

The Committee acknowledges the information on asylum seekers [and considers that the situation is in conformity with Article 13§4 in their respect], but reiterates its request for information on emergency medical and social assistance for other foreign nationals lawfully present, but not resident, in the territory as well as for foreigners present in the territory in an irregular manner. In the absence of this information it reiterates its previous finding of non-conformity.

### *Conclusion*

The Committee concludes that the situation in Malta is not in conformity with Article 13§4 of the Charter on the ground that it has not been established that all foreign nationals, whether lawfully present or in an irregular situation, are entitled to emergency medical and social assistance.

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

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

### ***Social protection of families***

#### ***Housing for families***

The Committee refers to its previous conclusion (Conclusions 2011) for a description of the services offered by the Housing Authority.

As regards forced eviction, the report provides information on eviction justified by public interest. The 'Land Acquisitions (Public Purposes) Ordinance' enables the authorities to carry out evictions whenever land is required for public purposes and prescribes to evictees a number of rights. Evictions can take place 14 days from the date of publication in the Government Gazette, however if the land from which a person is to be evicted is also serving as a dwelling house, the occupier shall not be required to yield the possession thereof before the lapse of fourteen days from the date when alternative accommodation, reasonably sufficient for the persons resident in that dwelling house, has been offered in writing by the competent authority to the said occupier. In accordance with principles of administrative law, the Court of Justice has jurisdiction to enquire whether the government was justified in issuing an order for expropriation and review whether the alternative accommodation is reasonably sufficient. The Committee wishes the next report to lay out the legislation on forced eviction for reasons other than public interest such as insolvency or wrongful occupation.

The Committee notes from the 2013 report on Malta of the European Commission against Racism and Intolerance (ECRI), which notes from a qualitative study on racial discrimination in Malta prepared by the National Commission for the Promotion of Equality (NCPE) that persons of migrant background continue to be confronted with racial discrimination when looking for a place to rent. The ECRI report mentions the project established by the NCPE, which consists of a situation-testing exercise, a study on the housing options available to migrants and plans to address home owners and estate agents on the illegality of racial discrimination. In his visit report of 2011, the Council of Europe Commissioner for Human Rights also stressed the issue of discrimination faced by migrants trying to access private housing.

While encouraging the efforts made by the NCPE, the Committee considers in view of the available information that the situation is not in conformity with the Charter on the ground that migrant families face discrimination in their access to housing.

#### ***Childcare facilities***

The report states that the Government recently adopted a policy of free childcare facility for all parents who work, meaning that every parent has access to childcare facilities. It also refers to the Department for Social Welfare Standards, whose role is to ensure that childcare is of a certain quality. There are currently 71 childcare centres registered with this Department and 9 holding a temporary registration. The quality of care is ensured either through inspections or on the basis of complaints. The Committee wishes the next report to indicate the number of children that these centres can accommodate.

#### ***Family counselling services***

The report indicates that through *Agenzija Appoġġ* the Government provides services relating to children in need and families. The said agency has professional social workers and psychologists who help individuals that are passing through difficulties in their relationship with others, particularly with their family members. Psychological support for

children's education is provided mostly within schools and colleges by professional staff that are assigned to each school and college.

### ***Participation of associations representing families***

The report explains that the Government endeavours to promote public consultation whenever laws are being amended or policies are being framed. Prior to the amendment or the framing of policies the Government puts relevant information on its webpage. In view of the foregoing, the Committee considers that the situation is not in conformity with the Charter on the ground that it has not been established that associations representing families are consulted when family policies are drawn up.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The Committee notes that marital conflicts are settled by the Civil Hall First Court (Family Section). Procedure requires that before proceedings are instituted before the court spouses ask the registrar to appoint a mediator (free of charge) and assist the spouses on agreeing on important points relating to the separation, which points include: matrimonial home and other assets, whether maintenance is to be paid and if so the amount of maintenance, who will be the primary care giver to the children and visitation rights received by the other parent and other relative issues. During the mediation, parties may be assisted by a person of trust which usually is a lawyer. Once the parties agree on a separation contract such agreement is sent to the Family Court which will assess whether one of the parties is seriously prejudiced by the contract. Case law shows that the Family Court will intervene and ask the spouses to revise the contract if it considers that the children will be placed at risk of poverty and there is uncertainty as to whether one of the parents has enough resources to pay for adequate child support.

#### ***Mediation services***

The report indicates that mediation services are offered free of charge to all couples who engage in separation, divorce or annulment proceedings.

#### ***Domestic violence against women***

The Committee takes note of the entry into force of the Domestic Violence Act in 2013, which establishes a commission on domestic violence. The functions of this commission are to advise the Minister responsible for social policy on the issue of domestic violence. The Act obliges the Government to designate one or more organisations, institutions or other bodies as the agency responsible for the provision of preventive or therapeutic programmes for victims and perpetrators of domestic violence. The Committee asks the next report to indicate the outcome following the implementation of these programmes.

It also notes that the Criminal Code empowers criminal courts to issue a restraining order when there is a high probability that an accused will harass his victim or when the conduct of the accused is likely to cause a fear of violence. In family courts cases, whenever it is proved that one of the spouses was violent towards the other the court may order that one of the spouses leaves the matrimonial home to the other. In addition to or without a protection order the criminal court and the family court may also issue a treatment order, which would require the accused to follow a treatment which the court may deem appropriate.

## ***Economic protection of families***

### ***Family benefits***

According to Eurostat data, the monthly median equivalised income in 2013 was €1,007. According to MISSOC, the monthly amounts of child benefits was €96.32 for the first child, €192.64 for 2 children, €288.96 for 3 children, €385.28 for 4 children and €96.32 for any additional children. Child benefits represented a percentage of that income as follows: 9.6% for the first child, 19% for 2 children, 28.6% for 3 children and 38.2% for 4 children, etc.

The Committee considers that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of the monthly median equivalised income. On the basis of the figures indicated, the Committee considers that the amount of benefits is compatible with the Charter.

### ***Vulnerable families***

In its previous conclusion (Conclusions 2011) the Committee asked what measures were taken to ensure the economic protection of Roma families. The report indicates in this respect that there are no Roma families living in Malta. It however explains that there are families in an economically vulnerable position being from a different ethnic group, mostly African families, who cannot be repatriated due to the application of the 1951 Refugee Convention and Articles 2 and 3 of the European Convention of Human Rights.

The report mentions that there are 12 different facilities which offer residence to single male adults, couples without children, single women, families and unaccompanied minors. In addition to accomodation the Government gives between €2.33 and €4.66 per person per day to each individual in this category.

### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The Committee noted in its previous conclusion (Conclusions 2011) that the equal treatment of nationals of States parties to the European Social Charter residing in Malta was ensured regarding family benefits. The Committee however asked whether the granting of residence status was subject to a length-of-residence requirement. The report provides no answer in this respect, the Committee therefore reiterates its question.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

### ***Conclusion***

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

- migrant families face discrimination in their access to housing;
- it has not been established that associations representing families are consulted when family policies are drawn up.

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

### *Paragraph 1 - Assistance, education and training*

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

### ***The legal status of the child***

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with the Charter as children born outside the wedlock were discriminated against in matters of succession and inequalities existed between children of the first and second marriage.

The Committee notes from the report that Article 602 et seq. of the Civil Code has been duly amended and removed the *a priori* discrimination against children born out of wedlock who were incapable of receiving more than the reserved portion. The Committee notes that in its current wording Article 602 of the Civil Code provides that all children, whether born in wedlock, out of wedlock or adopted may receive by will from the testator.

Article 712 et seq. of the Civil Code has been amended so that children of second (or subsequent) marriages or children who were adopted are not discriminated against.

The Committee considers that with these legislative amendments the situation has been brought into conformity with the Charter.

### ***Protection from ill-treatment and abuse***

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as not all forms of corporal punishment were prohibited. In this regard it notes from the report that as of 2014 all forms of corporal punishment have been outlawed. Article 339 of the Criminal Code provides that it is a contravention for any person being authorised to correct any other person, to exceed the bounds of moderation, provided that, for the avoidance of any doubt, corporal punishment of any kind shall always be deemed to exceed the bounds of moderation.

The Committee also notes from the Global Initiative to end corporal punishment that the law reform has been achieved. Corporal punishment is prohibited in all settings, including the home. Corporal punishment is unlawful in the home under a 2014 amendment to the Criminal Code. Corporal punishment is unlawful in alternative care settings under article 339 of the Criminal Code, as amended by the Criminal Code (Amendment No. 3) Act 2014. Corporal punishment is unlawful in schools under Article 339 of the Criminal Code as amended in 2014.

The Committee considers that with the legislative amendments introduced in 2014 (outside the reference period) the situation has been brought into conformity with the Charter. However, the Committee considers that during the reference period the situation was not in conformity with the Charter as corporal punishment was not prohibited in the home in schools and in institutions.

### ***Rights of children in public care***

The Committee notes from the report that most children who are taken into public care are placed in foster care within a short period of time, if not at once. Foster parents are appointed by *Agenzija Appoġġ*, which is accredited as a Foster Care Agency by the Department for Standards in Social Welfare. In accrediting the Foster Care Agency the Department follows the National Standards for Out-of-Home Child Care, published in 2009.

In reply to the Committee's question asked in the previous conclusion concerning the rules applying in case of restriction or limitation of parents' custodial rights, the report states that the criteria found in the law required for the restriction of custody or parental rights are that a

child needs care, protection or control. The law states that a child is in such situation if he/she is not receiving such care, protection and guidance as a good parent may reasonably be expected to give and the lack of care, protection or guidance is likely to cause the child or young person unnecessary suffering or seriously affect his health or proper development.

According to the report, the primary procedural safeguards to ensure that children are removed from their families only in exceptional circumstances is that the decision of the social workers will be reviewed by the juvenile court if the parent objects to the care order. The secondary procedural safeguard is that a board will review the care order once every six months.

### ***Right to education***

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

### ***Young offenders***

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as the age of criminal responsibility was too low.

The Committee notes from the report that the age of criminal responsibility has been raised to the age of 14. The relevant provisions of the law have been changed (Article 35 of the Criminal Code) and now a child under the age of 14 shall be exempt from criminal responsibility for any act or omission. Hence the Article in the Criminal Code relating to mischievous discretion between the ages of 9 to 14 has been removed.

The Committee considers that with this legislative amendment the situation has been brought into conformity.

According to the report, the Juvenile Court is the responsibility of the Justice Unit and the Court Services, while the management the juvenile section of the correctional facilities, now having a male and female section, and the implementation of policies and programmes relating thereto, falls within the responsibility of the broader Correctional Services.

The Committee asks what is the maximum permissible length of pre-trial detention and a prison sentence that can be imposed on a young offender.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

### *Conclusion*

The Committee concludes that during the reference period the situation in Malta was not in conformity with Article 17§1 of the Charter on the ground that corporal punishment was not prohibited in the home, in schools and in institutions.



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

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

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

The Committee notes that Malta adopted its Education Strategy for 2014-2024. Among its objectives are improving the quality and effectiveness education, ensuring more inclusive education. The Committee wishes to be kept informed of the implementation of this strategy.

In its previous conclusions (Conclusions 2011) the Committee asked to be informed of the absenteeism rate and measures taken to reduce it. In this connection it takes note of measures taken by the Psycho-Social Services and well as the Principal Social Worker to tackle absenteeism. Since 2010 the team of social workers and social support workers employed with the Education Psycho-Social Services within Student Services Department have been giving priority to primary students with a history of absenteeism. Consequently, following in depth interventions the number of unauthorised school absences decreased in a way that fewer children were missing more than three school days.

The Committee notes that the rate of absenteeism in the primary schools dropped from 2.12% in 2008/2009 to 1% in 2012/2013. In the secondary education this rate stood at 7.76% in 2008/2009 and 7.5% in 2013/2014. In 2011 the parents of 1,766 students were referred to the Regional Tribunal because of habitual absenteeism. This figure stood at 1,399 in 2013.

According to the report, the attendance policy was launched in October 2014. The aim is to maximise school completion for all students, raise student achievement and close gaps in student performance. The Committee wishes to be informed about the results of implementation of this policy.

The Committee recalls that education provided by States must fulfil the criteria of availability, accessibility, acceptability and adaptability (Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Collective Complaint No 41/2007, decision on the merits of 3 June 2008). It asks what measures are taken to facilitate access to education for children from vulnerable families, including children of minorities as well as unlawfully present children.

### *Conclusion*

The Committee concludes that the situation in Malta is in conformity with Article 17§2 of the Charter.

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

### *Paragraph 2 - Parental leave*

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

The Committee notes that the situation which it has previously considered to be in conformity with the Charter has not changed. The report states that since 2010 parental leave is of four months duration.

The Committee recalls that under Article 27§2 of the Charter the States are under a positive obligation to encourage the use of parental leave by either parent. The States shall ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave.

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

The Committee asks what financial compensation or benefits are provided during the period of parental leave.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Malta is in conformity with Article 27§2 of the Charter.

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

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

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

In its previous conclusion (Conclusiosn 2011) the Committee considered that the situation in Malta was in conformity with the Charter.

### ***Protection against dismissal***

According to the report Regulation 10 of the Parental Leave Entitlement Regulations (SL 452.78) stipulates that it shall not be lawful for the employer to dismiss an employee solely because an employee has taken or applied to take parental leave in accordance with these regulations. Any such dismissal shall not constitute a valid reason for termination of employment.

### ***Effective remedies***

According to the report, there is no defined level of compensation which could be awarded by the Industrial Tribunal. There is not yet any law of precedents and the Tribunal has discretion to impose any amount of compensation it deems fit.

### *Conclusion*

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



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**REPUBLIC OF MOLDOVA**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns the Republic of Moldova which ratified the Charter on 8 November 2001. The deadline for submitting the 11th report was 31 October 2014 and the Republic of Moldova submitted it on 26 January 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report contains also information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to protection of health – advisory and educational facilities (Article 11§2)
- the right to protection of health – prevention of diseases and accidents (Article 11§3)
- the right to social security – existence of a social security system (Article 12§1)
- the right to social security – maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security – Unemployment benefit (Article 12§2)
- the right to social and medical assistance – adequate assistance for every person in need (Article 13§1)

The Republic of Moldova has accepted all provisions from the above-mentioned group except Articles 7§§5 and 6, 19§§1 to 6 and 19§§9 to 12, 27§§1 and 3 and 31.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Republic of Moldova concern 24 situations and are as follows:

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

– 12 conclusions of non-conformity: Articles 7§1, 7§3, 8§1, 11§2, 11§3, 12§1, 12§2, 13§1, 16, 17§1, 17§2 and 19§8.

In respect of the other 6 situations related to Articles 7§10, 8§1, 8§2, 8§3, 8§4, 8§5 and 27§2, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by the Republic of Moldova under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 7§2**

List of dangerous activities prohibited to young workers under 18, established by the Government Decision No. 541 of 7 July 2014.

## **Article 7§10**

The Criminal Code, the Code of Criminal Procedure and the Family Code have been amended in 2012.

- Article 206 (1) of the Criminal Code criminalises the recruitment, transportation, transfer, harbouring, or receipt of a child, as well as giving or receiving payments or benefits to obtain the consent of the person who exerts control over the child for the purpose of commercial or non-commercial sexual exploitation in prostitution or a pornographic industry;
- Article 208 (2) of the Criminal Code criminalises taking advantage, against any material benefits, of sexual services provided by a person who is known with certainty not to have reached the age;
- Article 208<sup>1</sup> of the Criminal Code defines and criminalises child pornography as production, distribution, broadcasting, import, export, offering, sale, exchange, use, or holding of pictures or of other images of one or more children involved in explicit, real, or simulated sexual activities;
- Article 175 of the Criminal Code criminalises the proposal, including through information and communication technologies, to a meeting with a child for the purpose of committing an offence against him of a sexual nature.

## **Article 16**

Adoption on 17 July 2014 of the Housing Act.

## **Article 19§8**

Section 54 of Law No. 200/2010 on Foreigners provides for an appeal against decisions to return a migrant to their own country.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

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

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to organise (Article 5)
- the right to bargain collectively – negotiation procedures (Article 6§2)
- the right to bargain collectively – collective action (Article 6§4)
- the right to dignity in the workplace – moral harassment (Article 26§2)
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 the Republic of Moldova.

The Committee noted previously that under Article 46(2) of the Labour Code, the minimum age of admission to employment is 16. According to Article 46(3) of the Labour Code, a person can conclude an individual labour contract at the age of 15 subject to the written consent of the child's parents or his legal representatives and provided that the respective work will not cause harm to his health, development, education and vocational training.

The Committee repeatedly asked whether the prohibition of employment under the age of 15 applied also to work carried out on farms, in family businesses and private households. It also asked whether the prohibition covered all forms of economic activity irrespective of the status of the worker (employee, self-employed, unpaid helper or other) (Conclusions 2006, 2011). The report states that the State Labour Inspectorate monitors compliance with the labour legislation by enterprises, institutions and organisations of all types of ownership and legal form of organisation, by physical persons recruiting employees as well as by public authorities. The Committee asks whether the legal provisions prohibiting the employment of children under the age of 15 apply also to family businesses and private households, domestic work as well as to self-employed.

The Committee notes that according to the National Bureau of Statistics Survey report of 2010 the majority of children working under the minimum age were working either on a self-employed basis or on an unpaid basis in a family enterprise, or in the informal economy (Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138), Republic of Moldova (Ratification 1999)). The Committee asks what are the measures taken by the authorities to detect cases of children under the age of 15 working on their own account or in the informal economy, outside the scope of an employment contract.

The same source mentioned above indicates that the National Steering Committee on the Elimination of Child Labour together with the Child Labour Monitoring Unit of the labour inspectorate, at its meeting held on 27 July 2012, decided that children shall not be involved in autumn agricultural work as it affects the educational process. The Committee notes, however, that according to the Children's Activities Survey, 2010, conducted by the National Bureau of Statistics and ILO–IPEC, the majority of employed children (95.3%) work as unpaid family workers, including 76.9% of children aged between 5–11 years, 95.7% of children aged between 12–14 years and 92% of children aged between 15–17 years (Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138), Republic of Moldova (Ratification 1999)).

The Committee recalls that work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28).

The Committee recalls that States are required to monitor the conditions under which work done at home is performed in practice (Conclusions 2006, General Introduction on Article 7§1). The Committee asks how work performed at home by children is monitored.

In its previous conclusion (Conclusions 2011), the Committee asked information on the list of light work which children under the age of 15 might engage in. The report indicates that there is no such list. The Committee notes from another source that discussions were expected to be undertaken with regard to adopting a list of light work/activities that may be



carried out by children of 14 years of age (Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138), Republic of Moldova (Ratification 1999)). It requests the next report to provide information on any developments in this regard. The Committee recalls that States are required to define the types of work which may be considered light, or at least to draw up a list of those who are not. Work considered to be light ceases to be so if it is performed for an excessive duration (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §§29-31). The Committee considers that the situation is not in conformity with Article 7§1 of the Charter on the ground that the definition of light work is not sufficiently precise in the national legislation.

In its previous conclusion (Conclusions 2011), the Committee asked for information and detailed statistics on the Labour Inspectorate's activities and findings in relation to the prohibition of child labour. The report indicates that in May 2007, the Child Labour Monitoring Unit has been created within the State Labour Inspectorate with the support of ILO-IPEC in order to monitor the illegal employment of children. The report provides information on the results of the inspections carried out by the labour inspection during the reference period. The labour inspectors identified problems linked to employment contracts in respect of minors (no labour contract, no record of the working hours, labour book unavailable, no medical examination at recruitment, employment of children under 15 years of age without the parents' consent). The report states that the labour inspectors notified the employers to remedy the breaches detected.

The Committee asks the next report to provide disaggregated data on the number and nature of violations detected by the State Labour Inspectorate as well as on sanctions imposed for breach of the regulations regarding prohibition of employment of children under the age of 15.

### *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 7§1 of the Charter on the ground that the definition of light work is not sufficiently precise.

## **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 the Republic of Moldova.

The Committee previously noted that under Article 255§1 of the Labour Code, persons under the age of 18 are prohibited from performing heavy work and work in harmful and/or dangerous conditions, underground work, as well as work that can cause harm to their health and their moral integrity (gambling, work in night clubs, manufacture, transportation and trade with alcoholic drinks, tobacco products, narcotic and toxic products). The report provides the list of dangerous activities prohibited to young workers under 18, as established by the Government Decision No. 541 of 7 July 2014.

The report indicates that exceptions to the prohibition of employment under the age of 18 for dangerous and unhealthy activities are established through the same Government Decision mentioned above in case of activities carried out as part of vocational training for no more than four hours a day and only if all requirements of safety and health at work are strictly observed.

In its previous conclusion, the Committee found the situation to be not in conformity with Article 7§2 of the Charter on the ground that it had not been established that the Labour Inspectorate supervised work carried out by persons under the age of 18 which might be considered dangerous or unhealthy. The report provides information on the monitoring activities of the Labour Inspectorate during the reference period. For example, in 2011 the labour inspectors identified 46 young employees under the age of 18 performing activities which were prohibited to them (such as waiter in a night club, agriculture, tobacco harvesting). In 2012, 39 young workers performed activities which were prohibited to young workers under 18, and only 5 young workers performing dangerous activities were identified in 2013. The report indicates that the labour inspectors notified the employers to remove the minors from performing such activities.

The report indicates that according to the Contravention Code, in case of admission to employment of young persons under the age of 18 in dangerous or unhealthy activities, fines shall be imposed on employers in the amount of 100 to 150 conventional unit for an individual, 250 to 400 conventional units for a person with a post of responsibility and 400 to 500 conventional units for a legal person (according to Article 34 of the Contravention Code, a conventional unit is equivalent to 20 Moldovan lei (approximately € 0.97). The Committee asks for data on the fines effectively imposed in practice against the employers who were found in breach of the regulations prohibiting the employment of young persons under 18 in dangerous or unhealthy activities.

The Committee recalls that the situation in practice should be regularly monitored. It asks that the next report provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment under the age of 18 for dangerous or unhealthy activities.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Republic of Moldova 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 Republic of Moldova

In its previous conclusion (Conclusions 2011), the Committee concluded that the situation in the Republic of Moldova was not in conformity with Article 7§3 of the Charter on the ground that it had not been established that permitted working hours during the school year were sufficiently limited so as not to affect the child's school attendance, receptiveness and homework.

The report indicates that there were no cases detected of children working before the school begins. With regard to the permitted working hours for children, the Committee asked previously what daily working hours were permitted during the holidays and during the school year (Conclusions 2006). There is no indication of the permitted working time for children subject to compulsory education in the report.

The Committee notes from the Report of the Governmental Committee concerning Conclusions 2011, that according to Articles 96(2) and 100(2)-(3), the reduced working time for persons between 15 and 16 years of age shall be maximum 5 hours per day and 24 hours per week. Working time for persons between 16 and 18 years of age shall be maximum 7 hours per day and 35 hours per week.

The Committee notes from another source that the maximum age of compulsory education is 18 (Education Act, Article 13(2)). The Committee recalls that during the school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework (Conclusions 2006, Albania). It refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015).

The Committee considers that the situation is not in conformity Article 7§3 on the ground that the daily and weekly working time for children subject to compulsory education is excessive and therefore it cannot be qualified as light work.

The Committee referred to its Statement of Interpretation on Article 7§3 in the General Introduction of Conclusions 2011 and asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday (Conclusions 2011). The report does not provide any information in this respect.

The Committee recalls that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays which shall under no circumstances be less than two weeks during the summer holiday (Statement of Interpretation on Article 7§3, Conclusions 2011). The Committee considers that the situation is not in conformity with Article 7§3 of the Charter on the ground that it has not been established that children subject to compulsory education are guaranteed two consecutive weeks of rest during the summer holiday.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on

the merits of 9 September 1999, §28). It asks that the next report provide information on the number and nature of violations detected as well as on sanctions imposed with regard to employment of children subject to compulsory education.

*Conclusion*

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

- the daily and weekly working time for children subject to compulsory education is excessive and therefore it cannot be qualified as light work.
- it has not been established that children who are still subject to compulsory education are guaranteed at least two consecutive weeks of rest during summer holiday.

## **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 Republic of Moldova.

The Committee noted previously that according to Article 96§2 of the Labour Code, working time is limited to 24 hours a week in the case of young persons of 15 and 16 years of age and 35 hours a week in the case of those aged 16 to 18. Under Article 100 of the Labour Code, daily working hours may not exceed five hours in the case of young persons under the age of 16. Daily working hours in the case of young workers aged 16 to 18 may not exceed seven hours.

The Committee recalls that under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. For persons under 16 years of age, a limit of 8 hours a day or forty hours a week is contrary to the article. However, for persons over 16 years of age, the same limits are in conformity with the article.

In its previous conclusion (Conclusions 2011), the Committee concluded that the situation was not in conformity with Article 7§4 of the Charter on the ground that it had not been established that sufficient measures had been taken to guarantee the limitation of the working hours of persons under 18 years of age in practice. The report provides information on the findings of the Labour Inspectorate in relation to working time of young persons under 18. The Committee notes from the data provided in the report that during the period January 2012 – October 2014, the Labour Inspectorate has identified only 5 cases of breach of the legislation related to reduced working time for young workers under 18.

The Committee asks for more precise information on the nature of violations and sanctions imposed in practice against employers who fail to observe the reduced working time for young workers under 18 who are no longer subject to compulsory education.

### *Conclusion*

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

The Committee noted previously that under Article 113 of the Labour Code, all employees were entitled to at least 28 calendar days of annual paid holiday (Conclusions 2006). According to Article 121 of the Labour Code, persons under 18 years of age are entitled to four extra days of paid leave in addition to the 28 days of leave granted to all employees.

In its previous conclusion, in the absence of information on the supervision activities, the Committee found that the situation is not in conformity with Article 7§7 of the Charter on the ground that it had not been established that the minimal length of four weeks' holiday with pay for employed persons of under 18 years of age was respected in practice.

The report indicates that the Labour Inspectorate identified, during its inspections in 2010, breaches of the legislation granting four extra days of paid leave to young workers under 18 years of age (violation of Article 121 of the Labour Code). From the data provided in the report, the Committee notes that in 2013, the labour inspectors found in only one situation that the individual labour contract of a young employee did not stipulate the benefit of four extra days of paid leave. The report does not indicate which were the measures taken and sanctions applied against the employers in cases of breach.

The Committee requests more precise information with regard to the nature and number of violations detected and sanctions applied by the labour inspectors in relation to paid annual holidays of young workers.

### *Conclusion*

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

The Committee noted previously that under Article 103§5 of the Labour Code, night work is not authorised in the case of workers under 18. The Labour Code defines night work as work performed between 10 p.m. and 6 a.m.(Conclusions 2006).

In the absence of any information on the actions taken by the Labour Inspectorate in monitoring illegal night work of workers under 18, the Committee concluded previously that the situation was not in conformity with the Charter on the ground that it had not been established that the prohibition of night work for employed persons of under 18 years of age was respected in practice (Conclusions 2011).

The Committee takes note of the information provided in the report on the monitoring activities of the Labour Inspectorate during the reference period. It notes from the statistical data provided in the report that the labour inspectors identified a breach of the law prohibiting night work only in one case during 2012.

The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide more precise and disaggregated data on the findings of the State Labour Inspectorate in relation to prohibition of night work for young persons under 18, including the nature and number of violations detected and sanctions imposed.

### *Conclusion*

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

The Committee noted previously that under Article 253 of the Labour Code, workers under 18 must undergo a medical examination before being employed. Subsequently, a medical check-up must be organised every year up to the age of 18. Employers are required to cover the costs of these examinations (Conclusions 2006).

In the absence of any information on the activities carried out by the labour inspectorate, the Committee concluded that the situation was not in conformity with Article 7§9 of the Charter on the ground that it had not been established that sufficient measures had been taken to ensure that employed persons of under 18 years of age undergo regular medical control in practice (Conclusions 2011).

The report indicates that during the inspections carried out within the reference period, the labour inspectors detected, among other violations, cases where young workers under 18 were employed without undergoing a medical examination before employment. The report adds that the labour inspectors notified the employers to remedy the breaches detected and imposed fines. The Committee notes from the statistical data provided in the report that during the period January 2012 – October 2014, the State Labour Inspectorate identified 10 cases of breach where young workers under 18 were employed without a medical examination.

The Committee recalls that the situation in practice should be regularly monitored, and asks the next report to provide concrete and detailed information on the nature and number of violations detected and sanctions imposed by the State Labour Inspectorate in relation to regular medical examination of young persons under 18.

### *Conclusion*

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



## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

### ***Protection against sexual exploitation***

The Committee recalls that under Article 7§10 of the Charter, 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. The following are the minimum obligations:

- as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised. In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts.
- a national action plan combating the sexual exploitation of children should be adopted.

An effective policy against commercial sexual exploitation of children should cover primary and interrelated forms: child prostitution, child pornography and trafficking in children.

- child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration;
- child pornography is given an extensive definition and takes account of the fact that new technologies have changed the nature of child pornography. It includes the procurement, production, distribution, making available and simple possession of material that visually depicts a child engaged in sexually explicit conduct.
- trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.

States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.

According to the report the Criminal Code, the Code of Criminal Procedure and the Family Code have been amended in 2012.

- Article 206 (1) of the Criminal Code criminalises the recruitment, transportation, transfer, harbouring, or receipt of a child, as well as giving or receiving payments or benefits to obtain the consent of the person who exerts control over the child for the purpose of commercial or non-commercial sexual exploitation in prostitution or a pornographic industry;
- Article 208 (2) of the Criminal Code criminalises taking advantage, against any material benefits, of sexual services provided by a person who is known with certainty not to have reached the age;
- Article 208<sup>1</sup> of the Criminal Code defines and criminalises child pornography as production, distribution, broadcasting, import, export, offering, sale, exchange, use, or holding of pictures or of other images of one or more children involved in explicit, real, or simulated sexual activities;
- Article 175<sup>1</sup> of the Criminal Code criminalises the proposal, including through information and communication technologies, to a meeting with a child for the purpose of committing an offence against him of a sexual nature.

The Committee notes from the Concluding observations of the UN-CRC on the initial report of the Republic of Moldova submitted under Article 12 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child

pornography (2013) that Article 175<sup>1</sup> of the Criminal Code criminalising grooming, including on the Internet, concern only children up to the age of 16 years.

The Committee asks the next report to indicate whether the amended legislation criminalises all acts of sexual exploitation, including grooming through the use of internet technologies, until the age of 18. The Committee also asks whether children, victims of sexual exploitation whether or not linked to trafficking, can be held criminally liable.

### ***Protection against the misuse of information technologies***

In its previous conclusion the Committee found that it had not been established that children were effectively protected against misuse of information technologies.

The Committee notes from the report that with a view to informing the children, their parents, as well as teachers of the risks of sexual exploitation through information technologies, an internet portal has been set up which is administrated by the International Centre La Strada-Moldova. A guide has been elaborated for children on safe internet surfing. Regional and municipal educational establishments have received information material.

The Committee notes that the Centre has made a proposal of a draft law to modify the legislative acts in view of their fine-tuning the legislation with the international legal framework on sexual exploitation of children. Namely, the proposed amendments envisage improvement of protection against exploitation on-line, interception of computer data, research, removal of electronic communications including in cases of child pornography, abuse and sexual exploitation of children online. It also envisages making electronic communications services responsible for non-fulfilment of certain legal obligations on prevention and fight against computer crime. These services will be obliged to transmit to the Ministry of Interior and the General Prosecutor, within 3 working days any information provided by users regarding individuals who distribute, disseminate, import or export images or other depictions of a child or children involved in sexual activities, and on cases of sexual abuse against a child using electronic communications. •

The Committee notes that the draft law in question has been transmitted to the Government for its approval. The Committee wishes to be informed on any development in this regard. In the meantime, it reserves its position on this issue.

### ***Protection from other forms of exploitation***

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as enforcement of anti-trafficking legislation remained weak.

The Committee takes note of the statistics concerning the identification and prosecution of the cases of trafficking of children. In 2013 20 cases have been registered of which 10 were submitted to prosecution and of which 8 were transmitted to judicial bodies. 29 children victims have been identified, of whom 15 had been sexually exploited.

The Centre for Combating of Trafficking has signed an agreement with La Strada in 2013. The Committee takes note of the awareness raising activities in schools as well as production of material for the media, including television programmes. In 2013 in cooperation with the police 3,940 activities have been organised in pre-university educational institutions to raise awareness of trafficking in human beings.

In 2012 the Centre organised 30 information seminars in various educational establishments. In 2013 2,000 pupils participated in 40 seminars.

The Committee notes that Actions Plans on trafficking are adopted every two years. They contain measures for implementation of concrete preventive measures against sexual exploitation and trafficking of children. The Plan of 2012-2013 included measures of prevention as well as assistance to victims, including children.

The Ministry of the Interior signed a memorandum of cooperation with the Ministries of Labour, Education and Health as well as the National Centre for the Prevention of Abuse of Children. On the basis of this memorandum an intersectoral mechanism has been elaborated for protection against trafficking.

The Committee notes from the report of the Republic of Moldova on the implementation of Recommendations of the Committee of the Parties of the Council of Europe Convention on the Action against Trafficking in Human Beings (2014) anti-trafficking duties were integrated in the policy of the Center for Combating Cyber Crimes. This Centre has a Child Protection Section in charge of combating infant pornography, abuse and sexual exploitation of children by using IT.

In its previous conclusion the Committee noted that corruption played a key role in child trafficking and that the enforcement of anti-trafficking provisions remained weak, partly due to corruption among law enforcers. The Committee also notes from the report of the Governmental Committee to the Committee of Ministers (TS-G) that the Governmental Committee urged the Government to take the necessary measures to combat corruption among senior Government officials. In this connection the Committee also notes from the report of GRETA that as confirmed by representatives of public bodies and NGOs corruption remains one of the most significant structural problems faced by the Republic of Moldova and there are allegations that corruption among law enforcement officials is contributing to trafficking.

The Committee wishes to be informed of measures taken to combat corruption in the specific field of trafficking. In the meantime it reserves its position as regards enforcement of anti-trafficking legislation.

On 8 April 2014 the Government approved the Instructions on the intersectoral cooperation mechanism for the identification, referral, evaluation, assistance and monitoring of child victims and potential victims of violence neglect, exploitation, trafficking. These Instructions constitute the regulatory and methodological framework that underlies the implementation of several legal provisions related to the protection of child rights, by strengthening the efforts of all relevant stakeholders. Likewise, the instructions establish the role and responsibilities of public authorities/intra and intersectoral cooperation procedures for the prevention and intervention in cases of violence, neglect, exploitation, child trafficking with an emphasis on interventions by level 1 local public authorities, particularly in cases of immediate danger for child's life and safety.

The Ministry of Health currently has two Centres for the Placement and Rehabilitation of Young Children (Balti and Chisinau municipalities), which have two maternal sections with eight beds each.

The Committee asks the next report to provide updated information regarding the numbers of children victims of trafficking as well as regarding street children and the measures taken to assist them.

### *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 the Republic of Moldova.

### ***Right to maternity leave***

The Committee previously noted that under Article 124 of the Labour Code, which applies both to the private and public sector, employed women are entitled to 70 days maternity leave to be taken before the expected date of birth and 56 days of postnatal leave (which can be extended to 70 days in case of multiple births or other complications).

The Committee asked whether part of the maternity leave could be relinquished by the employee and, in particular, whether there was a compulsory six weeks period of postnatal leave. If no compulsory leave existed, the Committee asked what legal safeguards existed to avoid any undue pressure on employees to shorten their maternity leave; whether there was an agreement with social partners on the question of postnatal leave that protects the free choice of women; whether collective agreements offered additional protection and, on a more general level, what was the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave). The Committee reserved its position on this issue, pending receipt of the requested information and held that, if the relevant information would not be provided, there would be nothing to establish the conformity of the situation in this respect.

In response to these questions, the report states that maternity leave must be granted by the employer as set out in Article 124 of the Labour Code and that, as a result, the women concerned are not allowed to renounce their right, also in the light of Article 64§2 of the Labour Code which provides that employees cannot refuse the rights prescribed by the Labour Code.

### ***Right to maternity benefits***

Maternity benefits amount to 100% of the average monthly wages earned by the woman concerned over the last six months and are paid for the whole duration of the maternity leave. The report indicates that are entitled to maternity benefits all employed women, in the private as in the public sector, as well as apprentices and the wives dependant on employees contributing to the social security scheme. The Committee previously noted that, in order to be entitled to maternity benefits, the woman concerned (or her husband) should have paid contributions to the social insurance scheme during the 6 months preceding the request for maternity benefit and asked whether periods of unemployment were included in the calculation of the required six months of contribution.

The report state that, under Article 16 of the Law on temporary disability benefits and other benefits of social insurance (Law No. 289 of 22 July 2004), unemployed women registered with the health institutions are also entitled to maternity leave and benefits. The Committee asks the next report to clarify whether this means that interruptions in the employment record are taken into account in the calculation of the period of contribution. For example, what would be the entitlement to maternity benefits for a single woman, not dependant on a social insurance contributor, who would be employed at the time of requesting maternity benefits, but who would not have cumulated six months of contributions to the social insurance scheme? In the meantime, the Committee does not find it established that interruptions in the employment record are included in the calculation of the qualifying period for maternity benefits.

The Committee furthermore refers to its Statement of Interpretation on Article 8§1 (Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds at

least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

*Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 8§1 of the Charter on the ground that it has not been established that interruptions in the employment record are included in the calculation of the qualifying period for maternity benefits.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

The Republic of Moldova has submitted no information on this provision in its report.

The Committee refers to its previous conclusions (Conclusions 2005 and 2011), establishing that the situation was in conformity with Article 8§2 of the Charter. In this respect, it noted that Article 251 of the Labour Code prohibits dismissal of pregnant women, women with children under the age of six, and persons who are on childcare leave in conformity with articles 124, 126 and 127, except in case of liquidation of the enterprise. Article 86 of the Labour Code also provides that a worker may not be dismissed during childcare leave concerning children under six years of age, except if the enterprise ceases to operate. The Committee noted that these regulations also apply to women employed in the public sector.

As regards redress in case of unlawful dismissal, the Committee previously noted that, in case of unlawful dismissal, the employee concerned is entitled, upon judicial decision, to reinstatement (Article 89 of the Labour Code) and to the payment of damages including compensation for the whole period of absence from work, at least equal to the wages due for this period, compensation for costs incurred in bringing legal proceedings and compensation for the moral prejudice caused to the employee. Moral damages are assessed by the court in light of the employer's conduct. Where reinstatement is not possible or the employee does not want to be reinstated, increased damages are payable, whose amount cannot be less than three monthly average wages (Article 90 of the Labour Code).

The Committee asks that the next report provide comprehensive and up to date information on the implementation of Article 8§2 of the Charter in the Republic of Moldova, in law and in practice; it considers that, should the report fail to provide the requested information, there will be nothing to establish that the situation is in conformity with the Charter 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 Republic of Moldova has submitted no information on this provision in its report.

The Committee refers to its previous conclusion (Conclusions 2011), establishing that the situation was in conformity with Article 8§3 of the Charter: under Article 108 of the Labour Code, women who have a child under three years of age are entitled to additional time off to feed the child. In this respect they are entitled to not less than 30 minutes every three hours (not less than one hour in case of two or more children under the age of three). Nursing breaks are included in the working hours and are paid. The same rules apply both to women employed in the private as in the public sector.

The Committee asks that the next report provide comprehensive and up to date information on the implementation of Article 8§3 of the Charter in the Republic of Moldova, in law and in practice; it considers that, should the report fail to provide the requested information, there will be nothing to establish that the situation is in conformity with the Charter 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 4 - Regulation of night work*

The Republic of Moldova has submitted no information on this provision in its report.

The Committee refers to its previous conclusion (Conclusions 2011), establishing that the situation was in conformity with Article 8§4 of the Charter: it noted that Article 103 of the Labour Code, which also applies to women employed in the public sector, prohibits night work for pregnant women, women on maternity leave and women who have children below the age of three years old. The Committee asks the next report to indicate whether there are any exceptions to this rule, whether the employed women concerned are entitled to be transferred to daytime work until their child is three year old and what rules apply if such transfer is not possible.

The Committee asks that the next report provide comprehensive and up to date information on the implementation of Article 8§4 of the Charter in the Republic of Moldova, in law and in practice; it considers that, should the report fail to provide the requested information, there will be nothing to establish that the situation is in conformity with the Charter 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 5 - Prohibition of dangerous, unhealthy or arduous work*

The Republic of Moldova has submitted no information on this provision in its report.

The Committee refers to its previous conclusions (Conclusions 2005 and 2011), establishing that the situation was in conformity with Article 8§5 of the Charter. In this respect, the Committee noted that Article 248 of the Labour Code prohibits the employment of women in "heavy work and work in harmful working conditions, and also on underground work, with the exception of work on sanitary services and the work which does not demand physical effort". It furthermore noted the list of prohibited activities contained in Government Decision No. 264 of 6 October 1993, which covers many areas where risks are higher (e.g. activities with metals, chemical or biological substances, work involving high levels of noise, ionising radiation, vibration, etc.). The Committee noted that these regulations also apply to women employed in the public sector.

The Committee previously found that the Labour Code provides for the reassignment of workers who are pregnant or have children under three years of age if their work is unsuitable according to medical advice; they are guaranteed in these cases the right to their previous pay (Article 250). The Committee asks whether, in case no reassignment is possible, the women concerned are entitled to be temporarily exempted from work and what is their remuneration in this case. It furthermore asks whether in all cases they maintain the right to be reinstated in their post when their condition permits it.

The Committee asks that the next report provide comprehensive and up to date information on the implementation of Article 8§5 of the Charter in the Republic of Moldova, in law and in practice; it considers that, should the report fail to provide the requested information, there will be nothing to establish that the situation is in conformity with the Charter on this point.

### *Conclusion*

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

## **Article 11 - Right to protection of health**

### *Paragraph 2 - Advisory and educational facilities*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by the Republic of Moldova in response to the conclusion that it had not been established that screening for diseases responsible for high levels of mortality was available and that free medical supervision was provided throughout the period of schooling (Conclusions 2013, Republic of Moldova).

As regards screening the Committee recalls that it should exist and preferably be systematic for all the diseases that constitute the principal causes of death (Conclusions 2005, Republic of Moldova). The Committee has ruled that "where it has proved to be an effective means of prevention, screening must be used to the full" (Conclusions XV-2 (2001), Belgium).

The report states that prevention and early detection measures represent a main vector of the health system as provided for by Act No. 411/1995 on health protection. Pursuant to this legislation a list of mandatory preventive medical examinations has been drawn up aimed at detecting cardiovascular diseases, diabetes, malignant tumours, sexually transmitted diseases, glaucoma and tuberculosis.

From information provided to the Governmental Committee (Report on Conclusions 2013) the Committee notes that the Government has adopted a National Programme for the Prevention and Control of Cardiovascular Diseases for the period 2014-2020. The overall objective of this programme is to reduce cardiovascular mortality by 10% by 2020. Reference is also made to a National Programme for Supervision of Tuberculosis for the period 2011-2015. The Committee asks the next report to provide information on the implementation of these programmes.

The Committee notes from another source (WHO Health Systems in Transition, Vol. 14 No. 7, 2012) that existing mandatory preventive medical examinations, including for cancer, cannot be treated as screening programmes as they are not based on clear criteria for enrolment of target groups presenting no clinical signs. Moreover, according to this same source, pilot screening programmes for cervical and breast cancer are far from having national coverage.

Having noted the existence of data collection measures, including performance indicators for early detection of diseases, the Committee asks that the next report contain detailed statistical information on the results achieved, including on early detection rates for various diseases and on the overall impact on mortality rates. It also wishes to receive information on progress and results achieved in the framework of the above-mentioned national prevention programmes (cardiovascular diseases and tuberculosis). Meanwhile, the Committee considers that it has not been established that the situation is in conformity with the Charter in respect of screening.

With respect to free medical supervision during schooling, the Committee recalls that its assessment takes into account the frequency of medical checks, their objectives, the proportion of pupils concerned and the level of staffing (Conclusions XV-2 (2001), France).

The report indicates that a regulatory framework exists for medical checks in schools but provides very little detail on the nature of the services, their funding, their frequency, pupils covered, staff, etc. From the above-mentioned WHO source the Committee notes that most schools and kindergartens also have medical offices, usually staffed by a nurse responsible for the provision of first aid, health promotion and disease prevention (including vaccinations). In this respect it notes from another WHO source (Health Policy Paper Series,

No.7, Child and adolescent health services in the Republic of Moldova) the existence of a School Health Service (SHS).

The Committee asks that the next report provide detailed information on medical checks during schooling along the lines indicated above, including on the activities of SHS. Meanwhile, it reserves its position on whether free medical supervision is provided throughout the period of schooling.

*Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 11§2 of the Charter on the ground that it has not been established that screening for diseases responsible for high levels of mortality is available to the population in general.

## **Article 11 - Right to protection of health**

### *Paragraph 3 - Prevention of diseases and accidents*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by the Republic of Moldova in response to the conclusion that it had not been established that there were adequate measures protecting the population from the risks of asbestos; that adequate measures had been taken to prevent smoking; that efficient immunisation and epidemiological monitoring programmes were in place; and that there were adequate measures in force for the prevention of accidents (Conclusions 2013, Republic of Moldova).

On the first point, the Committee recalls that Article 11 entails a policy that bans the use, production and sale of asbestos and products containing it (Conclusions XVII-2 (2005), Portugal). There must also be legislation requiring the owners of residential property and public buildings to search for any asbestos and where appropriate remove it, and placing obligations on enterprises concerning waste disposal (Conclusions XVII-2 (2005), Latvia).

From information provided to the Governmental Committee (Report on Conclusions 2013) the Committee notes that while no asbestos manufacturing takes place in the Republic of Moldova a significant proportion of country's industrial sites and buildings, including educational institutions, have been constructed using asbestos-containing materials. It is estimated that 1.5 million people (55% of the population) may be exposed to asbestos in varying degrees. The asbestosis morbidity rate has increased from 179.2 per 100,000 in 1990 to 234.8 per 100,000 in 2013.

Against this background, the Government adopted Decision No. 244/2013 on minimum requirements for the protection of workers against risks linked to exposure to asbestos at work. The Ministry of Health issued Order No. 1334/2013 setting out an action plan with a view to implementing the Government Decision. The Committee asks that the next report contain more details on the standards contained in the aforementioned regulations and on measures taken to search for and remove asbestos in public buildings and residential property. In addition, it requests clarification as to whether the use of asbestos in construction materials is prohibited or regulated. Finally, it also wishes to be informed of the results achieved in reducing the exposure of the population to asbestos. Meanwhile, it reserves its position on this point.

With respect to smoking the Committee recalls that anti-smoking measures are particularly relevant for the compliance with Article 11 since smoking is a major cause of avoidable death in developed countries. To be effective, any prevention policy must restrict the supply of tobacco through controls on production, distribution, advertising and pricing (Conclusions XVII-2 (2005), Malta). In particular, the sale of tobacco to young persons must be banned (Conclusions XV-2 (2001), Portugal) as must smoking in public places (Conclusions 2013, Andorra) including transport, and advertising on posters and in the press (Conclusions XV-2 (2001), Greece). The Committee assesses the effectiveness of such policies on the basis of statistics on tobacco consumption.

The report states that the high prevalence of smoking as well as the commitments undertaken under the WHO Framework Convention on Tobacco Control has prompted a number of measures to reduce tobacco consumption. In the framework of the National Programme on Tobacco Control 2012-2016 adopted by Government Decision No. 100/12012 a national monitoring system on tobacco control is being set up and a National Council on Tobacco Control has been created. Among more specific measures undertaken are a prohibition of tobacco advertising, prohibition of the sale of tobacco in the vicinity of educational institutions and increased tax on tobacco products. National campaigns to

reduce smoking have been conducted, 21 November has been fixed as an annual anti-smoking day and the Ministry of Education and the Ministry of Health have jointly developed courses for school children aimed at preventing smoking.

The Committee asks that the next report contain detailed information on the implementation of the above-mentioned national programme, including statistics on the impact on the prevalence of smoking. It also requests clarification as to whether smoking is prohibited in public places.

On the third point the Committee recalls that States must operate widely accessible immunisation programmes. They must maintain high coverage rates not only to reduce the incidence of these diseases, but also to neutralise the reservoir of the virus and thus achieve the goals set by WHO to eradicate several infectious diseases (Conclusions XV-2 (2001), Belgium).

The report firstly refers to three immunisation programmes carried out during the period 1994-2010: against Hepatitis C (1994), rubella (2002) and Haemophilus influenzae type b (2009). By Government Decision No. 1192/2010 a National Immunisation Programme for the period 2011-2015 was adopted under which the population will be offered vaccinations free of charge against twelve different transmissible diseases. In addition, persons at risk may be offered a flu vaccine. Finally, certain vaccinations are provided for a fee, such as vaccinations against Hepatitis A and Human papillomavirus.

The Committee notes from WHO information (WHO Health Systems in Transition, Vol. 14 No. 7, 2012) that current vaccination rates are over 97% for measles, TB, hepatitis B and polio and 89.8% for DPT. Revaccination campaigns in response to outbreaks of childhood diseases (e.g. mumps) have also been successful in containing the epidemic and extending coverage in the population. The Committee asks that the next report contain updated information on coverage rates for the various immunisation programmes.

Finally as regards accidents the Committee recalls that States must take steps to prevent them. The main types of accidents covered are road accidents, domestic accidents, accidents at school, accidents during leisure time, including those caused by animals (Conclusions 2005, Republic of Moldova).

The report states that measures have been undertaken in cooperation with WHO to improve road safety, but no further details are provided. It also states that Government Decision No. 494/2013 introduces rules on restraint (fixation) of children under 12 in vehicles. Moreover, reference is made to televised information campaigns on child safety in the home as well as to first aid courses organised for the benefit of various occupational categories (police, firemen, flight personnel, etc.). The Committee asks that the next report contain detailed information on measures taken to prevent accidents backed up by statistics on the various types of accidents and their number, especially road accidents (fatality rates) and accidents in the home. In the meantime, in view of the paucity of the information at its disposal on this point the Committee reiterates that it has not been established that there are adequate measures in force for the prevention of accidents.

### *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 11§3 of the Charter on the ground that it has not been established that there are adequate measures in force for the prevention of accidents.

## **Article 12 - Right to social security**

### *Paragraph 1 - Existence of a social security system*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by the Republic of Moldova in response to the conclusion that it had not been established that it had not been established that the minimum level unemployment benefit was adequate (Conclusions 2013, Republic of Moldova).

The Committee recalls that under Article 12§1 benefits provided within the different branches of social security, should be adequate and in particular income-substituting benefits should not be so low as to result in the beneficiaries falling into poverty. Moreover, the level of benefits should be such as to stand in reasonable proportion to the previous income and should not fall below the poverty threshold defined as 50% of the median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold value (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, §§59-63).

In its previous conclusion the Committee specifically asked for information on the minimum wage and requested confirmation that the minimum level of unemployment benefit may not fall below the minimum wage.

The report firstly recalls that following an amendment to Act No. 102-XV/2003 by Act No. 56/2011 the amount of unemployment benefit is no longer determined by reference to the national average wage but by the average wage of the person concerned in the year preceding the contingency. At the same time the length of the period of contribution in order to be entitled to unemployment benefit was increased from 6 to 9 months (within the last 24 months). The report further states that the amount of the benefits varies according to the circumstances under which the person concerned has become unemployed: for persons who lost their job at the initiative of the employer the benefit amounts to 50% of their average wage in the preceding year, for persons whose employment contract has expired the rate is 40% and for persons who have terminated their employment on their own initiative it is 30%.

The report also emphasises that there is a ceiling on the amount of unemployment benefit that can be paid which is fixed at the level of the national average wage in the preceding year and that the minimum benefit cannot fall below the national minimum wage. The Committee notes that in the first half of 2014 persons who receive benefits amounting to 30% of their average wage in the preceding year make up about 40% of all persons in receipt of unemployment benefit and about 30% of all recipients received the absolute minimum amount which was 600 Lei per month (about 30 €). The average unemployment benefit paid in the first half of 2014 was 1,126 Lei per month (57 €) compared to a national average wage of 4,500 Lei per month (227 €).

As regards the payment of unemployment benefits for the category of persons who have terminated their employment on their own initiative, the Committee asks for clarification if the legislation makes any distinction between persons who have left their employment voluntarily without just cause and persons who have terminated their employment due to employer breaching contractual obligations, and more specifically if the rate of unemployment benefit for the latter category is also 30% of their previous average wage.

While no information is provided on the median equivalised income allowing a direct assessment of the situation, the Committee nevertheless considers on the basis of the information at its disposal that the situation is in breach of the Charter. According to the Committee's information the amount of the minimum benefit quoted in the report falls far

below both monthly disposable income per capita in the fourth quarter of 2014 as calculated by the National Bureau of Statistics of the Republic of Moldova (1,877 Lei or 95 €) and the national subsistence level (1,627 Lei per month in 2014 according to the National Bureau of Statistics of the Republic of Moldova or about 82 €). The Committee also takes into account that the share of the average unemployment benefit in the national average wage has fallen steadily from 29.9% in 2012 to 25.0% in the first half of 2014.

Finally, having noted that the national minimum wage in 2014 reached 1,800 Lei per month (91 €), the Committee asks the Government to clarify in the next report its statement that unemployment benefits cannot fall below the national minimum wage (see above).

#### *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 12§1 of the Charter on the ground that the minimum level of unemployment benefits is manifestly inadequate.

## **Article 12 - Right to social security**

*Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by the Republic of Moldova in response to the conclusion that it had not been established that the Republic of Moldova maintains a social security system at a level at least equal to that necessary for the ratification of the European Code of Social Security (Conclusions 2013, Republic of Moldova).

The Committee recalls that Article 12§2 obliges states to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The European Code of Social Security requires acceptance of a higher number of parts than ILO Convention No 102 relating to social security; six of the nine contingencies must be accepted although certain branches count for more than one part (old-age counting per three for example).

The Republic of Moldova signed the European Code of Social Security on 16 September 2003 but has not ratified it. Therefore, the Committee cannot take into consideration the resolutions of the Committee of Ministers on the compliance of the states bound by the European Code of Social Security. In addition, the Republic of Moldova has not ratified any of the following conventions of the International Labour Organisation: Conventions No. 102 (Social security, minimum standards, 1952), No. 121 (Employment Injury Benefits, 1964), No. 128 (Invalidity, Old-Age and Survivors' Benefits, 1967), No. 130 (Medical Care and Sickness Benefits, 1969) and No. 168 (Employment Promotion and Protection against Unemployment, 1988).

It follows that the Committee has to make its own assessment. Unfortunately, however, the information provided by the Government does not enable the Committee to make such an assessment. It therefore asks that the next report contain in particular figures on the minimum amounts of benefits calculated for a standard beneficiary as set out in a schedule to Part IX of the European Code of Social Security and based on the three models of benefit provision defined in Articles 65, 66 and 67 of the Code (see Finnish Society for Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, §31). In addition to the amounts of benefits paid, information should also be provided on the number of persons protected, on the duration of unemployment benefits and on the collective nature of the financing of the system (distribution of financing between employers and workers).

Meanwhile, the Committee reiterates its conclusion that it has not been established that the situation is in conformity with the Charter.

### *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 12§2 of the Charter on the ground that it has not been established that the Republic of Moldova maintains a social security system at a level at least equal to that necessary for the ratification of the European Code of Social Security.



## **Article 13 - Right to social and medical assistance**

### *Paragraph 1 - Adequate assistance for every person in need*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by the Republic of Moldova in response to the conclusion that it had not been established that the level of social assistance paid to a single person without resources was adequate; that the level of social assistance paid to elderly people without resources was adequate and that people lacking resources were entitled to obtain, free of charge, the medical assistance required by their health condition (Conclusions 2013, Republic of Moldova).

With respect to the adequacy of the level of social assistance, the Committee recalls that it must be such as to make it possible to live a decent life and to cover the individual's basic needs. In order to assess the level of assistance, the Committee takes into account basic benefits, additional benefits and the poverty threshold in the country, which is set at 50% of the median equivalised disposable income and calculated on the basis on the Eurostat at-risk-of-poverty threshold (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, §112). In the absence of this indicator (median equivalised income as calculated by Eurostat), the Committee may take into account nationally defined thresholds such as the monetary cost of the household basket containing the minimum quantity of food and non-food items which is necessary for the individual to maintain a decent living standard and be in good health (Conclusions 2009, Armenia).

The report states that Act No. 133-XVI/2008 provides for a means-tested monthly guaranteed income (RMMG) for persons in need. Pursuant to Section 4 of the 2013 Act on the State Budget the RMMG amounted to 640 Lei per month (€ 32) in the period January to October 2013 and to 680 Lei per month (€ 34) as from 1 November 2013. The report also recalls that as from 1 January 2011 persons in need are entitled to a so-called winter-time allowance for the cold period of the year. The Committee notes the figures on this allowance provided by the Government, but requests clarification as to how it is calculated for a single person living alone and what is the monthly amount for the period concerned. Finally, the report indicates that following decisions taken in 2013 and 2014, monthly wage income of up to 120 Lei (€ 6) in 2013 and of up to 200 Lei (€ 10) in 2014 of a person in need is exempted from the means test. Reimbursement of costs incurred in connection with medical treatment of children up to the age of 3 are also exempted.

However, according to the Committee's information the amount of the RMMG falls far below both monthly disposable income per capita in the fourth quarter of 2013 as calculated by the National Bureau of Statistics of the Republic of Moldova (1,743 Lei or 86 €) and the national subsistence level (1,612 Lei per month in 2013 according to the National Bureau of Statistics of the Republic of Moldova, or about 80 €). Even when taking into account the effect of the winter-time allowance referred to by the Government, the Committee considers the RMMG to be manifestly inadequate for single persons in need. In this respect, it does not consider it demonstrated that all such persons benefit from the exemption of a limited amount of wage income from the means test. Consequently, the situation is not in conformity with the Charter on this point.

The report does not provide the requested information on non-contributory pensions and/or social assistance for elderly persons without resources, although it does indicate that the age at which income derived from own agricultural produce is exempted from the means test for RMMG has been lowered from 75 years to 62 years. On this basis the Committee understands that in principle the level of the social assistance (RMMG) paid to elderly persons without resources does not differ from that to which the concerned population in general is entitled. In this respect, the Committee does not consider it demonstrated that the

exemption of income from own agricultural produce from the means test benefits all elderly persons in need. The situation is therefore not in conformity with the Charter.

As regards medical assistance, the Committee recalls that everyone who lacks adequate resources must be able to obtain free of charge "in the event of sickness the care necessitated by his condition". In this context, medical assistance includes free or subsidised health care or payments to enable persons to pay for the care required by their condition (Statement of interpretation on Article 13, Conclusions XIII-4 (1996)). Under Article 13§1 the right to medical assistance should not be confined to emergency situations (Conclusions 2009, Armenia).

The report provides information on health care services available subject to contribution to the mandatory health insurance scheme (AOAM). Under this scheme the following vulnerable groups are entitled to health care: pregnant women and women having recently given birth, persons with (severe) disabilities, pensioners, registered unemployed persons, persons caring for a person with disabilities, mothers with four or more children, persons in receipt of social assistance pursuant to Act No. 133-XVI/2008 and foreigners who are beneficiaries of an integration programme. In order to increase health insurance coverage among the rural population a discounted contribution rate (75%) has been introduced for this target group.

The report further states that since 2011 persons who are not insured under the health insurance scheme will benefit from emergency medical assistance ("pre-hospital care") and primary care, including medicines to an extent determined by the applicable rules. While acknowledging that persons eligible for social assistance are also covered by the general health insurance scheme, the Committee requests clarification as to who are the persons not insured under the scheme, what is their number and what is the actual content of "pre-hospital care" and "primary care" (the nature of the medical assistance provided in the framework of these forms of care). Pending receipt of this information, the Committee reserves its position as regards medical assistance for persons in need.

#### *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 13§1 of the Charter on the grounds that

- the level of social assistance is manifestly inadequate;
- the level of social assistance for elderly persons without resources is manifestly inadequate.

## **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 the Republic of Moldova.

### ***Social protection of families***

#### ***Housing for families***

The Committee notes the adoption on 17 July 2014 (outside the reference period) of the Housing Act. Its main purpose is to ensure access to housing for the most vulnerable groups and lay down rules on housing standards. The Committee wishes the next report to provide information on the application of this legislation.

The Committee also notes the adoption on 13 September 2010 of the Government Decision on the award of one-off payments for the construction or purchase of dwellings or the renovation of old housing for certain categories of citizens.

The report indicates that the housing construction project for socially vulnerable groups started in 2008 was finalised in 2012. The project was funded jointly by the Council of Europe Development Bank and local public authorities. Housing was provided for a total of 777 people. Phase II of the project was started in 2012. It is due to be completed in 2018 and involves the construction of 700 dwellings for approximately 2 500 people. The Committee requests that the next report provide information about the results of the project.

The Committee has consistently interpreted the right to economic, legal and social protection of family life provided for in Article 16 as guaranteeing the right to adequate housing for families, which encompasses secure tenure supported by law (Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint No. 52/2008, decision on the merits of 22 June 2010, § 53).

To be effective, the right to adequate housing requires legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial judicial or other remedies (administrative review, etc.). Any appeal procedure must be effective (Conclusions 2003, France, Italy, Slovenia and Sweden; Conclusions 2005, Lithuania and Norway; European Federation of National Organisations working with the Homeless (FEANTSA) v. France, complaint No. 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

To prevent illegal evictions, states must set up procedures to limit the risk (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). To comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the affected parties in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- legal remedies;
- the right to legal aid;
- compensation for illegal evictions.

To determine whether the situation concerning families' access to housing is compatible with Article 16 of the Charter, the Committee asks for information in the next report on all the aspects considered above.

With regard to Roma families, the Committee takes note of the Action Plan for 2011-2015, which seeks to improve the situation of Roma, in particular in terms of housing. The report indicates that the plan has provided accommodation for 70 Roma in 18 social housing units. The Committee notes from the report by the European Commission against Racism and Intolerance (ECRI) adopted in 2013 that Roma have difficulty finding decent housing and

that there are a considerable number of shanty-towns inhabited by Roma in rural areas. While taking note of the Action Plan, the Committee requests that the next report indicate what steps have been taken to deal with the difficulty Roma have in finding housing. In the meantime, the Committee reserves its position.

### ***Childcare facilities***

The Committee refers to its previous conclusion (Conclusions 2011) for a general description of childcare facilities.

In its previous conclusion (Conclusions 2011), the Committee asked for information about the quality of childcare services. Firstly, the report states that initial training for preschool teaching staff takes the form of bachelor's and master's courses in higher education institutions. Secondly, it states that educational institutions are in charge of assessing the teaching staff through assessment panels set up by decision of academic boards. Thirdly, Vocational integration programmes are implemented for young specialists, along with mentoring programmes for staff at the start of their career.

### ***Family counselling services***

The report states that the Ministry of Labour, Social Welfare and Family Affairs in 2013 established the legal framework for a "Family welfare support service for families with children". The service was set up in 13 regional units that year. The Committee asks whether the relevant services are available throughout the country.

### ***Participation of associations representing families***

The Committee notes that the relevant government departments hold public consultations with civil society.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The Committee refers to its previous conclusion (Conclusions 2011) for a general description of the rights and obligations of spouses. It recalls that the situation was found to be in conformity with the Charter.

#### ***Mediation services***

The report explains that the Ministry of Justice has drawn up a bill on mediation with a view to making mediation services more effective. Strengthening mediation services is one of the priority objectives of the justice sector reform strategy adopted by law on 25 November 2011 and of the action plan for implementing the justice sector reform strategy approved by decision of Parliament on 16 February 2012.

The Committee recalls that States are required to provide family mediation services. The following issues are examined: conditions for access to family mediation services as well as whether they are free of charge, cover the whole country and are effective. The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the provision of mediation services whose object should be to avoid the further deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from seeking such services for financial reasons. Providing these services free of charge constitutes an adequate measure to this end. Otherwise, in case of need, a possibility of access for families should be provided. The Committee asks the next report to provide information on all these points.

### ***Domestic violence against women***

In its previous conclusion (Conclusions 2011), the Committee asked for information concerning the application of the 2008 Act on Preventing and Combating Domestic Violence and also for details of the sentences handed down for the perpetrators of domestic violence. The report does not provide the information requested. For its part, the UN Committee for the Elimination of Discrimination against Women (CEDAW) in a note dated March 2013 indicates that the national authorities are not making sufficient efforts to implement the Act. In particular, the CEDAW refers to the protection orders procedure provided for in the legislation, which does not adequately address victims' needs in situations of immediate danger.

In the light of the above, the Committee concludes that the situation is not in conformity with the Charter on the ground that it has not been established that there is adequate protection for women victims of domestic violence.

### ***Economic protection of families***

#### ***Family benefits***

The Committee considers that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of median equivalised income. The Committee notes from MISSCEO that the monthly amount of child benefit for insured persons is 30% of average wages for the previous 12 months, but no less than €15.55, and €15.55 for uninsured persons. In addition, according to figures from the Moldovan National Bureau of Statistics, the monthly per capita disposable income in the last quarter of 2014 was €95 and the minimum subsistence level was €82.

The Committee takes note of these statistics but insists that the next report indicate the level of median equivalised income or a similar indicator, such as the national subsistence level, the average income or the national poverty threshold, etc. so that it can determine whether child benefit constitutes an adequate income supplement. In the meantime, it reserves its position on this point.

#### ***Vulnerable families***

The report states that in order to ensure the economic protection of vulnerable families, in particular Roma families, the Social Assistance Act of 25 December 2003 established a social assistance policy designed to prevent or remedy situations of hardship, maintain a decent standard of living for families and provide temporary or permanent additional support through welfare benefits and services. The Committee asks that the next report include relevant figures.

#### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The Committee notes from MISSCEO that family benefits are paid to persons whose legal and habitual place of residence is in the Republic of Moldova. It has already asked twice whether the granting of family benefits is subject to a length of residence requirement. In the absence of a reply, the Committee concludes that the situation is not in conformity with the Charter on the ground that it has not been established that foreign nationals enjoy equal treatment regarding family benefits.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

### *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 16 of the Charter on the grounds that it has not been established that:

- there is adequate protection for women victims of domestic violence;
- foreign nationals enjoy equal treatment regarding family benefits.

## **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 the Republic of Moldova.

### ***The legal status of the child***

In its previous conclusion (Conclusions 2011) the Committee asked whether the adopted children had a right to know their origins. In this regard it notes from the report that the legislation does not contain any restrictions to the right to know one's origins. According to the Law on the Legal Status of Adoption, an adopted child after having reached the age of majority has the right to request the information concerning his/her biological parents.

### ***Protection from ill-treatment and abuse***

In its previous conclusion the Committee held that the situation was not in conformity with the Charter as there was no explicit prohibition of corporal punishment of children in the home.

The Committee notes from another source (Global Initiative to End Corporal Punishment of Children) that corporal punishment is prohibited in the home. In 2008, the Family Code (2001) was amended to establish the right of the child "to be protected against abuse, including corporal punishment by his parents or persons who replace them" (Article 53). Article 62 of the Code states that the methods chosen by parents in educating their children will exclude abusive behaviour, insults and ill-treatments of all types, discrimination, psychological and physical violence, corporal punishments.

The Committee also notes that corporal punishment is prohibited in schools and in institutions.

### ***Rights of children in public care***

In its previous conclusion the Committee asked what was the criteria for restriction of custody or parental rights and what procedural safeguards existed to ensure that children were removed from their families only in exceptional circumstances.

In reply, the Committee notes that the Government approved the Strategy for Child Protection for the years 2014-2020. The document sets out a series of priorities and long-term measures. The Strategy was developed as a response to major social problems of the families and children, such as, inter alia, separation of the child from his/her family.

According to the report, there is a positive trend in de-institutionalisation of children. At the end of 2013 the residential system consisted of 41 residential institutions (3808 children in care), of which 39 (3271 children in care) were subordinated to the Ministry of Education, while in 2007 more 11,000 children were placed in 65 residential institutions for children.

The Committee notes from the report that the reason for placement, according to the parents, was the precarious financial situation of the family. At the end of 2013 temporary centres housed 128 children under the age of 3 years.

In this connection, the Committee recalls that placement must be an exceptional measure and is only justified when it is based on the needs of the child. The financial conditions or material circumstances of the family should not be the sole reason for placement (Conclusions 2011, Statement of Interpretation on Articles 16 and 17). The Committee also refers to the judgements of the European Court of Human Rights where the latter held that separating the family completely on the sole grounds of their material difficulties has been an unduly drastic measure and amounted to a violation of Article 8 (*Wallová and Walla v. Czech Republic*, application No. 23848/04, judgment of 26 October 2006, final on 26 March 2007).

The Committee considers that the situation of the Republic of Moldova is not in conformity with the Charter as children can be taken into residential care due to the material circumstances of the family.

In its previous conclusion the Committee held that it had not been established that children in public care received a sufficient degree of protection and assistance. The report states in this regard that with a view to developing the system of protection of children in difficulty in each region or municipality a commission is set up to prevent unjustified placement of children in residential care. In 2013 these commissions have examined 4,454 cases of children in 3,406 families. The Commissions gave their opinion to reintegrate 520 children into their biological families and 124 children in extended families. 399 children were institutionalised, 575 children were placed in temporary placement centres for children in situations of risk and in case of 283 children other protection measures were applied.

The Committee takes note of the community social services as well as specialised social services which help children in situations of difficulty. It also notes the family-type children homes which can place children left without parental care under the age of 14. There are also guardianship / curatorship which is a form of protection that is established for children left without parental care for their education and care, as well as the defence of their legitimate rights.

The Committee asks the next report to provide information on the development of foster care or similar type of family environment and the number of children placed in foster care as opposed to institutions.

### ***Right to education***

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

### ***Young offenders***

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as young offenders could be held in adult detention facilities.

It notes from the report that according to Article 252 of the Execution Code, convicts under the age of 18 years are placed in penitentiaries for juveniles under the conditions laid down in the Code. They can also serve their the sentence in separate areas of penitentiaries for adults, but under the same conditions as in penitentiaries for minors. Convicted juveniles are held separately from adult convicts.

Concerning the maximum length of prison sentence that can be imposed on a juvenile, according to Article 70 of the Criminal Code it is reduced by half in relation to the same sentence that would be imposed on an adult. Thus the maximum prison sentence of 25 years for an adult becomes the maximum of 12 years and 6 months for a juvenile. Juveniles cannot receive a life sentence.

According to the report, since 2008 the situation with regard to education of juvenile detainees has improved. All classes for juvenile detainees have been renovated and furnished appropriately with teaching material. Since 2013 minors are placed in appropriate classes on the basis of evaluation of their abilities.

The Committee notes that the situation is in conformity with the Charter on this issue.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be



provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect that against negligence, violence or exploitation.

#### *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 17§1 of the Charter on the ground that children can be taken into residential care due to material circumstances of the family.

## **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 the Republic of Moldova.

In its previous conclusion (Conclusions 2011) the Committee found that it has not been established that measures taken to increase the enrolment rate were sufficient and measures taken to increase enrolment rate of vulnerable groups were sufficient.

As regards drop out from compulsory education, the Committee notes that mixed commissions composed of teaching staff, educational institution and police have been set up with a view to enrolling children in general education and to prevent drop out. The Committee takes note of the enrolment rates and notes that it has gone down from 89.3% in 2008-2009 to 87% in 2013-2014 in gymnasium. It stood at 93,1% in primary schools. The Committee considers that the enrolment rate remains too low and therefore, the situation is not in conformity with the Charter. The Committee asks the next report to provide information about the drop-out rate.

According to the report there are 1,374 schools, gymnasiums and high schools, of which 98,7% are public. In the school year 2013-2014 there were 353,100 pupils in primary and secondary schools.

The Committee further recalls that under Article 17§2 all hidden costs such as books or uniforms must be reasonable, and assistance must be available to limit their impact on the most vulnerable population groups so as not to undermine the goal being pursued (European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 82/2012, decision on the merits of 19 March 2013, §31).

The Committee asks what assistance is provided to vulnerable families to cover such costs.

As regards access to education for Roma children, a study was conducted which showed that 185 children were studying in the high schools in 2014 (137 Roma children were in high schools in the 2012-2013 school year). Among the positive developments the report names the abolishing of the segregation of Roma children in education, the opening of the preparatory classes for Roma children. The Committee also notes that the Roma culture and traditions is included in the curriculum. A round table was organised on promoting the education of Roma children. All discussions were attended by all the heads of directorates of education, youth and sport and managers of educational institutions from regions where there is a large Roma population.

The Committee recalls that under Article 17§2 States have positive obligations to ensure equal access to education for all children. In this respect particular attention should be paid to vulnerable groups, such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, etc.

Under Article 17§2 as regards education of children of Roma origin, even though educational policies for Roma children may be accompanied by flexible structures to meet the diversity of the group and may take into account the fact some groups lead an itinerant or semi-itinerant lifestyle, there should be no separate schools for Roma children. Special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group (Conclusions 2011, Slovak Republic).

The Committee wishes to be informed in detail about the measures taken to end segregation of Roma children in education. It asks in particular whether there are Roma-only schools.

The Committee notes from the European Commission against Racism and Intolerance (ECRI) Report on the Republic of Moldova (2013) that considerable efforts have been made by the national and local authorities and by Roma communities to increase the number of Roma children attending school. However, there are still a large number of Roma children who do not attend pre-school and school education: according to a recent survey, the proportion of Roma children enrolled in pre-school education (age 3-6) is only 21% and the gross enrolment rate of children aged 6–15 in compulsory education is only 54% (as compared with 90% in the population as a whole). 76% of Roma have only three or four years of school education.

The Committee considers that certain measures have been taken to improve access to education for Roma children. However, there is still a large number of children who do not complete compulsory education. Therefore, the measures taken in this respect cannot be regarded sufficient and the situation is not in conformity with the Charter.

The Committee recalls that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that States Parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2 , Conclusions 2011).

In view of the above, the Committee asks whether unlawfully present children have a right to education.

#### *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 17§2 of the Charter on the grounds that:

- the net enrolment rate in compulsory education remains too low;
- measures taken to ensure that Roma children complete compulsory education are not sufficient.

## **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 the Republic of Moldova.

The report states that Law No. 198/2007 on Legal Aid provides that foreign nationals may benefit from legal assistance on the same basis as nationals.

The Committee previously asked whether domestic legislation made provision for migrant workers who do not have sufficient means to be appointed counsel where the interests of justice required, and to be assigned interpretation services where they did not understand or speak the language used in proceedings (Conclusions 2011). With regard to the appointment of counsel, the report states that the Law No. 198/2007 provides for the appointment of an advocate without charge for people who satisfy certain criteria. These categories include defendants in criminal trials where the interests of justice require them to be represented, and defendants in causes under the Contravention Code where they do not have sufficient funds to pay for their own lawyer. In this regard, the Committee considers that the legal framework is in conformity with the Charter.

The report does not provide any information concerning interpretation. However, the Committee notes that Law No. 264/2008 regulates the authorisation and payment of interpreters and translators; who may be used in both criminal and civil proceedings. Furthermore, Article 16 of the Criminal Procedure Code provides that defendants shall have the right to participate in court proceedings through the medium of an interpreter where they do not speak or understand the language of the proceedings. The Committee asks who covers the cost of the interpretation in such proceedings.

It also asks that the next report contain further information, including any available data, on the use in practice of legal aid funded counsel and interpretation services by foreign nationals.

The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid assistance.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Republic of Moldova is in conformity with Article 19§7 of the Charter.

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

### *Paragraph 8 - Guarantees concerning deportation*

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

Pursuant to Section 62 of the Law No. 200/2010 on Foreigners, a migrant may only be expelled where there is a judicial decision which finds the migrant to have committed an infraction of the Criminal Code or the Contravention Code.

The Contravention Code allows expulsion under Article 40, where the rules of stay have been violated, or as a complementary sanction to certain infractions of the Code (Article 40(2)). Under Article 333 of the Contravention Code, foreigners whose stay in the country is or has become illegal may be fined and expelled. The Committee understands that expulsion is not an automatic consequence of infraction, and that Article 41 requires the court to consider the circumstances of the case and the circumstances of the offender in choosing the appropriate punishment. Article 105 of the Criminal Code similarly provides for the possibility of expulsion following conviction, but again all the circumstances of the case must be taken into account pursuant to Article 75. Article 105(3) also explicitly requires the court to take into account the private and family life of the defendant. The Committee asks for information on the application of these rules in practice, including figures on the number of expulsions.

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' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of interpretation on Article 19§8, Conclusions 2015).

The Committee also recalls that risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment (Conclusions V (1977), Germany).

The report states that in 2012 the Law No. 23-XVI concerning HIV/AIDS was amended by Law No. 76/2012, which now excludes liability under the Contravention Code for failure to undergo medical examination for HIV.

The Committee notes that a number of the provisions of the Contravention Code which can lead to a complementary punishment of expulsion under Article 40 are not directly related to the commissioning of a serious criminal offence, or involvement in activities which constitute a substantive threat to national security, the public interest or public morality – for example, Article 81 (employing staff who do not possess the required hygiene training), Article 326 (failing to meet the deadline for registering immovable property) and Article 339 (failing to meet the deadline for declaring a birth). The Committee considers that these offences are not sufficiently related to public order and do not constitute acceptable grounds for expulsion. Accordingly, it finds that the grounds for expulsion are not in conformity with the Charter.

The Committee asked previously (Conclusions 2011) whether foreign nationals served with an expulsion order have a right of appeal. In reply to this question the report states that Article 465 of the Contravention Code provides an appeal against condemnation for any contravention of that Code. The Criminal Procedure Code also provides an appeal against conviction under Chapter IV.

Furthermore, the Committee notes that Section 54 of the Law No. 200/2010 on Foreigners provides for an appeal against decisions to return a migrant to their own country. The Committee asks for confirmation of whether this applies to migrants who have been convicted of a criminal offence or an infraction of the Contravention Code, who might thus appeal the decision to return them home, independently of appealing the decision of their condemnation. In the meantime, it reserves its position on this issue.

#### *Conclusion*

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 19§8 of the Charter on the ground that the legislation permits the expulsion of migrant workers in situations where they do not pose a threat to national security, or offend against public interest or morality.

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

### *Paragraph 2 - Parental leave*

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

In its previous conclusion (Conclusions 2011) the Committee took note of Article 124 of the Labour Code, which provides that the partially paid leave for child care can be used by the father. The mother, the father, the grandmother, the grandfather or other family member who takes care of the child, have the right to return to their job after the period of the partially paid parental leave up has the age of 3 or additional unpaid leave from the age of 3 to 6 years.

The Committee recalls that under Article 27§2 of the Charter the States are under a positive obligation to encourage the use of parental leave by either parent. The States shall ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave.

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

The Committee asks what financial compensation or benefits are provided during the period of parental leave.

According to the report, the Ministry of Labour, Social Protection and Family has prepared a draft law on the amendment of legislative acts to introduce paternity leave. The bill was approved by the Government and submitted to the Parliament. The Committee wishes to be informed in the next report of any development in this respect.

### *Conclusion*

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



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**MONTENEGRO**

*This text may be subject to editorial revision.*





The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Montenegro which ratified the Charter on 3 March 2010. The deadline for submitting the 4th report was 31 October 2014 and Montenegro submitted it on 5 December 2014.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report contains also information requested by the Committee in Conclusions 2013 in respect of its finding of non-conformity due to a repeated lack of information:

- the right to social and medical assistance – specific emergency assistance for non-residents (Article 13§4)

Montenegro has accepted all provisions from the above-mentioned group except Articles 7§10, 19§1, 19§2, 19§3, 19§4, 19§5, 19§6, 19§7, 19§8, 19§9, 19§10 and 31.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Montenegro concern 23 situations and are as follows:

– 14 conclusions of conformity: Articles 7§1, 7§2, 7§3, 7§6, 7§7, 7§8, 8§1, 8§2, 8§3, 8§4, 8§5, 17§2, 19§11, 27§2.

– 3 conclusions of non-conformity: Articles 13§4, 16, 17§1.

In respect of the other 6 situations related to Articles 7§4, 7§5, 7§9, 19§12, 27§1 and 27§3, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Montenegro under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 8§5**

New Law on Safety and Health Protection at Work was adopted in 2014.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),

- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 1 - Prohibition of employment under the age of 15*

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

The Committee 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 young persons of at least 15 years old and with a general health ability to work may conclude an employment contract with an employer (Section 16 of the Labour Law). The report adds that young persons under the age of 18 may enter into an employment contract only with the written consent of their parents, adoptive parents or guardians and provided that the work does not affect their health, moral and education or it is not prohibited by law (Section 17 of the Labour Law). The Committee asks if Section 16 of the Labour Law (stipulating a minimum age of 15 for admission to employment) applies to all activities, without exceptions, including self-employed workers and family work.

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).

The Committee notes from another source that according to the information in a report entitled "Findings on the worst forms of child labour – Montenegro" of 2008 available on the site of the United Nations High Commissioner for Refugees, 12.9 per cent of children between the ages of 5 and 14 years were involved in child labour, mainly on family farms (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Minimum Age Convention, 1973 (No. 138) - Montenegro (Ratification: 2006)). The Committee asks if the national labour legislation provides exemptions relating to the employment of persons under the age of 15. The Committee asks what are the measures taken by the Labour Inspectorate or by other institutions to detect cases of children under the age of 15 working in the informal economy, outside the scope of an employment contract.

The report indicates that according to Section 172 of the Labour Law, a fine in the amount of € 500 to € 20,000 shall be imposed on an employer with the status of a legal entity for an infringement if the respective employer (i) concludes a contract of employment with a child under the age of 15 in breach of Section 16 of the Labour Law; or (ii) concludes a contract of employment with a person under the age of 18, contrary to the provisions of Section 17 of Labour Law.

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 the next report to provide information on the activities and findings of the Labour Inspectorate of monitoring the prohibition of employment under the age of 15, including on the violations detected and sanctions applied in practice. In this respect, it notes from another source that the Labour Inspectorate conducted 13,215 inspections in 2011, and 4,015 inspections during the period from January to May 2012. During the inspections, no cases of employment of persons below 15 years or illegal labour

of persons of over 15 years were registered (Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138) - Montenegro (Ratification: 2006).

The Committee recalls that States are required to monitor the conditions under which home work is performed in practice (Conclusions 2006, General Introduction on Article 7§1). The Committee asks whether State authorities monitor work done at home by children under 15 and which are their findings in this respect.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Montenegro is in conformity with Article 7§1 of the Charter.

## **Article 7 - Right of children and young persons to protection**

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

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

The Committee notes that, under Article 17 of the Labour Law, an employment contract with a person under 18 years of age can be concluded upon written approval of the parents or guardians under the condition that such work does not threaten their health, morals and education and is not prohibited by law. The report states that a labour contract with persons under the age of 18 years shall be made upon a certificate issued by the relevant health authority that confirms the capacity of such persons to perform the tasks for which the labour contract is signed and that such tasks are not harmful for their health. The report further indicates that young persons under 18 are prohibited from performing jobs involving very difficult physical work, underground or underwater work as well as jobs that may have a harmful effect or an increased risk for their health and life.

The report indicates that employers are obliged to ensure special protection and health at work of employed persons under the age of 18 in accordance with the Law on Safety and Health Protection at Work ("Official Gazette of Montenegro" 34/14). The report states that Section 60 (2) of the Law on Safety and Health Protection at Work provides that secondary legislation (Protection of Young Persons at Work Ordinance) shall be adopted within two years following the date of entry into force of the Law on Safety and Health Protection at Work which was 16 August 2014. The Committee requests up-to-date information with respect to the adoption of such secondary legislation in the next report.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activities and findings of the Labour Inspectorate in relation to the prohibition of employment under the age of 18 for dangerous or unhealthy activities, including the number of violations detected and sanctions applied.

### *Conclusion*

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

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.

The report indicates that primary education which lasts for nine years shall be free and compulsory for all children from the age of 6 to 15 years. The Committee took note in its conclusion on Article 7§1 that the minimum age of admission to employment is 15. The report also states that under the Law on Primary Education, parents must ensure that their children fulfil the obligation to complete primary education. The obligation to attend primary school shall be considered fulfilled when children complete nine years of primary school. If a child is fifteen during the school year, he/she will have to attend the courses until the end of that school year.

As noted in its conclusion on Article 7§1, the legislation does not seem to provide exemptions relating to the employment of persons under the age of 15 (such as for example light work or artistic performances). The Committee asks the Government to confirm this understanding.

The Committee notes that according to the information in a report entitled “Findings on the worst forms of child labour – Montenegro” of 2008 available on the site of the United Nations High Commissioner for Refugees, that 12.9 per cent of children between the ages of 5 and 14 years were involved in child labour, mainly on family farms (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Minimum Age Convention, 1973 (No. 138) - Montenegro (Ratification: 2006)). The Committee asks if in practice children who are still subject to compulsory education are employed in any type of work, including in family undertakings such as family farms.

The Committee notes from another source that the Labour Inspectorate conducted 13,215 inspections in 2011, and 4,015 inspections during the period from January to May 2012. During these inspections, no cases of employment of persons below 15 years or illegal labour of persons of over 15 years were registered (Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138) - Montenegro (Ratification: 2006)). The Committee asks how the Labour Inspectorate monitors any illegal work performed by children who are subject to compulsory education and information on its findings.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Montenegro is in conformity with Article 7§3 of the Charter.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 4 - Working time*

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

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

The report indicates that an employee under 18 years of age may not be requested to work overtime, or at night. Exceptionally, an employee under 18 years of age may be deployed to work at night when it is necessary to continue work which was interrupted due to natural hazards, or to prevent damage to raw materials or other materials.

In order to assess if the situation in Montenegro meets the requirements of the Charter on this point, the Committee asks if legislation provides for reduced working hours for young workers under 18 years of age. The Committee also asks if daily and weekly rest periods are established for such workers. Pending receipt of the information required, the Committee reserves its position on this point.

The Committee notes from another source that according to the statistics provided by the Statistical Office of Montenegro- MONSTAT in its publication entitled "Children in Montenegro – 2011 Census data", 187 children aged from 15 to 17 years were employed. The Committee asks how the Labour Inspectorate monitors the working time and rest periods in relation to young workers under 18 and which are its findings in this respect.

### *Conclusion*

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



## **Article 7 - Right of children and young persons to protection**

### *Paragraph 5 - Fair pay*

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

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

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.

### **Young workers**

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

The report indicates that all employees, including those under the age of 18, shall be entitled to an adequate salary, determined in accordance with the law, collective agreement and contract of employment (Section 77 of the Labour Law). An employee shall be entitled to minimum wage for the standard performance and full working hours, or working hours equivalent to full working hours in accordance with the law, collective agreement and contract of employment. The report states that the minimum wage may not be lower than 30% of the average wage in Montenegro in the previous six months according to the official data determined by the administration body in charge of the statistics. The amount of the minimum wage shall be determined by the Government upon a proposal from the Social Council, every six months.

The report does not provide information on the amount of the minimum wage during the reference period. In order to assess the situation, the Committee needs information on the starting wages or minimum wages of young workers/adult workers as well as on the average wage of adult workers. 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. Pending receipt of the information requested, the Committee reserves its position on this point.

### **Apprentices**

Apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period (Conclusions II (1971), Statement of Interpretation on Article 7§5), starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (Conclusions 2006, Portugal).

The report does not provide any information on the allowances paid to apprentices during the reference period. The Committee asks whether there is a legal framework on the status of apprentices in Montenegro. In order to assess on the conformity of the situation with Article 7§5 of the Charter, the Committee requests to be provided with the net values of the allowances paid to apprentices (after deduction of social security contributions) at the

beginning and at the end of the apprenticeship. Pending receipt of the information requested, the Committee reserves its position on this point.

*Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

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

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

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

The report indicates that according to Section 38 of the Labour Law, an employee shall undergo vocational training and further improvement of skills for work according to his/her abilities and needs. Costs of education, vocational training or further improvement shall be provided from the employer's funds and other sources, in accordance with the law and collective agreement.

The report states that employees, including those under the age of 18, shall be entitled to a wage compensation in the amount determined by collective agreement and contract of employment at the employer's request during professional improvement, retraining, additional training and in other cases determined by law, collective agreement and contract of employment. The Committee asks confirmation that in all cases the time spent in vocational training is included in the normal working time and thus remunerated as such.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity and findings of the Labour Inspectorate in relation to the inclusion of time spent on vocational training in the normal working time.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 7 - Paid annual holidays*

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

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

The report indicates that according to the Labour Law, an employee under 18 years of age shall be entitled to annual leave of at least 24 working days.

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

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity and findings of the Labour Inspectorate in relation to the paid annual holidays of young workers under 18.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 8 - Prohibition of night work*

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

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

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

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

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity of the Labour Inspectorate, its findings and sanctions applied in relation to possible illegal involvement of young workers under 18 in night work.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 9 - Regular medical examination*

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

The report indicates that, under Section 17 of the Labour Law, a person under the age of 18 may enter into a contract of employment only based on findings from a relevant health authority determining his/her ability to perform duties covered by the contract of employment and that such duties are not harmful to his/her health.

The Committee recalls that under Article the obligation 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. The check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed. The Committee asks if regular medical examination are provided to young workers of 15 -18 years after recruitment and at which intervals. Pending receipt of the information requested, the Committee reserves its position on this point.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity and findings of the Labour Inspectorate in relation to the medical examination of young workers under 18.

### *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 Montenegro.

### ***Right to maternity leave***

Article 111a of the Labour Code provides for 45 days maternity leave before childbirth (upon submission of a medical certificate indicating the expected date of delivery), including a mandatory leave of 28 days before childbirth. Women are also entitled to a mandatory leave of 45 days after childbirth. After the expiry of this period, either parent is entitled to parental leave to be used during the year following the birth. The Committee asks the next report to clarify whether the same rules apply to women employed in the public sector.

### ***Right to maternity benefits***

The report indicates that, according to Article 111b of the Labour Code, workers on maternity or parental leave are entitled to wage compensation corresponding to their regular salary. The Committee asks what are the requirements for entitlement to maternity benefits, in particular whether the right to maternity benefits is subject to a qualifying period (period of employment or contribution to the social security scheme) and, in such case, whether the qualifying period takes into account interruptions in the employment record. With reference to its Statement of Interpretation on Article 8§1 (Conclusions 2015), the Committee also asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

It furthermore asks whether the same rules apply to women employed in the public sector.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Montenegro is in conformity with Article 8§1 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

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

### ***Prohibition of dismissal***

Article 108 of the Labour Law provides that an employer may not refuse to conclude a contract of employment with a pregnant woman, or terminate an employee's contract for reasons related to pregnancy or maternity leave. If a fixed-term contract is due to expire while the employee concerned is on maternity leave, the employment contract will be extended till the expiry of the maternity leave. According to the report, the employer cannot dismiss a worker during parental leave for redundancy related to technological, economic or restructuring changes. The Committee asks the next report to clarify what exceptions, if any, apply concerning the dismissal during pregnancy or maternity leave (for example, in case of misconduct justifying the breaking of the employment relationship or if the employer's business ceases to operate). It also asks whether the same rules apply to employees of the public sector.

### ***Redress in case of unlawful dismissal***

The Committee notes from the report that, in case of alleged violation of an employment-related right, the concerned employee may file a claim with the employer to request exercise of that right. The employer shall decide on such request within 15 days; such decision shall be final, it should contain explanation and note on the legal remedy and must be delivered to an employee within eight days as from the deadline for adopting the decision. If the employee is not satisfied with the decision or has not received it within the prescribed period, he or she is entitled to initiate proceedings before the relevant court within 15 days as of the day of receiving the decision. The employer shall then enforce the final court decision within 15 days as of the day of receiving the decision. If it is determined that there were no legal or justifiable grounds for termination of a contract of employment, the employee shall be entitled to return to work, as well as to a compensation of financial and non-financial damage. An employee and an employer may entrust the Agency for Amicable Settlement of Labor Disputes with resolving disputes arising from and based on employment, in accordance with Article 121 of the Labor Law and a special law. It is up to the employer to prove that the termination of employment is not connected to the employee's pregnancy.

The Committee recalls that under Article 8§2 of the Charter compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. It asks the next report to clarify, in the light of any relevant case-law, what criteria are taken into account by the court in awarding compensation and whether any ceiling apply in this respect. It also asks whether adequate compensation is awarded when reinstatement to work is not possible and whether the same rules apply to employees in the public sector.

### ***Conclusion***

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



## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

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

It notes from the report that, in addition to the normal daily rest period of at least 30 minutes, employees resuming work before the child is one year old are entitled to a daily nursing period of 90 minutes, under Article 111a of the Labor Code. The nursing break shall be taken in agreement with the employer.

The Committee asks:

- whether all employees, including domestic employees, employees in the public sector, fixed-term employees and part-time employees are entitled to nursing breaks;
- whether nursing breaks are treated as regular working time and remunerated as such;
- whether employees are entitled to nursing breaks at least until the child is nine months old.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Montenegro is in conformity with Article 8§3 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 4 - Regulation of night work*

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

In accordance with Article 110 of the Labor Code, employees who are pregnant or have a child aged below three years old cannot work overtime, or at night. Exceptionally, an employed woman with a child over two years of age may perform nightwork only if she accepts such work in a written statement. The Committee asks whether the same rules apply to employees of the public sector. The Committee furthermore asks the next report to clarify whether the employed women concerned are transferred to daytime work until their child is three years old and what rules apply if such transfer is not possible.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Montenegro is in conformity with Article 8§4 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

According to Article 104 of the Labour Code, women may not work in activities involving mainly very difficult physical work, underground or under water work, or work which may be harmful and particularly dangerous for their health and life. Based on findings and recommendation of the relevant medical authorities, a pregnant or nursing employee may be temporarily reassigned to other positions, if it is in the interest of preserving her health or the health of her child. If an employer is not in a position to redeploy the concerned employee, she shall be entitled to abstain from work, with a wage compensation which may not be lower than the compensation she would receive if she had been working. A temporary reassigned woman shall also be entitled to the salary corresponding to the position where she worked prior to the reassignment. The Committee asks the next report to clarify whether the same rules apply also to employees of the public sector.

The report refers to a new Law on Safety and Health Protection at Work, which was adopted in 2014 (published in the Official Gazette No. 34/14 on 8 August 2014), out of the reference period and which replaces the Law on Safety at Work ("Official Gazette of RCG" 79/04, "Official Gazette of Montenegro" 26/10 and 40/11). According to Article 60, paragraph 2, of the new Law, implementing legislation, including rules on safety and protection at work for pregnant and nursing women, as well as women having given birth recently, shall be adopted within two years following the date of entry into force of the Law. The Committee asks the next report to provide updated information on the legislation adopted and its implementation.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Montenegro is in conformity with Article 8§5 of the Charter.

## **Article 13 - Right to social and medical assistance**

### *Paragraph 4 - Specific emergency assistance for non-residents*

In application of the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Montenegro in response to the conclusion that it had not been established that non-resident foreign nationals, whether legally present or in an irregular situation, are all entitled to emergency social and medical assistance (Conclusions 2013, Montenegro).

The Committee recalls that Article 13§4 grants foreign nationals the right to emergency social and medical assistance. The beneficiaries of this right are foreign nationals who are lawfully present in a particular state but do not have resident status and those who are unlawfully present (Conclusions 2013, Montenegro).

The report provides information on medical assistance stating that the right to emergency care is not conditioned on the length of presence in Montenegro but rather on the need and confirming that emergency medical care, as defined by the Law on Emergency Medical Care (Official Gazette of Montenegro 49/08), is provided to all non-resident foreigners regardless of whether they are legally present in Montenegro or are in an irregular situation. According to the report these provisions are also reflected in a new Bill on Healthcare which in its Section 14 provides for emergency treatment and placement of a person whose life is under direct threat due to an illness or injuries. The Committee wishes to be informed of the adoption and implementation of this Bill in the next report. Meanwhile, it considers that the situation meets the requirements of Article 13§4 as regards emergency medical assistance.

From supplementary information provided by the Government the Committee notes the legal framework applicable to foreigners who are unlawfully present and to asylum seekers. The Foreigners Act No. 56/2014 governs the situation of foreigners who are unlawfully present and under an obligation to leave the territory and provides that pending deportation unlawfully present foreigners shall be placed in a "shelter for foreign persons" until deportation can take place or up to a maximum of 90 days (with exceptions possible; Sections 104 and 106). The authorities may seek to recuperate costs incurred in this respect (Section 115). The Committee understands that persons placed in a shelter will also receive basic necessities such as food and clothing and asks that the next report confirm this understanding. It also seeks confirmation that any repatriation of foreigners takes place respecting the conditions laid down by the European Convention on Social and Medical Assistance.

The Committee notes the regulations applicable to asylum seekers which provide not only for accommodation, food and clothing, but also free health care, financial assistance and access to the labour market.

However, the Committee notes that information has still not been provided on emergency social assistance for persons who are lawfully present in the territory without residing there (for example tourists and persons in transit). In the absence of this information the Committee considers that it has not been established that emergency social assistance is guaranteed to all non-resident foreign nationals.

### *Conclusion*

The Committee concludes that the situation in Montenegro is not in conformity with Article 13§4 of the Charter on the ground that it has not been established that all non-resident foreign nationals are entitled to emergency social assistance.

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

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

### ***Social protection of families***

#### ***Housing for families***

The report indicates that pursuant to the Law on Local Self-Government resolving housing issues is the responsibility of municipalities.

The Committee has constantly interpreted the right to economic, legal and social protection of family life provided for in Article 16 as guaranteeing the right to adequate housing for families, which encompasses secure tenure supported by law (Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint 52/2010, decision on the merits of 22 June 2010, § 54).

Under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment. The Committee recalls that this obligation extends to ensuring protection against unlawful eviction (European Roma Rights Center (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24).

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies. Any appeal procedure must be effective (Conclusions 2003 France, Italy Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction.

As regards eviction, the Committee notes from the report that only courts can issue an eviction order. According to the Law on Free Legal Aid, the right to free legal aid may be exercised by "a beneficiary of material family benefits or any other social care benefit, a child without parental care, a person with disability, a victim of a criminal offence involving domestic violence or violence in domestic unit and human trafficking and a person of poor financial standing."

To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards access to adequate housing for the families, the Committee asks for information in the next report on all the aforementioned points.

As regards access to housing for vulnerable families and Roma in particular, the Committee has held that as a result of their history, the Roma have become a specific group of disadvantaged and vulnerable minority. They therefore require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community (Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40). The Committee asks that the next report provide information on measures taken to improve the housing situation of Roma families.

### ***Childcare facilities***

The Committee notes that as Montenegro has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

### ***Family counselling services***

The Committee recalls that families should have access to appropriate social services, in particular in times of difficulty. States should provide *inter alia* family counselling and psychological guidance advice on childrearing.

The Committee notes that the Law on Social and Child Protection provides for services in the area of social and child protection in the form of assessment and planning, support for family life, counselling-therapy, social and educational service, accommodation and urgent interventions. The service provider is an institution or a natural person who was issued a licence by the competent state administration body.

### ***Participation of associations representing families***

The Committee recalls that in order to ensure that the views of families are taken into account in the formulation of family policy, all civil organisations representing families should be consulted by the relevant authorities (Conclusions 2006, Statement of Interpretation on Article 16).

The Committee asks the next report to provide information on the participation of associations representing families in the light of its above-mentioned case-law.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The Committee recalls that spouses must be equal, particularly in respect of rights and duties within the couple (reciprocal responsibility, ownership, administration and use of property, etc.) (Conclusions XVI-1 (2002), United Kingdom) and children (parental authority, management of children's property). It also states that in cases of family breakdown, Article 16 requires the provision of legal arrangements to settle marital conflicts and, in particular, conflicts relating to children: care and maintenance, custody and access to children.

The Committee asks the next report to indicate whether spouses are equal, particularly in respect of rights and duties within the couple (reciprocal responsibility, ownership, administration and use of property, etc.) and children (parental authority, management of children's property).

It takes note that Family Law sets out the legal framework for the exercise of parental rights, settlement of disputes between spouses in relation to children, disputes relating to property rights and the obligation to support between family members.

### ***Mediation services***

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 considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided.

The Committee asks the next report to provide information on mediation services in the light of these points.

### ***Domestic violence against women***

The Committee recalls that Article 16 requires that protection for women exists both in law (through appropriate measures and punishments for perpetrators, including restraining orders, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (through the collection and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims) (Conclusions 2006, Statement of Interpretation on Article 16).

The report indicates that pursuant to the Law on Protection of Domestic Violence, a victim of domestic violence has the right to psycho-social support, legal aid, social and medical care. To protect the victim the Law provides for the issuance of an order of protection. In addition, special assistance and protection is provided to a victim who is a minor, an elderly, a person with disability and a person who cannot take care of himself/herself. The institutions providing for protection are: the Police, misdemeanour body, Public Prosecution Service, Social Welfare Centre or other social and child protection agency, health care institution and other agency or institution acting as care provider or non-governmental organisations.

The Committee asks the next report to provide information in practice on the protection provided to women in case of domestic violence through for example the collection and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims.

### ***Economic protection of families***

#### ***Family benefits***

The Committee recalls that States are required to ensure the economic protection of the family by appropriate means. The primary means should be family or child benefits provided as part of social security, available either universally or subject to a means-test (Conclusions 2006, Statement of Interpretation on Article 16). It also recalls that child benefit must constitute an adequate income supplement, which is the case when it represents a significant percentage of median equivalised income, for a significant number of families (Conclusions 2006, Statement of Interpretation on Article 16).

The Committee notes from MISSCEO that the scheme of child benefit is based on social assistance, i.e. entitlement upon need. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that family benefits do not cover a significant number of families.

### ***Vulnerable families***

States' positive obligations under Article 16 include implementing means to ensure the economic protection of various categories of vulnerable families, such as single-parent families and Roma families. The Committee consequently asks what measures are taken to ensure the economic protection of these vulnerable families.

### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The Committee recalls that States Parties must ensure equal treatment of foreign nationals of other States Parties who are lawfully resident or regularly working in their territory and stateless persons with respect to family benefits. The Committee asks the next report to indicate whether foreign nationals, stateless persons and refugees are treated equally with regard to family benefits.

### ***Conclusion***

The Committee concludes that the situation in Montenegro is not in conformity with Article 16 of the Charter on the ground that family benefits do not cover a significant number of families.



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

### *Paragraph 1 - Assistance, education and training*

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

The Council on Children's Rights monitors the implementation of the National Action Plan for Children. The Law on Social and Child Protection is the legal act that specifically defines the term 'child' as a person under the age of 18.

### ***The legal status of the child***

The Committee recalls that under Article 17 of the Charter there should be no discrimination between children born within marriage and outside marriage, for example in matters relating to inheritance rights and maintenance obligations. The Committee wishes to be informed about the applicable legislation in this regard.

The Committee recalls that under Article 17 there must be a right for an adopted child to know his or her origins. It asks whether there are restrictions on this right and under what circumstances.

### ***Protection from ill-treatment and abuse***

The Committee recalls that under Article 17 of the Charter, the prohibition of any form of corporal punishment of children is an important measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2). The Committee recalls its interpretation of Article 17 of the Charter as regards the corporal punishment of children laid down most recently in its decision in *World Organisation against Torture (OMCT) v. Portugal* (Complaint No. 34/2006, decision on the merits of 5 December 2006; §§19-21):

“To comply with Article 17, states' domestic law must prohibit and penalize all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.

The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.”

The Committee has noted that there is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers, in particular, in this respect to the General Comments Nos. 8 and 13 of the Committee on the Rights of the Child (*Complaint No 93/2013 Association for the Protection of All Children (APPROACH) v. Ireland* , decision on the merits of 2 December 2014, §§45-47).

The Committee notes from the Global Initiative to End Corporal Punishment of Children that corporal punishment in Montenegro is lawful in the home. There is no legal defence for its use enshrined in law and provisions against violence and abuse in the Criminal Code 2004, the Family Act 2007, the Charter on Human and Minority Rights and Civil Liberties 2003 and the Law on Family Violence Protection 2010 do not include explicit prohibition of all corporal punishment in childrearing.

There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents.

Corporal punishment is prohibited in schools according to Section 111 of the General Law on Education. The Law on Primary Education (art. 66) and the Law on High School (art. 49) do not include corporal punishment among permitted disciplinary measures.

The Committee considers that the situation is not in conformity with the Charter as corporal punishment of children is not explicitly prohibited in the home and in institutions.

### ***Rights of children in public care***

The Committee recalls that under Article 17 the long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions. Children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well being as well as to special protection and assistance. Such institutions must provide conditions promoting all aspects of children's growth. A unit in a child welfare institution should be of such a size as to resemble the home environment and should not therefore accommodate more than 10 children. Furthermore, a procedure must exist for complaining about the care and treatment in institutions. There must be adequate supervision of the child welfare system and in particular of the institutions involved.

According to the report, the Law on Social and Child Protection defines the duty of all who work on child protection to make every effort to assist the child to remain in the family by providing family support and if this is not possible, through the provision of family placement-foster care. A child under three years of age shall not be placed in an institution and the placement is provided only when all other options are exhausted and it is reviewed at least every six months. The Ministry of Labour and Social Welfare aims at reducing the total number of children in institutional care by 30% by the end of 2017 and the children aged 0-3 will be the priority.

The Committee takes note of the draft plan for transformation of the Institution "Komanski Most" prepared in 2011 with the assistance of UNDP and UNICEF. Children's pavilion at the institution 'Komanski' was closed in mid-2014 and all children were relocated. Children who have attained the majority have been moved to adult pavilions in the absence of alternative services. Another draft plan for transformation of the public institution children's home 'Mladost' was prepared as well with the support of the UNICEF. The plan seeks to provide transformation of residential institutions for children and support services that are aligned with the needs of children and families in the community, to develop and further strengthen foster care.

The Social Protection Reform Strategy aims at development of various services which support the natural family and family environment, as least restrictive environment for a child. It also emphasises the importance of encouraging the development of less restrictive forms of social protection – foster care, adoption services, day centres, home assistance etc.

The aim of the reform is primarily to reduce the number of children in institutions and develop a range of new services in order to bring the conditions in the institution closer to the standards of living in the family.

The expectations of the reform are to prevent separation of children from their families, improved developmental outcomes, protection from neglect and abuse. Reduction of residential capacities will free up resources which can be channelled towards offering services in the community for children who live with their families as well as establishment of new centre to support foster families.

The Committee wishes to be informed about the implementation of the Social Protection Reform Strategy. In the meantime it notes that there were six children up to the age of three and 91 children aged 3-18 in institutions.

The Committee recalls (Conclusions XV-2, Statement of Interpretation on Article 17§1, p.29) that any restriction or limitation of parents custodial rights should be based on criteria laid down in legislation, and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family. The Committee has held that it should only be possible to take a child into custody in order to be placed outside his/her home if such a measure is based on adequate and reasonable criteria laid down in legislation. The Committee asks what are the criteria for the restriction of custody or parental rights and what is the extent of such restrictions. It also asks what are the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances. It further asks whether the national law provides for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family.

### ***Right to education***

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

### ***Young offenders***

The Committee recalls that under Article 17 the age of criminal responsibility must not be too low. The criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly. Minors should only exceptionally be detained pending trial for serious offences, for short period of time and should in such cases be separated from adults. Young offenders should not serve their sentence together with adult prisoners.

The Committee notes from the report that the Law on the Treatment of Juveniles in Criminal Proceedings contains the basic principles of juvenile justice. The measure of detention as a measure of deprivation of liberty may be ordered only exceptionally under legally prescribed terms. This law explicitly stipulates the obligation of the juvenile judge or the presiding judge for juveniles who rendered the criminal sanction to supervise and control its execution. A juvenile judge who handed down the institutional measure is under an obligation to visit juveniles placed in juvenile ward or in an institution every six months.

The Committee asks what is the age of criminal responsibility and the maximum length of pre-trial detention and prison sentence that can be imposed on a minor. It also asks whether young offenders are always separated from adults.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

*Conclusion*

The Committee concludes that the situation in Montenegro is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment of children is not prohibited in the home and in institutions.

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

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

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

The Committee recalls that Article 17 requires States to establish and maintain an education system that is both accessible and effective. The Committee recalls in this respect that under Article 17§2 of the Charter in order for there to be an accessible and effective system of education there must be *inter alia* a functioning system of primary and secondary education provided free of charge, including an adequate number of schools fairly distributed over the geographical area. Class sizes and the teacher pupil ratio must be reasonable. Measures must be taken to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.

The Committee further recalls that under Article 17§2 all hidden costs such as books or uniforms must be reasonable, and assistance must be available to limit their impact on the most vulnerable population groups so as not to undermine the goal being pursued (European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France Complaint No. 82/2012, decision on the merits of 19 March 2013, §31).

According to the report primary education is compulsory and free of charge. Parents must ensure that their children are enrolled with the primary educational institutions. The local authorities are under an obligation to identify children not enrolled with local schools. The Law guarantees an equal access to education in accordance with the network of establishments set up according to the number and age of children in a particular area, providing equal conditions for access to education and financial possibilities. There are 21 public pre-school institutions, 163 primary schools (including 256 branch schools), 47 public secondary schools (high schools, vocational and mixed schools). The law specifies that each class of the same grade may have 30 pupils at most. The Committee asks what is the enrolment rate in primary education as well as the drop-out rate. It also asks what measures are taken to reduce absenteeism.

The Committee takes note of the Action Plan of the Inclusive Education Strategy 2014-2018 which is designed for children with disabilities, their parents, families and professionals whose field of action relates to this population. As regards the integration of children with disabilities into mainstream education the Committee refers to its conclusion under Article 15§2.

The Committee further recalls that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that states parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2, Conclusions 2011).

The Committee asks whether unlawfully present children have a right to education.

The Committee recalls that under Article 17§2 States have positive obligations to ensure equal access to education for all children. In this respect particular attention should be paid to vulnerable groups, such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, etc.

Under Article 17§2 as regards education of children of Roma origin, even though educational policies for Roma children may be accompanied by flexible structures to meet the diversity of the group and may take into account the fact that some groups lead an itinerant or semi-itinerant lifestyle, there should be no separate schools for Roma children. Special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group (Conclusions 2011, Slovak Republic).

According to the report, preparatory kindergarten for children of Roma and Egyptian population has been functioning for three years. In 2013/2014 school year eight preschools were involved in this process where the children of Roma population were integrated. Desegregated education of these children takes place in six schools in Podgorica. Transport has been arranged for about 200 students on a daily basis. Mediators ensure that children attend school regularly, collaborate with teachers and expert services. Children at risk of dropping out are regularly monitored and measures are proposed to overcome the problems.

The Committee notes from the Report by the Council of Europe Commissioner for Human Rights, following his visit to Montenegro, from 17 to 20 March 2014 that certain progress has been made in recent years in improving access to education for Roma children. The measures taken have resulted in an increase in the number of such pupils in primary schools. 1,167 Roma children attended school in 2013, while about 90% of Roma children were enrolled in secondary schools. Targeted measures included introduction of special scholarships, free transportation and tuition for Roma children.

The Committee also takes note of the Roma Education Fund activities to de-segregate the Kinik camp and to improve access by Roma children to quality education.

The Committee asks to be informed about the progress made with improving access and enrolment of Roma children and children from other vulnerable groups in education.

#### *Conclusion*

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

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

### *Paragraph 11 - Teaching language of host state*

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

Committee notes from the 2011 Census that 28,258 people (5% of the population) in Montenegro were of a nationality other than Montenegrin. Of that number, 56% were Serbian, 18% were nationals of Bosnia and Herzegovina, and 5% were Croatian. The next largest groups were Kosovar and Albanian. The Committee asks that the next report provide information concerning the number of migrants in Montenegro.

The Committee notes from the report that Article 15 of the Law on Primary Education has been amended, and paragraph 2 now provides for additional classes for up to one school year for Students in primary school who do not know or are insufficiently familiar with the language in which teaching is organised. The Law on Gymnasias and the Law on Vocational Education also provide that schools have an obligation to assist students in overcoming language barriers.

Furthermore, the Bureau for Educational Services has prepared a curriculum for the subject of Montenegrin as a Non-mother tongue language. A number of textbooks for different age groups have been produced and more are in the process of being prepared.

The Committee considers that although the language of the host country is automatically taught to primary and secondary school students throughout the school curriculum, this is not enough to satisfy the obligations laid down by Article 19§11. States must make special effort to set up additional assistance for children of immigrants who have not attended primary school right from the beginning and who therefore lag behind their fellow students who are nationals of the country (Conclusions 2002, Sweden). The Committee takes note of the one year of additional assistance and the special course in Montenegrin. It asks for further information on the implementation of these initiatives, including data on how many students benefit from such additional education, and whether children who continue to struggle may receive further assistance.

The Committee also recalls that States should promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age (Conclusions 2002, France). The Committee asks what policies are in place to provide or support the education of adult migrants in the national language.

### *Conclusion*

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

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

### *Paragraph 12 - Teaching mother tongue of migrant*

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

The Report states that schools have the opportunity to plan 20% of the teaching hours of each subject independently. This 'open' part of the educational program allows teachers to take into account the needs of the child. The report states that it also provides an opportunity to promote the culture, language and traditions of the countries of origin of migrant children. Schools are obliged to organise tuition classes for students who show a particular interest in broadening and deepening their knowledge of certain educational areas.

The Committee notes the flexibility provided in the curriculum, and asks for examples to be provided in the next report of implemented plans focussing on the culture of origin of migrant students.

It recalls that the undertaking of States under this provision is to promote and facilitate the teaching, in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory (Conclusions 2011, Armenia). States should promote and facilitate the teaching of the languages most represented among the migrants present on their territories within their school systems or in other contexts such as voluntary associations or non-governmental organisations (Conclusions 2011, Statement of interpretation on Article 19§12). The Committee asks what policies or initiatives are in place which specifically aim towards the education of migrant children of the most represented groups in their own culture, language and traditions.

In the meantime the Committee considers that the report does not contain sufficient information for it to assess the situation.

### *Conclusion*

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



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

### *Paragraph 1 - Participation in working life*

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

The Committee notes that Montenegro has only accepted Article 27§1a.

### ***Employment, vocational guidance and training***

The Committee recalls that the aim of Article 27§1a is to promote the reconciliation of professional and family responsibilities by providing people with family responsibilities with equal opportunities in respect of entering, remaining in and re-entering employment. Article 27 requires States Parties to take specific measures in the field of vocational guidance and training, so as to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities and to assist them in advancing in economic activity (Conclusions 2007, Armenia).

To be able to return to professional life, such persons may need special assistance in terms of vocational guidance and training. However, if the standard employment services (those available to everyone) are well developed, the lack of extra services for people with family responsibilities cannot be regarded as a human rights violation (Conclusions 2003, Sweden).

According to the report, the Law on Employment and Exercising Rights with respect to Unemployment Insurance applies to unemployed persons, workers seeking to change their job, employers and any other person seeking information on employment matters.

The Law envisages measures of active employment policy, namely information on possibilities and conditions of employment, job mediation, professional orientation, adult education and training, vocational rehabilitation etc.

The law provides assistance to unemployed persons as well as any other person in the field of professional orientation, career planning. The term 'persons with family responsibilities' is used in the Law as well as in other secondary legislation.

The Committee refers to its conclusion under Article 10§3 (Conclusions 2012) where it reserved its position pending receipt of the information concerning the types of continuing vocational training and education available on the labour market, training measures for certain groups, such as women, the overall participation rate of persons in training and the gender balance, the percentage of employees participating in continuing vocational training, and the total expenditure.

The Committee wishes to be informed about the implementation of the Law on Employment and Exercising Rights with respect to Unemployment Insurance and asks what special assistance is given to persons with family responsibilities wishes to return to work after parental leave.

### *Conclusion*

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

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

### *Paragraph 2 - Parental leave*

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

The Committee recalls that the focus of Article 27§2 are parental leave arrangements which are distinct from maternity leave and come into play after the latter. National regulations related to maternity or paternity leave fall under the scope of Article 8§1 and are examined under that provision. The States should provide the possibility for either parent to obtain parental leave.

Consultations between social partners throughout Europe show that an important element for the reconciliation of professional, private and family life are parental leave arrangements for taking care of a child. Whilst recognising that the duration and conditions of parental leave should be determined by States Parties, the Committee considers important that national regulations should entitle men and women to an *individual right* to parental leave on the ground of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided to each parent and at least some part of it should be non-transferable.

The Committee recalls that the remuneration of parental leave (be in continuation of pay or via social assistance/social security benefits) plays a vital role in the take up of childcare leave, in particular for fathers or lone parents.

According to Section 111 of the Labour Law parental leave is entitlement of one of the parents to use absence from work for the purpose of providing care and nursing to child. Parental leave may be used for 365 days from the birth of the child. The parent may start working even prior to expiry of the leave (365 days), but not prior to expiry of 45 days from the birth of the child. In this case, the parent shall not be entitled to continue to use parental leave.

If one of the parents interrupts parental leave before the expiry of 365 days, the other parent shall be entitled to use the remaining part of the parental leave.

According to Section 111b during the parental leave the parent shall be entitled to wage compensation in the amount of the salary he/she would earn if he/she was at work, in accordance with the law and collective agreement. The employer shall provide the employee with return to the same working position or to an adequate working position with at least the same salary.

The Committee asks whether fathers have a non-transferable right to parental leave and if so, what is its length.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Montenegro is in conformity with Article 27§2 of the Charter.

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

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

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

### ***Protection against dismissal***

The Committee recalls that under Article 27§3 family responsibilities must not constitute a valid ground for termination of employment.

The Committee notes that according to Section 108§3 of the Labour Law, during absence from work for the purpose of nursing a child and parental leave an employer may not terminate the employer's contract of employment. An employer may not terminate contract of employment of employees nor declare them redundant due to introduction of technological, economic or restructuring changes, who are working on part time due to providing care to a child with severe developmental disabilities, as well as single parents with a child up to seven years old or a child with severe disability.

The Committee asks whether such protection equally applies to fathers on parental leave.

### ***Effective remedies***

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 (Statement of Interpretation on Articles 8§2 and 27§3 (Conclusions 2011) .

In this regard the Committee refers to its conclusion under Article 8§2 of where it notes that in case of alleged violation of an employment-related right, the concerned employee may file a claim with the employer to request exercise of that right. The employer shall decide on such request within 15 days; such decision shall be final, it should contain explanation and note on the legal remedy and must be delivered to an employee within eight days as from the deadline for adopting the decision. If the employee is not satisfied with the decision or has not received it within the prescribed period, he or she is entitled to initiate proceedings before the relevant court within 15 days as of the day of receiving the decision. The employer shall then enforce the final court decision within 15 days as of the day of receiving the decision. If it is determined that there were no legal or justifiable grounds for termination of a contract of employment, the employee shall be entitled to return to work, as well as to a compensation of financial and non-financial damage.

The Committee asks for the case law examples specifically relating to dismissal of persons with family responsibilities. It asks whether the legislation sets an upper limit to the amount of compensation that is awarded in case of unlawful dismissal on the ground of family responsibilities.

### ***Conclusion***

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



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**THE NETHERLANDS**

*This text may be subject to editorial revision*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns the Netherlands, which ratified the Charter on 3 May 2006. The deadline for submitting the 8th report was 31 October 2014 and the Netherlands submitted it on 20 November 2014. Comments from FNV on the 8th report were registered on 20 November 2014. Comments on the 8th report by SGBV were registered on 16 January 2015. The reply from the Government to the SGBV comments were registered on 10 March 2015. On 3 June 2015, a request for additional information regarding Articles 31§§1 and 3 was sent to the Government which submitted its reply on 14 September 2015. On 16 September 2015 a request for additional information regarding Articles 7 and 17 was sent to the Government which did not submit a reply.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report contains also information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to safe and healthy working conditions – occupational health services (Article 3§4)
- the right to social security – existence of a social security system (Article 12§1)

The Netherlands have accepted all provisions from this group, except Article 19§12, in respect of the Kingdom in Europe. The Netherlands have furthermore accepted one provision from this group (namely, Article 16 of the 1961 Charter), in respect of the special Caribbean municipalities of Bonaire, Sint Eustatius and Saba, which are under the direct administrative responsibility of the Netherlands, and in respect of Aruba, Curaçao and Sint Maarten. The deadline for submitting reports in their respect was 31 October 2014; in respect of Aruba it was submitted on 24 February 2015, in respect of Curaçao it was submitted on 23 February 2015 and in respect of Sint Maarten no report was submitted.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to the Netherlands concern 39 situations and are as follows:

- 24 conclusions of conformity: Articles 3§4, 7§1, 7§2, 7§4, 7§7, 7§8, 7§10, 8§1, 8§2, 8§3, 8§4, 8§5, 12§1, 17§2, 19§1, 19§2, 19§5, 19§7, 19§8, 19§9, 27§1, 27§2, 27§3 and 31§3;
- 14 conclusions of non-conformity: Articles 7§3, 7§5, 7§6, 7§9, 16 (Kingdom in Europe and special Caribbean municipalities), 16 (Aruba), 16 (Curaçao), 17§1, 19§4, 19§6, 19§10, 19§11, 31§1 and 31§2.

In respect of the situation related to Article 19§3, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information

requested amounts to a breach of the reporting obligation entered into by the Netherlands under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

The next report to be submitted by the Netherlands will be a simplified report dealing with the follow up given to decisions on the merits of collective complaints in which the Committee found a violation:

- Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 01/07/2014, violation of Articles 13§4 and 31§2
- European Federation of National Organisations Working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 02/07/2014, violation of Articles 31§2, 13§§1 and 4, 19§4(c) and 30,
- Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20/10/2009, violation of Articles 31§2 and 17§1.c.

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to a fair remuneration – decent remuneration (Article 4§1)
- the right to dignity in the workplace – moral harassment (Article 26§2).

In respect of Aruba, of Curaçao and of Sint Maarten, the next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

- the right to work (Article1)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 4 - Occupational health services*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by the Netherlands in response to the conclusion that it had not been established that there was a strategy to progressively institute access to occupational health services for all workers in all sectors of the economy (Conclusions 2013, the Netherlands).

The Committee recalls that under Article 3§4 States must promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions. These services may be run jointly by several companies. The services must be efficient and should be able to identify, measure and prevent work-related stress, aggression and violence (see Statement of interpretation on Article 3§4, Conclusions 2013; also Conclusions 2003, Bulgaria). It further recalls that if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. Thus, States "must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Conclusions 2003, Bulgaria, Conclusions 2009, Albania).

In its report, the Government maintains that there is indeed a strategy concerning occupational health services, which consists of a legal framework providing for the availability of expert occupational health services as well as sustaining facilities and supervision.

The Working Conditions Act (WCA) provides the legal basis for occupational safety and health services in the Netherlands and it applies to all economic sectors. The act stipulates that employers and employees must cooperate and have consultations about occupational health services (Section 12 WCA) and provides rules on the support of expert occupational health services (Section 13 WCA). Expert occupational services can be organised within the company in which case the employer is supported by a specific employee whose task is occupational health prevention and by an occupational health physician or an internal occupational health service (Section 14 WCA). If and when an employer chooses not to organize services internally, he is obliged to enter into a contract with an external expert occupational health service (Section 14a).

An expert occupational service is a certified, private and independent service organisation. In order to operate legally, it needs to acquire a certificate that is formally granted by the Minister of Social Affairs and Employment but with the application for the certificate to be submitted to an independent certifying institute which checks the expertise, organisational set-up and quality of the service. Every such service organisation must have at least one occupational physician, one occupational hygiene expert, one occupational safety expert and one occupational psychologist or equivalent. The service organisation may also have other staff such as nurses, social workers, ergonomists, etc.

The report emphasises that there is a nationwide network of services. In some cases the services are set up at branch level by the social partners, usually on the basis of collective agreement arrangements, whereas in other branches use is made of an external occupational service organisation.

The Committee notes that it is part of the Dutch strategy to take measures to help companies, especially small and medium-sized enterprises, to improve their occupational health services. This takes place, for example, by making available digital tools to enable



companies to make risk assessment and to deal with any risks (see [www.rie.nl](http://www.rie.nl)). There is also a website which provides relevant information to employers, employees and prevention-workers on occupational health services and relevant links ([www.arboportaal.nl](http://www.arboportaal.nl)).

Finally, the Government states that there is on-going supervision of occupational health services. An occupational health service organisation may lose its certificate when it does not live up to its tasks. Moreover, the organisation of occupational health service support within the company must be endorsed by the Works Council. It is always an option that the 'Inspectorate-SZW' (the former labour inspectorate) puts forward a demand to the employer to comply with the applicable legislation, when the expert support is not functioning well in the company.

The Committee asks whether there are cases of certificates for occupational health service organisations being withdrawn and it also wishes to know whether any violations of the applicable legislation have been determined by the 'Inspectorate-SZW'. Nevertheless, in view of the elements provided in the report the Committee considers that the situation is in conformity with the Charter.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 3§4 of the Charter as regards the strategy to progressively institute access to occupational health services for all workers in all sectors of the economy.

## **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 the Netherlands.

The report states that there have been no new developments to the situation which the Committee previously found to be in conformity with Article 7§1 of the Charter.

The report provides information on the activities of the Labour Inspectorate. The Committee notes that there have been 717 inspections in 2010 carried out in various sectors such as hotel and catering, supermarkets, agriculture and horticulture, retail. The report indicates that almost half of the infringements (46%) concerned the working conditions, working hours and rest periods of children of 13-15 years of age.

The report states that compliance with the rules for employing 16- and 17-year-olds is fairly good in the sectors inspected, but there is room for improvement in the case of 13-15-year-olds. The report also indicates that working hours and rest periods in holiday and part-time jobs are the main problems in the retail and hotel and catering industry, particularly children's working hours.

The Committee requests that the next report provide updated information on inspections carried out by the Labour Inspectorate and the number of breaches detected and sanctions imposed in relation to the prohibition of employment under the age of 15.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 7§1 of the Charter.

## **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 the Netherlands.

The report states that there have been no new developments to the situation which the Committee previously found to be in conformity with Article 7§2 of the Charter.

The Committee previously noted the high incidence of accidents with farm machinery involving children under 16 and asked that the next report contain an update on the findings of the Labour Inspectorate with regard to employment of young persons under the age of 18 for dangerous or unhealthy activities.

In reply, the report indicates that the Labour Inspectorate examined the working conditions of children and young persons during the inspections performed (for example if the work is performed in the vicinity of hazardous substances or machinery). In the agricultural and horticultural industries, the inspections focused on the access of children into glasshouses or fields containing crops after they have been treated with plant protection products. Children aged 13, 14 or 15 are not allowed to work among or with crops that have been treated with a protection product within the past two weeks. The report indicates that breach of the access rules were identified in the agricultural and horticultural industries. The Committee asks for information on the number of violations and sanctions imposed by the Labour Inspectorate in this sense.

The report adds that 15% of the companies inspected did not conduct a comprehensive risk identification and assessment and consequently 12 companies were fined for this infringement. The report indicates that children sometimes performed prohibited tasks, such as manning a till on their own or operating industrial dishwashers. The Committee asks how many children and young persons under the age of 18 were identified operating dangerous machinery and what measures/sanctions were taken in this regard.

### *Conclusion*

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

The report states that until 1 July 2011, 15-year-olds were permitted to work until 7 p.m. It also indicates that the detailed rules on child labour have been amended. For example, the working time limit in the evening for 15 year-olds has been extended to 9 p.m. during the holidays, and the corresponding rest periods have been adjusted accordingly. The Committee asks for detailed and updated information on the new applicable rules concerning working time and rest periods for children subject to compulsory education during school term and holidays. Meanwhile, it reserves its position on this point.

The Committee concluded previously that the situation was not in conformity with Article 7§3 of the Charter on the ground that children aged 15 who are still subject to compulsory education were not guaranteed the benefit of an uninterrupted rest period of at least two weeks during summer holiday (Conclusions 2011). The report indicates that children aged 15 still in compulsory full time education are permitted to work a maximum of six weeks during the holidays, but not more than 4 weeks consecutively. The report adds that the annual length of school holidays amounts to 12 weeks distributed as follows: one week in the autumn, two weeks at Christmas, one week in the spring and a minimum of eight weeks in the summer.

The Committee notes that the situation has not changed since the right of two consecutive weeks of rest is not always guaranteed, as it is the case for example when a young person during the summer holidays works for four consecutive weeks, then has a week free followed by one more week of work. As noted in its Statement of interpretation on Article 7§3 (Conclusions 2011), the Committee considers that an uninterrupted period of rest which should under no circumstances be less than two weeks, must be provided for during summer holidays. As this is not the case in the Netherlands, it considers that the situation is still not in conformity with Article 7§3 of the Charter on this point.

The Committee previously found that the situation is not in conformity with the Charter as the law allows children aged 15 years subject to compulsory education to deliver newspapers from 6 a.m. onwards for up to two hours on school days, 5 days per week before school. The report indicates that there have been no changes to the situation. It also indicates that the practice of newspaper delivery by children is closely monitored by the Dutch Labour Inspectorate. The Committee asks for updated information on the findings of the Labour Inspectorate. Meanwhile, the Committee maintains its conclusion of non-conformity on this point.

### *Conclusion*

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

- children aged 15 who are still subject to compulsory education are not guaranteed an uninterrupted rest period of at least two weeks during summer holiday;
- it is possible for children aged 15, who are still subject to compulsory education, to deliver newspapers before school from 6 a.m. for up to 2 hours per day, 5 days per week.

## **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 the Netherlands.

The report states that there have been no changes to the situation which the Committee, in its previous conclusion, found to be in conformity with Article 7§4 of the Charter.

The Committee takes note of the information on the inspections carried out by the Labour Inspectorate in 2010. It notes that 18% of the breaches detected related to the working hours and rest periods of young persons aged 16 and 17. The report states that compliance with the rules for employing young persons of 16 and 17 years of age is fairly good in the sectors inspected.

The Committee recalls that the situation in practice should be regularly monitored and requests that the next report provide updated information on inspections carried out by the Labour Inspectorate and the number of breaches detected and sanctions imposed in relation to working time and rest periods for young persons under 18 who are not subject to compulsory education.

### *Conclusion*

The Committee concludes that the situation in the Netherlands is in conformity with Article 7§4 of the Charter.

## **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 the Netherlands and in the comments addressed by FNV (Netherlands Trade Union Confederation) on 20 November 2014.

The report states that there have been no changes to the situation which the Committee previously found not to be in conformity with Article 7§5 of the Charter on the ground that young workers' wages and apprentices' allowances were not fair.

### **Young workers**

The Committee notes from the Report of the Governmental Committee concerning Conclusions 2011, that young people are entitled to a given percentage of the adult minimum wage that ranges from 30% at the age of 15 to 45.5% at the age of 18.

The Committee recalls that the young workers' wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For 15/16 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%.

The Committee considers that the gap between the minimum wages of a young worker and an adult is manifestly disproportionate. It finds that the situation remains unsatisfactory and does not meet the requirements of Article 7§5 of the Charter. The Committee therefore maintains its conclusion of non-conformity on this point.

Under Article 7§5 the Committee examines if young workers are paid the equivalent of 80% of a minimum wage in line with the Article 4§1 fairness threshold (60% of the net average wage). Thus, if young workers' wage amounts to 80% of the minimum threshold required for adult workers (60% of the net average wage), the situation would be in conformity with Article 7§5 (Conclusions XVII-2 (2005), Spain).

In order to assess the situation, the Committee needs information on the minimum wage/starting wage of young workers and adult workers calculated net. The Committee underlines that it requests information on the net values, that is, after deduction of taxes and social security contributions. Net calculations should be made for the case of a single person. In the meantime, the Committee reserves its position on this point.

### **Apprentices**

As regards apprentices, the report indicates that they are not considered regular young workers and therefore they do not benefit of a regular young worker's wage. The report does not provide information on the apprentices' allowances. The Committee asks the next report to indicate how the apprentices' allowances are determined and examples of concrete allowances paid to apprentices. Meanwhile, it maintains its conclusion of non-conformity on this point.

The Committee notes from the comments submitted by FNV that according to research (National Apprentices Monitor 2014, Stageplaza), 23.5% of the apprentices do not receive any form of remuneration. It asks the next report to comment on the information provided by FNV.

### *Conclusion*

The Committee concludes that the situation in the Netherlands is not in conformity with Article 7§5 of the Charter on the grounds that:

- young workers' wages are not fair;
- apprentices' allowances are not adequate.

## **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 the Netherlands.

The report indicates that there have been no new developments to the situation which the Committee found not to be in conformity with Article 7§6 of the Charter on the ground that it has not been established that the great majority of young workers have a right to remuneration for time spent on vocational training with the consent of the employer (Conclusions 2011).

The report indicates that the Dutch legislation does not oblige employers to continue paying wages when employees receive vocational training outside the workplace. However, the social partners may agree in the collective agreement for the industry or business concerned that training time will be remunerated. The report provides statistics with regard to vocational training on a block or day release basis. For example, 55 of the 100 collective agreements examined contained agreements about training. In 33 of these 55 collective agreements, it is stipulated that salary continues to be paid during the training (in full or in part). In 22 of the 55 collective agreements with block or day release arrangements, employees are not paid for the time they are in training. The report adds that although time spent in vocational training is deemed to be working time, this does not necessarily mean it should also be remunerated as such.

The Committee notes from the information contained in the Report of the Governmental Committee concerning Conclusions 2011 that in 26% of the collective agreements time spent on vocational training including time spent outside the work place was paid as normal working time, and consequently 30-35% of the young workers are paid when having vocational training outside the work place.

The Committee notes that most of young workers do not have the right to be remunerated for the time spent on vocational training with the consent of the employer, and therefore the situation is still not in conformity with Article 7§6 of the Charter.

### *Conclusion*

The Committee concludes that the situation in the Netherlands is not in conformity with Article 7§6 of the Charter on the ground that the time spent in vocational training is not included in the normal working time and remunerated as such for the majority of workers.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 7 - Paid annual holidays*

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

The report states that there have been no new developments to the situation which the Committee previously found to be in conformity with Article 7§7 of the Charter.

The Committee previously noted that most of infringements detected by the Labour Inspectorate involved breaches of rules on rest periods for which fines were imposed. It asked whether those included breaches of the rules on annual paid holidays for young workers (Conclusions 2011). The report indicates that 18% of the infringements detected in 2010 related to the working hours and rest periods of young workers aged 16 and 17 years.

The Committee recalls that the situation in practice should be regularly monitored and therefore it asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed by the Labour Inspectorate for breach of the regulations regarding paid annual holidays of young workers under the age of 18.

### *Conclusion*

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

The report states that there have been no new developments to the situation which the Committee previously found to be in conformity with Article 7§8 of the Charter.

The report indicates that the Labour Inspectorate imposed fines where children aged 15 and young people were found to be working after 7 p.m. and 11 p.m. respectively, in violation of their working hours and rest periods.

It results from the report that the rules on child labour have been amended. Until 1 July 2011, 15- year- olds were permitted to work until 7 p.m. The limit has been extended to 9 p.m. only during the holidays and the corresponding rest periods have been adjusted accordingly. The Committee asks detailed and up-to-date information on the new rules applicable to night work and rest periods for children. It also requests information on the activities of the Labour Inspectorate of monitoring the prohibition of performing night work by children.

### *Conclusion*

Pending receipt to the information requested, the Committee concludes that the situation in the Netherlands 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 the Netherlands.

In its previous conclusion (Conclusions 2011), the Committee noted that there was no general mandatory medical examination for workers under 18 years of age and therefore concluded that the situation was not in conformity with Article 7§9 of the Charter. The Committee notes from the report that there have been no changes to this situation during the reference period. It therefore maintains its conclusion of non-conformity on this point.

As regards the situation in practice, the report indicates that in 2011, 20 collective agreements specified an age for undergoing periodic work-related medical examinations. In only four collective agreements, young workers under 18 are mentioned as a category eligible for medical examination. The report adds that in the construction sector, the social partners have an agreement for regular medical control for all workers. However, the report states that there are no data available on the actual use of the regular medical examination by young workers under 18 years of age.

The Committee recalls that, in application of Article 7§9, the law must provide for a compulsory full medical examination on recruitment and regular check-ups thereafter (Conclusions XIII-1 (1993), Sweden). The intervals between check-ups must not be too long. In this regard, an interval of two years has been considered to be too long by the Committee (Conclusions 2011, Estonia). Given that there are no data available on the use made by young workers of the opportunity to undergo medical examinations, nor on the intervals between medical check-ups, the Committee maintains its conclusion that the situation is not in conformity with Article 7§9 of the Charter on the ground that it has not been established that regular medical examination of young workers is guaranteed in practice.

### *Conclusion*

The Committee concludes that the situation in the Netherlands is not in conformity with Article 7§9 of the Charter on the grounds that:

- there is no general mandatory medical examination for workers under 18 years of age;
- it has not been established that regular medical examination of young workers is guaranteed 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 the Netherlands.

#### ***Protection against sexual exploitation***

In reply to the Committee's question (Conclusions 2011) regarding the measures taken to reduce risks of sexual exploitation relating to sex tourism, the report states that in 2012 the mandate of the National Rapporteur on Human Trafficking was extended to include sexual violence against children. Workshops organised by the organisation 'M', in cooperation with the police, on ways of reporting crime anonymously have been offered to social workers and health professionals in the four major cities. According to the report, these professionals possess information about child victims of sexual exploitation, but are still insufficiently familiar with the facilities available to pass it on anonymously. In so doing, they could help to detect human trafficking without harming the interests of the victims.

Consultations are provided free of charge and, if so desired, anonymously by the Municipal Health Service for young people in all parts of the country. Emphasis is placed on sexual assertiveness and sexual violence.

Training in the area of youth prostitution is provided by NGOs to workers involved in prevention, police officers, local and provincial government officials, social workers and schools.

The Committee asks the next report to provide an update of the situation in law as regards protection of children (until 18 years of age) from all forms of sexual exploitation.

#### ***Protection against the misuse of information technologies***

In 2013, the Minister of Security and Justice underlined the commitment to continuing the use of the entrapment method to track down and prosecute persons seeking to contact minors over the internet in order to sexually abuse them. This involves a police officer posing as a minor and creating an online profile to lure these 'groomers' before they can actually abuse or exploit adolescents. Using this approach, offenders can be identified and caught before they can claim any victims.

The Committee notes from ECPAT (Global monitoring status of action against commercial sexual exploitation of children, the Netherlands) that structured and continuous awareness raising among children on how to use internet communication safely is needed. Ideally, according to ECPAT, preventing sexual exploitation should be incorporated in the school curriculum, with sex education and assertiveness training, beginning at primary school. The Committee asks what measures are taken in this respect.

The Ministry of Security and Justice commissioned a film to alert children, parents, friends and teachers to the risks of social media. The Ministry also tasked Codename Future with developing an active learning package for schools based on the film. The target group is secondary school pupils. Schools were informed about the package in September 2013 and 45 signed up for it in the first week alone.

#### ***Protection from other forms of exploitation***

In its Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands, the Group of Experts against Trafficking in Human Beings (GRETA, 2014) invited the Dutch authorities to continue and further strengthen their efforts to identify victims of trafficking for the purpose of labour exploitation, especially among irregular migrant workers, and to detect victims of trafficking among asylum seekers, in particular unaccompanied foreign minors. GRETA recommends

improving the detection and identification of child victims of trafficking, including by setting up a specific identification mechanism which takes into account the special circumstances and needs of child victims, involves child specialists and ensures that the best interests of the child are the primary consideration.

The Committee asks for information about the factual information on the extent and character of the problem of child trafficking and street children.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 7§10 of the Charter.

## **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 the Netherlands.

### ***Right to maternity leave***

The Committee previously noted that the Work and Care Act (*Wet Arbeid en Zorg*) provides for sixteen weeks maternity leave, that is six weeks before the expected date of birth and ten weeks afterwards. The Working Time Act (*Arbeidstijdenwet*) prohibits employees from working during the four weeks before childbirth and six weeks after childbirth. In reply to the Committee's question, the report confirms that the same rules apply to women employed in the public sector.

### ***Right to maternity benefits***

The Work and Care Act provides that, in order to be entitled to maternity benefits, female employees or persons equated with employees must apply through their employer to the Employee Insurance Agency (*Uitvoeringsinstituut Werknemersverzekeringen UWV*) at least two weeks before the date on which the benefits should start. The same applies to women employed in the public sector. The benefits correspond to 100% of the daily wage, up to a ceiling of €197 per day, and cover the entire period of maternity leave (16 weeks).

The Committee refers to its Statement of Interpretation on Article 8§1 (Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

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

### ***Prohibition of dismissal***

The Committee notes from the report that there have been no changes to the situation which it previously found to be in conformity with Article 8§2 of the Charter: Article 7:670§2 of the Civil Code prohibits dismissal during the period of pregnancy and maternity leave and during the six weeks that follow maternity leave.

### ***Redress in case of unlawful dismissal***

Dismissal can be contested before a court and, if it is found unlawful and therefore void, the employee can claim compensation and reinstatement. In case of manifestly unreasonable dismissal, the court will award a compensation in relation with the damage suffered. No upper limits apply to the amount of such compensation and the limited jurisdiction sector of the district court (*kantonrechter*) decides on the reasonableness of the dismissal and on the amount of the compensation during the same proceedings. The employer may appeal against this decision.

In reply to the Committee's question, the report confirms, on the one hand, that the same regime regarding dismissals applies to government personnel who are employed under a civil-law contract of employment, for example those employed in special education. On the other hand, the rules governing dismissal and compensation that apply to personnel employed on the basis of a public-service appointment (in public-authority schools and government service) are contained in public-law instruments regarding legal status which are based on the Central and Local Government Personnel Act. The legal remedies of objection, application for review to the administrative sector of the district court and appeal to the Central Appeals Court for Public Service and Social Security Matters are available to any civil servant who is dismissed during maternity leave. The administrative court may either reverse the dismissal (while possibly directing that the legal consequences of the quashed decision will stand) or uphold it. In certain circumstances it may award extra compensation on the basis of a formula established by the Central Appeals Court for Public Service and Social Security Matters in 2013. A public servant may be entitled to this extra compensation if he or she is dismissed on 'other grounds' as a result of which there has been an irretrievable breakdown in the relationship with the employer or it has reached an impasse, largely through the actions of that employer. The calculation of the amount of the extra compensation is based on the degree of responsibility (once it exceeds 51%) borne by the administrative authority for the breakdown (falling into one of three bandwidths), the amount of the employee's monthly salary and length of service. The extra compensation is not subject to a statutory maximum. So although compensation for public servants who are dismissed during maternity leave is, legally speaking, awarded in a different way and on a different basis, this compensation is nevertheless comparable to that which they would receive if they worked in the private sector, according to the report. In light of this clarification, the Committee considers that the situation is in conformity with Article 8§2 of the Charter.

### ***Conclusion***

The Committee concludes that the situation in the Netherlands is in conformity with Article 8§2 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

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

Under the Working Time Act, Section 4:8.1-3, during the first 9 months of her child's life, a worker is entitled to interrupt her work to nurse or pump breastmilk, enjoying the necessary quiet and seclusion. Breaks for this purpose take place as often as for as long as required, up to 25% of the working time per work period. The determination of the time and length of the breaks is made by the worker in consultation with the employer. The breaks count as working time and are paid.

In reply to the Committee's question, the report confirms that the same applies to women employed in the public sector.

### *Conclusion*

The Committee concludes that the situation in the Netherlands 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 the Netherlands.

In response to the question raised in the previous conclusion (Conclusions 2011), the report confirms that, before starting night work, workers must be given the opportunity to undergo a medical assessment (Article 2.43 of the Working Conditions Decree, which forms part of the Working Conditions Act). In its Conclusions on Article 2§7 of the Charter (Conclusions 2014) the Committee furthermore noted that employees engaged in night work have a statutory right to undergo an occupational health medical examination at regular intervals, with a view to preventing or limiting the risks posed to their health by their work to the greatest possible extent (section 18 of the Working Conditions Act), and that, in case of health problems, they should be transferred as soon as possible to daytime shifts.

The same rules apply to employees who are pregnant, have recently given birth or are nursing their infant, both in the private and public sector. In a more specific way, Section 4:5, subsections 5 and 7, of the Working Hours Act sets a general prohibition on night working for pregnant employees and those having given birth in the last six months, "unless the employer can make a plausible case that it cannot reasonably be required of him/her to exempt the employee in question from nightworking". In response to the Committee's request for clarifications on the reasons that might be plausible for imposing nightwork in these cases, the report indicates that this would be subject to judicial assessment, weighing the interests involved. However, such cases are extremely rare, according to the report. In light of the explanations provided, the Committee considers that the situation is in conformity with Article 8§4 of the Charter.

### *Conclusion*

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



## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

The Working Conditions Decree (Section 6.29a) prohibits pregnant and nursing employees from working in the underground mining industry.

In addition, the Committee previously noted that, according to the same Decree, specific attention is paid in the risk assessment of the work of the employee concerned to the non-exhaustive list of agents, processes and conditions included in EU Directive 92/85/EEC. Pursuant to Section 1.42 of the aforementioned Decree, employers are required to organise the work in such a way that there are no risks to pregnant or nursing employees and no ill-effects on pregnancy and nursing. For example, pregnant and nursing women may not be exposed to lead and lead compounds or to biological agents (toxoplasma, rubella), nor may they work in a hyperbaric atmosphere. The lifting of weights of more than 10kg is also prohibited throughout the pregnancy or in the three-month period after giving birth (Section 3.2.5.13a of the Working Conditions Decree).

In reply to the Committee's question, the report confirms that if an employee is exempted from work during the protected period because her work represents a risk to her health that is not avoidable by changing her working conditions or hours and she cannot be temporarily transferred to another work, her leave will be paid and she has a right to reinstatement when her condition permits it. The report furthermore confirms that this also applies to women employed in the public sector.

### *Conclusion*

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

## **Article 12 - Right to social security**

### *Paragraph 1 - Existence of a social security system*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by the Netherlands in response to the conclusion that it had not been established that there was a reasonable initial period during which an unemployed person may refuse unsuitable job offer without losing his/her unemployment benefit (Conclusions 2013, the Netherlands).

The Committee recalls that in order to meet the requirements of Article 12§1 unemployment benefits must not only be of an adequate level and be paid for a reasonable duration, there must also be a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching his previous skills without losing his unemployment benefits (Conclusions XVIII-1 (2006), Germany).

The report states that persons in receipt of unemployment benefits have an obligation to seek and accept suitable employment. Work that is not suitable may be refused. The Unemployment Act (*Werkloosheidswet, WW*) provides that after one year of unemployment any employment is considered suitable, but may still be refused if justified by physical, mental or social circumstances.

The Directive Suitable Work, 2008, lays down standards concerning the definition of suitable work: during the first six months of unemployment, an unemployed person has the right to search for a job corresponding to the qualifications he or she has acquired through study and/or work experience. After six months of unemployment, an unemployed person is obliged to search for work that is qualified one level lower than the level of the preceding six months. As noted above after 12 months of unemployment, any job is considered suitable and may be refused only in special circumstances. The Committee asks that the next report explain the qualification levels referred to in the definition of suitable work.

In view of the elements outlined above, the Committee holds that the situation is in conformity with the Charter.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 12§1 of the Charter as regards a reasonable initial period during which an unemployed person may refuse unsuitable job offer without losing his/her unemployment benefit.

## **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 the Netherlands.

### ***Social protection of families***

#### ***Housing for families***

The Netherlands has accepted Article 31 of the Charter on the right to housing. As all aspects of housing of families covered by Article 16 are also covered by Article 31, for states that have accepted both articles, the Committee refers to Article 31 on matters relating to the housing of families.

In respect of the special Caribbean municipalities (Bonaire, St Eustatius and Saba), the report indicates that the housing strategy for 2011-2015 focuses on the construction of new social housing. The Ministry of the Interior and Kingdom Relations provided grants in 2011 through two European Dutch housing associations that have a cooperation agreement with the housing associations in the islands. Thanks to these grants: 101 new dwellings have been built in Bonaire and 20 in Saba. The Ministry undertook to provide more grant funding in 2013 to build 75 new dwellings in Bonaire, 7 in St Eustatius and 20 in Saba.

As far as eviction is concerned, the report stresses that there is no threat of eviction in Saba and St Eustatius. In Bonaire, the FCB housing association and the public body have adopted a protocol to prevent eviction. The protocol sets out all the steps that must be taken before a tenant is evicted as a last resort. The protocol is intended to prevent eviction, to agree alternative solutions with residents, etc. The FCB and the Bonaire public body also run a joint project to create payment plans for rent arrears and provide other kinds of help to families with rent arrears.

#### ***Childcare facilities***

The Committee notes that as the Netherlands has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

In respect of the special Caribbean municipalities (Bonaire, St Eustatius and Saba), the report indicates that the islands authorities are responsible only for after-school care and that initiatives have been taken for other types of care.

The Committee recalls that States are required to ensure that childcare facilities are available, affordable and of good quality (coverage with respect to the number of children aged 0-6, ratio of staff to children, staff training, suitable premises and cost of childcare to parents, etc.) (Conclusions XVII-1 (2004), Turkey). It therefore asks the next report to provide detailed information on childcare facilities for the special Caribbean municipalities. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the 1961 Charter in this respect.

#### ***Family counselling services***

Pursuant to the Social Support Act, municipalities shall provide support and care to children, young people and their parents usually through the Youth and Family Centres (CJGs). The report indicates that the centres are easily accessible to parents and young people. They are responsible for fulfilling two main tasks: providing information and general and preventive support in relation to child development and parenting and ensuring a comprehensive system so that risk and problems surrounding health, development, growing up and parenting are identified and dealt with effectively and at an early stage.

In addition, if the support offered by CJGs is not enough, parents and young people can go to the nearest Youth Care Office, which carry out a needs assessment and the tasks of the Child Abuse Advice and Reporting Centre, implement youth protection measures and provide guidance to young people who have been convicted of an offence or are suspected of committing one. Every province has a Youth Care Office and metropolitan regions of Amsterdam, Rotterdam and The Hague have also their own Youth Care Offices.

In the specific case of families with mental health problems the report indicates that they are referred to the mental health services.

In respect of the special Caribbean municipalities (Bonaire, St Eustatius and Saba), the report indicates that the local government, local institutions and the Youth Care Inspectorate worked together to set up Youth and Family Centres.

### ***Participation of associations representing families***

The report provides a long list of family associations that can be consulted in the framing of family policies.

In respect of the special Caribbean municipalities (Bonaire, St Eustatius and Saba), the report indicates that associations representing families have still to be established. The Committee asks the next report to indicate the progress achieved in this regard.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

In its previous conclusion (Conclusions 2011) the Committee asked to be informed on amendments made to the Civil Code regarding community of property. The report indicates that under the amending bill, which entered into force on 1 January 2012, only the spouse who receives assets as an heir, beneficiary or donee is entitled to dispose of the assets that were part of that estate or gift. It also states that the same applies to legacies and charged benefits.

In respect of the special Caribbean municipalities (Bonaire, St Eustatius and Saba), following a request of the Committee the report confirms that there is no distinction between children born in or out of wedlock in inheritance cases.

#### ***Mediation services***

The report indicates that courts regularly refer people to a mediator and that the success rate of mediation is around 60%.

The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the provision of mediation services whose object should be to avoid the further deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from seeking such services for financial reasons. Providing these services free of charge constitutes an adequate measure to this end. Otherwise, in case of need, a possibility of access for families should be provided. The report indicates that a personal contribution towards the costs is charged for mediation services on the basis of income. It also states that if a person has an income below a certain threshold a government-funded mediator may be appointed. Finally, the report indicates that most legal insurance policies cover the costs of mediation.

In respect of the special Caribbean municipalities (Bonaire, St Eustatius and Saba), the report provides no information on mediation services. The Committee therefore reiterates its request for information on such services, whether they are free of charge, how they are distributed across the country and how effective they are. Should the next report not provide

the requested information there will be nothing to show that the situation is in conformity with the 1961 Charter in this respect.

### ***Domestic violence against women***

The Committee refers to its previous conclusion (Conclusions 2011) for an overall description of the legislation concerning domestic violence against women.

In this conclusion it takes note of recent developments in this field. First, the report mentions the project entitled 'Dealing with domestic violence', which was set up to run from summer 2012 to the end of 2014. This project focuses on all types of violence related to the home or family and aims at enhancing the policy approach to this violence at local level. Second, a new publicity campaign on domestic violence was started in 2012 consisting in radio and television adverts about child abuse, intimate partner violence and elder abuse, a website and a toolkit with materials for municipalities, domestic violence support centres. Third, on 14 November 2012, the Netherlands signed the Council of Europe Convention on preventing and combating violence against women and domestic violence. The bill to ratify the Convention was to be submitted to the Parliament in 2014.

In respect of the special Caribbean municipalities (Bonaire, St Eustatius and Saba), the report indicates that domestic violence is a frequent issue, which is not tackled with adequately. The Committee considers that the situation is not in conformity with the 1961 Charter on the ground that the protection against domestic violence against women is not adequate.

### ***Economic protection of families***

#### ***Family benefits***

According to Eurostat data, the monthly median equivalised income in 2013 was €1,736. According to MISSOC, in 2014, the monthly amounts of universal child benefit was €63.88 (up to 5 years), €77.57 (6 to 11 years), and €91.26 (12 to 17 years). The Committee notes that these amounts per month correspond to 3.6%, 4.46% and 5.2% of monthly median equivalised income. It also notes that child benefit for families with children up to 5 and children aged 6-11 is low (3.6% and 4.46%).

While noting that the above-mentioned benefit rates are low, the Committee also takes into account the child-related allowance (*Wet op het kindgebonden budget, WKB*), the amount of which depends on the income of the parent(s), the number of children and the age of the children. The maximum amount of this allowance is granted to parents, whose household income does not exceed €26,147. For children between 12 and 18 there is an extra allowance. The combination of the universal child benefit and the child-related allowance brings the percentage vis-à-vis the monthly median equivalised income to a higher level. For instance, a child up to 5 whose parents' income does not exceed €26,147 will receive €63.88 + €84.75 = €148.63 per month which corresponds to 8.5% of monthly median equivalised income. In view of the foregoing and in order to assess the adequacy of child benefit the Committee asks the next report to indicate the number of families receiving the combination of the universal child benefit and the child-related allowance. Meanwhile, it reserves its position on this point.

The Committee takes also note of various specific benefits such as the one for children with disabilities living at home, childcare benefit for children cared for outside the home and several tax measures.

In respect of the special Caribbean municipalities (Bonaire, St Eustatius and Saba), the report indicates that there is no child benefit scheme. The Committee considers that the situation is not in conformity with the 1961 Charter on the ground that there is no child benefit scheme.

### ***Vulnerable families***

In its previous conclusion (Conclusions 2011) the Committee asked what measures were taken to ensure the economic protection of Roma families.

In this regard, the report mentions various measures such as municipalities' responsibility for enforcing the law combating school absenteeism, helping people find jobs, equal access to healthcare insurance, equal access to social housing market, assistance in case of discrimination, the 'Integrated Services' programme supporting municipalities in implementing innovations in the social field. The Committee asks that the next report indicate the outcome of the measures taken by municipalities.

In respect of the special Caribbean municipalities (Bonaire, St Eustatius and Saba), the report indicates that single-parent families are a key target group of the integrated approach on socio-economic issues. The Committee asks the next report to provide detailed information on the outcome of the policies that are being adopted.

### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The report indicates that foreign nationals, residing or working legally in the Netherlands are treated on an equal footing with nationals as regards family benefits.

In respect of the special Caribbean municipalities (Bonaire, St Eustatius and Saba), the report indicates that in the absence of a child benefit scheme a tax allowance scheme is available for resident taxpayers irrespective of their nationality.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

### ***Conclusion***

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

- in respect of the special Caribbean municipalities, the protection against domestic violence against women is not adequate;
- in respect of the special Caribbean municipalities, there is no child benefit scheme.

## **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 the Netherlands in respect of Aruba.

### ***Social protection of families***

#### ***Housing for families***

The *Fundacion Cas pa Comunidad* (FCCA) builds homes for low-income and middle income families. Eligibility for housing subsidies is stipulated at a monthly income of €1,647, of which no more than 30% may be for the rent itself. The FCCA and the Government recently signed a lease agreement in which the FCCA shall construct 20 homes in the form of a “Smart Community”. These new houses will be built meeting standards of sustainable energy. This is a new development in home construction.

As regards eviction, the report indicates that the FCCA has its own policy. Eviction is permissible when the tenant fails to pay rent for a long period. Social workers of the Department of Social Affairs help those targeted for eviction avoid it. The FCCA is also requested to refer tenants to the Department of Social Affairs before the arrears become too high and difficult to make up. Should eviction take place, the evicted may be eligible, in accordance with the Welfare Assistance Decree (AB 1989 no. 88), for temporary emergency assistance in the form of housing.

The Committee recalls that States must set up procedures to limit the risk of eviction (Conclusions 2005, Sweden). The Committee also recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction

In view of the lack of information on these points the Committee considers that the situation is not in conformity with the 1961 Charter on the ground that there is no adequate legal protection for persons threatened by eviction.

### ***Childcare facilities***

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)) for an overall description of childcare facilities.

It notes that despite its request the report provides no information on the draft legislation to regulate official approval of health and safety conditions in childcare facilities. It asks the next report to provide information on the follow-up to this draft legislation. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the 1961 Charter in this respect.

### ***Family counselling services***

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)) for an overall description of family counselling services.

### ***Participation of associations representing families***

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)) for a description of the situation.

## ***Legal protection of families***

### ***Rights and obligations of spouses***

The report indicates that spouses have an obligation of fidelity, help and assistance towards one another. They provide what is needed to each other. Spouses also have the obligation to take care of their children and provide for their upbringing (Articles 81 and 82 of the new Civil Code). Spouses may perform legal transactions with or without each other's consent. However, spousal consent is necessary as it regards specific contracts.

Concerning children the report indicates that minors are subject to custody, which refers to parental custody, or guardianship. This custody is exercised by both parents jointly or by one parent after divorce. Parental custody extends to the control over the child's assets and representation in civil transactions. It also encapsulates the obligation of the parent to take care and bring up the child, entailing the responsibility for the mental and physical welfare of the child and the development of his/her personality.

In case of a conflict of interest between the parents and the child, as it concerns his/her care, upbringing or assets, the Court of First Instance may appoint a special trustee at the request of the affected party or at the judges official discretion.

### ***Mediation services***

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 considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided.

The report provides no information on mediation services, the Committee therefore considers that the situation is not in conformity with the 1961 Charter on the ground that there are no mediation services.

### ***Domestic violence against women***

Despite the Committee's request the report does not provide any information on domestic violence against women. It therefore considers that the situation is not in conformity with the 1961 Charter on the ground that there is no adequate protection, both in law and in practice, for women in case of domestic violence.

### ***Economic protection of families***

#### ***Family benefits***

The Committee notes from the report that families receive €93 as child benefit per month. Moreover, it notes that for children attending school of three years up to the age of 24 years there is an additional €106 per month. In its previous conclusion (Conclusions XIX-4 (2011)), the Committee asked for the median equivalised income in order to assess whether child benefit constitutes an adequate income supplement. The report provides no information in this respect, the Committee therefore reiterates its question. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the 1961 Charter in this respect.



### ***Vulnerable families***

The report indicates that for the most financially vulnerable families, the Government, after having consulted its social partners, introduced a wage supplement for workers in the private sector earning a monthly wage between €868 and €1,299. This wage supplement varies from €16 to €53 per month depending on the monthly wage.

The Committee asks the next report to indicate what other measures have been taken to ensure the economic protection of vulnerable families, including single-parent families.

### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The Committee notes from the Governmental Committee's report (Report concerning Conclusions XIX-4 (2011)) that nationals of other States Parties to the 1961 Charter and the Charter as well as stateless persons are guaranteed equal treatment with regard to family benefits if they have had at least three years of legal residence in Aruba. The Committee considers that the situation is not in conformity with the 1961 Charter on the ground that equal treatment of nationals of States Parties to the 1961 Charter and the Charter and stateless persons regarding the payment of family benefits is not ensured because the length of residence requirement is excessive.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

### ***Conclusion***

The Committee concludes that the situation in the Netherlands in respect of Aruba is not in conformity with Article 16 of the 1961 Charter on the grounds that:

- there is no adequate legal protection for persons threatened by eviction from their housing;
- there are no mediation services;
- there is no adequate protection, both in law and in practice, for women in case of domestic violence;
- equal treatment of nationals of States Parties regarding the payment of family benefits is not ensured because the length of residence requirement is excessive.

## **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 the Netherlands in respect of Curaçao.

### ***Social protection of families***

#### ***Housing for families***

The Committee has constantly interpreted the right to economic, legal and social protection of family life provided for in Article 16 as guaranteeing the right to adequate housing for families, which encompasses secure tenure supported by law (Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint No. 52/2010, decision on the merits of 22 June 2010).

Under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment. The Committee recalls that this obligation extends to ensuring protection against unlawful eviction (European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24).

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies. Any appeal procedure must be effective (Conclusions 2003, France). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction

To enable it to assess whether the situation is in conformity with Article 16 of the 1961 Charter as regards access to adequate housing for the families, the Committee asks for information in the next report on all the aforementioned points.

#### ***Childcare facilities***

The Committee points out that states must ensure that affordable, good quality childcare facilities are available to its citizens (where quality is defined in terms of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and the size of the financial contribution parents are asked to make).

The Committee asks for information in the next report on childcare facilities.

#### ***Family counselling services***

Families must be able to consult appropriate social services, particularly when they are in difficulty. States are required in particular to set up family counselling services and services

providing psychological support for children's education. The Committee asks for information to be included in the next report on family counselling services.

### ***Participation of associations representing families***

To ensure that families' views are catered for when family policies are framed, the authorities must consult associations representing families. The Committee asks for information in the next report on the participation of relevant associations representing families in the framing of family policies.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The Committee recalls that spouses must be equal, particularly in respect of rights and duties within the couple (reciprocal responsibility, ownership, administration and use of property, etc.) (Conclusions XVI-1 (2002), United Kingdom) and children (parental authority, management of children's property). It also states that in cases of family breakdown, Article 16 requires the provision of legal arrangements to settle marital conflicts and, in particular, conflicts relating to children: care and maintenance, custody and access to children.

The Committee asks the next report to provide information on the rights and obligations of spouses in the light of its above-mentioned case-law.

#### ***Mediation services***

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 considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided.

The report indicates that the Government instituted a Social Mediation Bureau in order to halt the increasing number of subsidized judicial cases. The Committee asks the next report to provide information on all these points.

#### ***Domestic violence against women***

The Committee recalls that Article 16 requires that protection for women exists, both in law (through appropriate measures and punishments for perpetrators, including restraining orders, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (through the collection and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims).

The report indicates that in May 2012 the NGO National Alliance working against child abuse and domestic violence held a national dialogue with Government officials, policy advisors and other stakeholders. It stresses that the Ministry of Social Development, Labour and Welfare reiterated its commitment to combat domestic violence and child abuse by working with the Alliance to prepare structural and comprehensive policies in these fields. In addition, in October 2013 the Government issued a National Decree instituting a Committee to work on the development of an action plan to combat child abuse and domestic violence. The Committee asks the next report to provide information on the legal framework ensuring the

protection of women against domestic violence, the outcomes of the policies implemented and the content of the action plan.

### ***Economic protection of families***

#### ***Family benefits***

The Committee considers that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of median equivalised income.

The Committee notes that family benefits are only paid to certain groups in Curaçao, such as civil servants and employees of government companies. The amount of these benefits is €29 per child. The Committee considers that the situation is not in conformity with the 1961 Charter on the ground that the system of family benefits covers only families belonging to a certain category of the population.

#### ***Vulnerable families***

States' positive obligations under Article 16 include implementing means to ensure the economic protection of various categories of vulnerable families, in particular single-parent families.

The Committee asks the next report to indicate what measures are taken to ensure the economic protection of various categories of vulnerable families, in particular single-parent families.

#### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

As mentioned earlier family benefits are only paid to certain groups in the society, such as civil servants and employees of government companies. In view of the foregoing, the Committee understands that foreign nationals are not entitled to family benefits. The Committee therefore considers that the situation is not in conformity with the 1961 Charter.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

#### ***Conclusion***

The Committee concludes that the situation in the Netherlands in respect of Curaçao is not in conformity with Article 16 of the 1961 Charter on the grounds that:

- the system of family benefits covers only families belonging to a certain category of the population;
- foreign nationals are not entitled to family benefits.

## **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 the Netherlands.

### ***The legal status of the child***

The Committee notes that there have been no changes to the situation which it has previously (Conclusions 2011) found to be in conformity with the Charter.

### ***Protection from ill-treatment and abuse***

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.

### ***Rights of children in public care***

In its previous conclusion the Committee asks what were the criteria for the restriction of custody or parental rights.

It notes from the report that only a civil children's judge may issue a care order. A child can only be taken into care by the Youth Care Office on the basis of a care order. The Youth Protection Board has a statutory task in assessing a decision by the Youth Care Office to extend or prematurely terminate a care order.

The criteria for youth protection measures (guardianship and supervision) are laid down in the Civil Code. The Child Protection Board investigates care or parenting situations if they suspect the child's fundamental right to healthy and harmonious development is being violated.

Infringing upon the parents' right to bring up their own children is only allowed if there is a serious threat to the safe development and upbringing of the child, the parents are unable to remove that threat and they will not voluntarily accept help.

If this is the case, a supervision order will be requested on the basis of a report by the Child Protection Board. After the children's judge has made a decision on that request, a family supervisor will start working with the family. The focus will be on restoring the family's control over the child's upbringing – if possible with help from their own social network – and enabling them to resume their parenting responsibilities as soon as possible.

The Child Protection Board has the authority to petition the court to impose a child protection measure if the investigation gives cause to do so. A civil children's judge rules with regard to child protection measures for a maximum of one year. The judge requires access to all relevant information in order to make a decision. The judge will also want to talk to the child and the parents. Children aged 12 and above are always invited to an interview with the judge. Younger children may be called up or may request an interview with the judge.

According to the report, an appeal may then be lodged with the Court of Appeal, which reviews the case and makes a decision. The case is usually reviewed by three justices (appeal court judges). The Court of Appeal's decision in family cases takes the form of a court order. In some cases, an appeal against the court order can be lodged with the Supreme Court. Unlike the district court or the Court of Appeal, the Supreme Court does not look at the facts of the case. It only assesses whether the law (legislation and procedure) has been applied correctly by the Court of Appeal.

### ***Right to education***

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

### ***Young offenders***

In its previous conclusion the Committee found that the situation was not in conformity on the following grounds:

- minors could serve their sentence with adult prisoners;
- a prison sentence of up to 30 years could be imposed on minors which was excessive.

As regards the first ground, the Committee notes from the report that the Netherlands has a separate juvenile criminal law system with separate penalties and separate facilities to serve these penalties. Minors are always tried by a children's judge.

Juveniles who are aged 16 or 17 when they commit an offence may be given an adult criminal law sentence. The children's judge may decide this on the basis of the exceptional gravity of the offence, the circumstances of the offence or the perpetrator's personality. This is pursuant to Article 77b of the Penal Code. As a consequence, in accordance with the current system the enforcement of the sentence or measure will in principle take place within the adult system.

According to the report, when it introduced the adolescent criminal code, the Government considered abolishing the option of imposing an adult sentence on juveniles aged 16 or 17, but decided against it. This option, which is used very rarely as stated above, contributes to the support in society for the existence of a separate, less severe and more correctional juvenile criminal law and adolescent criminal law system. The 'extra option' of imposing adult sentences removes the necessity to introduce disproportionately harsher juvenile sentences across the board, in order to maintain sufficient options for adequate treatment or a credible judicial response to particularly serious offences.

The Committee notes that the court exercises its power to sentence juveniles under adult criminal law very circumspectly and there has been a strong decrease in these numbers, from 163 juveniles in 2002 (2.6% of the total group) to 50 and 56 juveniles in 2012 and 2013, respectively (0.8% and 1.2% of the total group).

In this connection, the Committee observes that the Commissioner for Human Rights recommends a number of steps to improve the juvenile justice system, including increasing the minimum age of criminal responsibility (currently at 12 years), changing the law which allows, by way of exception, that 16 or 17-year-old children are treated as adult criminals, and using more extensively alternatives to pre-trial custodial settings (2014, report on the visit to the Netherlands).

The Committee observes that the situation which it has previously found not to be in conformity with the Charter has not changed. It reiterates its previous finding of non-conformity on the ground that minors may be given an adult criminal law sentence and thus placed in adult detention facilities.

As regards the second ground, according to the report, life imprisonment is ruled out in these cases, but the maximum temporary custodial sentence of 30 years may be imposed. Such a long custodial sentence has never been handed down by a children's judge, however. Such a situation may occur, for instance, if the perpetrator can be considered equal to an 18-year-old in terms of his development, has committed an offence together with older perpetrators to whom adult criminal law applies, and the offence is particularly serious, for instance homicide. According to the report, the maximum 30-year prison sentence is only a theoretical possibility. In the vast majority of cases, the length of the sentence remains within the maximum under juvenile criminal law, i.e. two years.

The Committee observes that when referring to the juvenile justice, the competent international bodies require that the prison sentences imposed on juveniles should be as short as possible (Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Recommendation CM/Rec(2008)11 of the Committee of Ministers of the Council of Europe concerning the European Rules for juvenile offenders, United Nations Standard Minimum Rules for the Administration of Juvenile Justice). Accordingly, the Committee asks the States Parties to the Charter to take all possible measures to reduce the maximum length of prison sentence for young offenders, as well as to ensure that they make the best possible use of their right to education and vocational training, with a view to their reintegration into the society, once the sentence has been served.

In its previous conclusion the Committee noted that the number of juveniles ordered to be held in pre-trial detention decreased from 2,319 in 2007 to 1,852 in 2009. The Committee asked what is the maximum length of pre-trial detention.

It notes from the report in this regard that the hearing in first instance must take place within the maximum of 110 days of pre-trial detention. If the case is not brought before the court within 110 days, there is no legal basis for further detention of the suspect. If there are compelling reasons, the period may be longer, but it may not exceed three months.

### ***Right to assistance***

According to the report, the Supreme Court ruled on 21 September 2012 that the State has an obligation to protect the rights and interests of children in its jurisdiction, including children unlawfully present in the Netherlands. On the basis of this judgment, children and their parents are provided with shelter so that they do not find themselves in an urgent humanitarian situation as a result of their parents' decisions. Unaccompanied minor asylum seekers who have exhausted all legal remedies have the right to stay in the reception facility until they reach the age of majority.

Unaccompanied minor asylum seekers who are found living in the Netherlands illegally will be placed in a Young Offender Institution, under the care of the Central Agency for the Reception of Asylum Seekers or with a foster family. All aliens unlawfully resident in the Netherlands are entitled to necessary medical care (Section 10 of the Aliens Act 2000).

As regards the complaint *Defence for Children International (DCI) v. Netherlands*, No. 47/2008, decision on the merits of 20 October 2009, the Committee recalls that the follow-up will be made in Conclusions 2016.

### ***Conclusion***

The Committee concludes that the situation in the Netherlands is not in conformity with Article 17§1 of the Charter on the ground that minors may be given an adult criminal law sentence and thus placed in adult detention facilities.

## **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 the Netherlands.

According to the report, education policy is aimed at providing high-quality education which allows young people to get the best out of themselves and develop their talents. Obtaining a basic qualification (senior general secondary education (HAVO), pre-university education (VWO) or secondary vocational education (MBO) level 2 and higher) is the main priority.

The Netherlands focuses primarily on reducing the number of new early school leavers. A lower dropout rate means there are more well-educated young people finding their place on the labour market and contributing to society.

In reply to the Committee's question (Conclusions 2011), the report states that vulnerable families who incur necessary costs linked to education which they cannot cover themselves may apply for special funds from the municipality.

In its previous conclusion the Committee asked what were the drop out and absenteeism rates and what measures were taken to reduce them. It further asked whether vulnerable groups, such as unaccompanied children have a right to education.

According to the report, children aged 5 to 17 must attend school under the Compulsory Education Act. This includes unaccompanied minor asylum seekers and failed minor asylum seekers. A child who starts an education course before reaching the age of 18 may complete it, unless their return can be effected before the course is completed.

As regards measures to combat absenteeism, the report states that the priority is to focus on children and young people who are not attending school at all (either not enrolled or absent without permission for more than four weeks). There are two very important factors in ensuring these children and young people go back to school:

- a regional approach, with municipalities, school attendance officers, schools and partnerships working to provide pupils a place in a school that is suited to them.
- comprehensive registration, so that the whole group is visible and absenteeism can be tackled according to the method developed for this purpose.

According to the report, the targets for tackling the dropout rate at schools have been tightened. The aim is to reduce the number of new early school leavers to 25,000 by 2016. In 2012-2013, there were 27,950 new early school leavers, more than 8,500 fewer than the year before. The national percentage of early school leavers has dropped to 2.1%

In secondary education, the percentage dropped to 0.6% and in secondary vocational education it dropped to 5.7%.

The Committee notes that there is a downward trend in the numbers of school leavers from 3.2% in 2008 to 2.1% in 2012-2013.

The Committee further recalls that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that states parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2 , Conclusions 2011).

The Committee asks whether unlawfully present children have a right to education.



*Conclusion*

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

## **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 the Netherlands.

### ***Migration trends***

There has been a steady but slow rise in the number of immigrants arriving to work in the Netherlands. In 2010, 41,176 foreign nationals immigrated to the Netherlands for employment purposes, whether to undertake or to seek employment. In 2011 the figure was 47,311. In 2011, the vast majority came from the European Union (38,166) or other European countries (1,626). The number of emigrants from the Netherlands of all origins has remained stable, at a figure of 32,100 in 2011.

### ***Change in policy and the legal framework***

The report states that prior to granting a work permit, the Employee Insurance Agency (UWV) evaluates whether there is a shortage of qualified personnel in specific sectors and whether priority labour is available in the Dutch or EU labour market. With the exception of highly skilled migrants, few non-EU citizens are admitted to the Netherlands for employment purposes, because often an alternative solution can be found.

National admission policy does not apply to EU citizens, who are allowed to seek and find employment in the Netherlands without the need for a prior assessment of whether there is need in the Dutch labour market.

Highly skilled migrants are exempt from the labour market assessment. Employers must ensure that highly skilled foreign nationals receive a competitive salary.

The Committee notes that new national legislation in respect of preventing and combatting the exploitation of migrant workers is being prepared. The Committee asks for updated information on any changes to the legal framework concerning migrant workers to be provided in the next report.

### ***Free services and information for migrant workers***

The report states that there have been no new developments regarding the provision of free services and information to migrants.

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 asks for a full and up-to-date description of the measures taken in law and in practice to provide such information and assistance services to immigrants and emigrants. Should it not receive a full description of the services provided, there will be nothing to demonstrate that the situation in this regard is in conformity with the Charter.

The Committee notes that the website [www.newinthenetherlands.nl](http://www.newinthenetherlands.nl) provides an information brochure in a number of languages aimed at migrant workers, which explains their rights and provides some advice on issues such as housing and healthcare. 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. It asks what services are provided to migrants by other means.

### ***Measures against misleading propaganda relating to emigration and immigration***

The Committee refers to its previous Conclusion (Conclusions 2011), regarding measures taken to combat misleading propaganda.

In particular, the Municipal Anti-Discrimination Services Act entered into force in 2009, and requires authorities to provide Anti-Discrimination services (ADVs) to residents, to register and assist the settlement of discrimination complaints. The Committee notes from the report of the European Commission against Racism and Intolerance (ECRI) (adopted 2013) that approximately €6.2 million is earmarked for the municipalities and their ADVs. It notes that ECRI was informed by representatives of the bureaus that this sum is not sufficient to treat over 6000 discrimination cases, amongst other work, in an efficient way. The Committee asks that the next report provide up to date information on the scope and results of the abovementioned anti-discrimination services.

The report refers to the fact that the Government also supports the Complaints Bureau for Discrimination on the Internet (*Meldpunt Discriminatie Internet*), which receives complaints of discrimination and may ask websites to remove discriminatory material. It also provides training to organisations and moderators to recognise and combat discriminatory statements.

Furthermore, the Ministry of Foreign Affairs has also conducted anti-discrimination campaigns which include public information messages broadcast on television and radio, advertisements in newspapers, and a website.

The Committee notes from the abovementioned report of ECRI that “the settlement of Eastern Europeans in the Netherlands, as well as Islam and Muslims have been portrayed by politicians and media as a threat to Dutch society.” It also notes the existence of the Netherlands Press Council, which receives and rules on complaints concerning the behaviour of journalists.

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

The Committee also recognises that customs officers and officials of the Immigration and Naturalisation Service receive training respectively on prejudice and discrimination, and intercultural communication. The Committee wishes to know whether regular police officers receive specific training to combat discrimination in their work.

The Committee notes from the abovementioned report of ECRI that the Public Prosecution Service has issued new detailed instructions, providing, inter alia, for: the appointment of regional prosecutors and police officers specialised in dealing with discrimination and racist offences; and the obligation for the police to register specific racist offences, as well as general offences with racist motivation.

It notes from the same report that a state-funded Platform for Roma municipalities has been set up to share experience, good practice and to communicate with the government. Programmes have been carried out at the local level to assist Roma families, with the help of mediators, with issues such as debt relief and education.

The Committee recalls that States have an obligation to take measures or undertake programmes to prevent the dissemination of false information to departing nationals, as well as to prevent the misinformation of foreigners wishing to enter the country. Authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia). It asks for complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings.

In addition to answers to the questions raised above, the Committee wishes to receive a full and up-to-date description of activities in the Netherlands aimed at combatting misleading propaganda relating to emigration and immigration.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 19§1 of the Charter.

## **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 the Netherlands.

### ***Departure, journey and reception of migrant workers***

The report describes a new procedure of application for residence permits by nationals of States subject to a visa requirement (namely those outside the EU). Applicants can apply for temporary stay while outside of the country, and if granted this gives them the right to a residence permit, which can be collected upon arrival in the Netherlands. Prior to the enactment of the Modern Migration Policy Act in 2013, an application for a permit had to be submitted upon arrival.

The Committee's previous conclusion (Conclusions 2011) asked for a full and up-to-date description of the situation. The report does not provide information concerning the assistance provided to immigrants and emigrants upon arrival, departure and reception. Nor does it provide information on the healthcare and hygiene standards offered to such migrants.

The Committee recalls that reception 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). Reception means the period of weeks which follows immediately from their 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). The Committee asks what assistance, financial or otherwise, is available to migrants in emergency situations, in particular in response to their needs of food, clothing and shelter.

The Committee also requests that the next report provide updated information concerning the access of migrant workers and their families to healthcare facilities upon arrival in the Netherlands. It considers that if the information requested is not provided in the next report, there will be nothing to demonstrate that the situation is in conformity with the Charter.

### ***Services for health, medical attention and hygienic conditions during 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 requests details of any measures taken in regard of collective recruitment, if it should occur.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 19§2 of the Charter.

## **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 the Netherlands.

The report states there have been no changes to the situation, which the Committee has previously found in conformity with Article 19§3 of the Charter.

The Committee recalls that in its previous conclusion (Conclusions 2011), and others prior that, it requested a full and up-to-date description of the situation regarding the co-operation between social services of emigration and immigration states. The Committee notes that it has not received new information on the activities of the government or other organisations in the Netherlands since the reporting cycle concerning 1986 and 1987 (Conclusions XI-1). The Committee requests that this be rectified with a full description of the social services in the Netherlands which provide assistance to migrants, and in what manner they collaborate, or in what ways collaboration may occur, with the services of other States.

The Committee considers that if the requested information is not provided in the next report, there will be nothing to demonstrate that the situation is in conformity with the Charter. It reserves in the meantime its position.

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). 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 (1998), Norway), it holds that there must still be established links or methods for such collaboration to take place.

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).

### *Conclusion*

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

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

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

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

The report states that there have been no new developments in relation to Article 19§4, however, further details of the existing law and policy are provided.

### **Remuneration and other employment and working conditions**

The Committee previously deferred its conclusion (Conclusions 2011), requesting information on the monitoring of legal provisions against racial discrimination in employment and the workplace. The Committee notes the response to this specific question in the report.

The report states that in May 2014 (outside the reference period) an action plan on tackling discrimination in the workplace was presented to the House of Representatives. The government is undertaking research on the incidence of discrimination during the recruitment and selection phases, which will be followed up two years later to investigate whether there has been any change. The Committee requests that the next report contain information on the implementation and results of this action plan.

The Social Affairs and Employment Inspectorate monitors compliance of companies with legislation on health and safety at work, including the Working Conditions Act (*Arbeidsomstandighedenwet*). The Inspectorate can investigate whether the employer's policy on discrimination in the workplace is adequate, following an individual complaint. If it is found to be unsatisfactory, the Inspectorate can demand improvement or issue a warning, and if re-inspection indicates that the situation has not been rectified, a fine is imposed.

Furthermore, the Inspectorate works with the Netherlands Institute for Human Rights, which furnishes information which may lead to the Inspectorate instigating compliance investigations under the Working Conditions Act. The Committee requests that the next report include data or other information on the practical implementation of these policies of the Inspectorate. In the meantime, the Committee concludes that the situation in this regard is in conformity with the Charter.

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 and promotion. The provision applies also to vocational training (Conclusions VII (1981), United-Kingdom). The Committee asks whether vocational training with a view to improving the skills of workers and their opportunities is available in the Netherlands on the same basis for migrants and nationals.

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

In its previous conclusion the Committee requested information concerning membership of trade unions and enjoyment of the benefits of collective bargaining. The report states that the Equal Treatment Act (*Algemene wet gelijke behandeling*) prohibits discrimination on the grounds of nationality in the context of labour relations and trade union membership. The Committee asks that the next report give details of the implementation of this legislation in practice.

The Committee refers to its Statement of Interpretation in the General Introduction and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

### ***Accommodation***

In view of tackling the shortage of suitable flexible housing, the report indicates that central and local government, housing associations, and employers and trade unions in various sectors reached agreements in 2012 on increasing the supply of good temporary accommodation for EU workers, with a total of 17 stakeholders signing a National Declaration. The scope of this National Declaration covers nine regions with the most migrant workers. The report also mentions multi-room units with their own facilities, which are more suitable for families with children staying in the Netherlands for a relatively short time. On the issue of flexible housing, the Committee asks that the next report indicate the measures which are taken in respect of non-EU workers.

The Committee 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 refers to its decision on the merits of 2 July 2014 in *European Federation of National Organisations working with the Homeless (FEANTSA) v. Netherlands*, complaint No. 86/2012, and reiterates its finding that the right to appeal before an independent judicial body relating to the distribution of accommodation to migrant workers and their families is not effective in practice. Accordingly, the situation is not in conformity with Article 19§4(c) of the Charter.

The Committee recalls that it will examine the follow-up to its decision in the abovementioned complaint in 2016.

### ***Conclusion***

The Committee concludes that the situation in the Netherlands is not in conformity with Article 19§4 of the Charter on the ground that the right to appeal before an independent judicial body relating to the distribution of accommodation to migrant workers and their families is not effective in practice.



**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 the Netherlands.

The Committee notes from the report that there have been no new developments in the situation which it has previously considered to be in conformity with the Charter (Conclusions 2011).

The Committee asks what contributions are payable in relation to employment, and whether migrants are treated equally with nationals.

The Committee requests that full and up to date information on the situation be provided in the next report, including any relevant developments. In the meantime, the Committee considers that the situation remains in conformity with the Charter.

*Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in the Netherlands is in conformity with Article 19§5 of the Charter.

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

### *Paragraph 6 - Family reunion*

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

### **Scope**

Migrant workers from both the EU and outside, including self-employed workers, are eligible to apply for family reunification. The Committee notes that the Netherlands recognises two types of family-related migration, namely 'family reunification' and 'family formation'. It notes from the report of the Governmental Committee (Report concerning Conclusions 2011) that from 2004-2010 there were differing age limits and means requirements for the two types, but that in 2010 these were equalised following the decision of the CJEU in Case C-578/08 *Chakroun v the Netherlands*.

The Committee notes that the minimum age of spouses to be eligible for family reunion is 21. It considers that the maximum period of one year laid down in its case-law (Conclusions I (1969), II (1971), Germany) must apply without discrimination to all migrants and their families regardless of their specific situations, save for legitimate intervention in cases of forced marriage and fraudulent abuse of immigration rules. The Committee considers that the maximum generally applicable age limit permissible under Article 19§6 for the family reunion of spouses is the age at which a marriage may be legally recognised in the host state, as any higher age requirement hinders rather than facilitates family reunion.

The Committee recalls that once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they have an independent right under the Charter to stay in that territory (Conclusions XVI-1 (2002), Netherlands, Article 19§8). The Committee notes from the report of the Governmental Committee (Report concerning Conclusions 2011) that family members who come to the Netherlands derive their right to stay from the migrant worker, and their right to stay may be terminated if the sponsor loses their work. The Committee notes that the family member may apply for an independent residence permit after a period of three years, and that this had been introduced to avoid any misuse of the system through arranged marriages.

The Committee considers that an independent right to stay must be granted save for legitimate intervention in cases of forced marriage and fraudulent abuse of immigration rules. It recalls that it is not inconceivable that there should be a distinction on the basis of the length of stay on the nature of the rights of family members (Conclusions 2011, Netherlands Article 19§8). However, it considers that situations must be capable of consideration on their own merit, and that three years to acquire an independent right must be regarded as excessive and a disproportionate intervention which cannot be justified under Article G of the Charter. The Netherlands has taken no steps to rectify the situation of non-conformity during the reference period, and accordingly the Committee holds that the situation is not in conformity with the Charter on the basis that family members of a migrant worker lose their right to remain in the Netherlands and may be expelled automatically following the expulsion of the migrant worker.

### **Conditions governing family reunion**

The Committee notes from the report that there is no requirement for the migrant worker applying for family reunification to have had legal residence status in the Netherlands for a year prior to submitting an application.

With regard to means requirements, the Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), Netherlands).

The Committee notes from the report that the income of the national must amount at least to the national minimum wage. The gross minimum wage in July 2013 was €1477.80 per month (€17,733.60 per annum). The median net wage in 2013 for those educated to lower secondary level was €19,124 per annum. Therefore it appears that most people in the Netherlands earn more than the gross minimum wage, as such, the Committee finds that the income threshold is not too high. However, the Committee notes from the report that the migrant worker “may not rely on public funds”, and their income must be “independent”. The Committee considers that migrant workers who have sufficient income to provide for the members of their families should not be denied the right to family reunion because of the origin of such income, where its origin is not unlawful or immoral and where they have a right to the granted benefit. The Committee recalls that social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of interpretation on Article 19§6). The Committee understands from the information provided to the Governmental Committee (Report concerning Conclusions 2011) that reception of social assistance as such is not a reason for refusal of family reunification, and that applications from persons in receipt of social benefit will be examined on a case by case basis, in the light of the criteria set by the case-law of the European Court of Human Rights concerning family reunion. The Committee asks for confirmation that this understanding of the national situation is correct. The Committee notes that data is not collected on the reasons for rejection of application, and therefore it is not possible to provide further information on the operation of the means requirement. The Committee asks whether any concrete examples, such as appeals cases, are available to demonstrate the application in practice of the "case-by-case consideration", and whether any grounds other than unfitness for work can exempt the migrant from the exclusion of social welfare benefits. Pending receipt of this information, it defers its conclusion on this point.

The Committee further recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances. The Committee asks whether an accommodation requirement applies in the Netherlands, and if so, it requests further details of the criteria and its application.

With regard to language requirements, the Committee notes that family members of migrant workers are exempt from taking the compulsory civic integration examination normally required to obtain authorisation for temporary stay, for the purpose of applying for a temporary residence permit. If they wish to obtain a permanent residence permit, however, they must sit this exam. The Committee requests that the next report provide information on the content of the civic integration examination. It notes from a Migration Policy Group report "Impact of new family reunion tests and requirements on the integration process" (published 2011) that the cost of their pre-entry test was €350 and the training package was €41 in 2011. People's total costs vary significantly depending on their circumstances. €719 was the average total cost estimated by Ernst & Young. The Committee asks whether financial assistance is available for applicants without sufficient means.

The Committee asks whether family members of migrants or nationals with a permanent residence permit must sit the examination prior to coming to the Netherlands, or whether they can apply for a temporary residence permit before requesting a permanent right of residence. Furthermore, it asks whether family members who have failed the exam and are therefore ineligible for a permanent residence permit may remain in the Netherlands with a

temporary residence permit. The Committee notes that family members retain their right of residence for the term of the migrant worker's employment contract and right of residence.

The Committee considers 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. It requests that the next report provide information on the process of administrative or judicial appeals in the Netherlands.

#### *Conclusion*

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

- the minimum age of 21 for spouses to be eligible for reunification is an undue restriction on family reunion;
- family members of a migrant worker who have settled in the Netherlands as a result of family reunion may be expelled automatically when the migrant worker loses his or her right of residence.

## **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 the Netherlands.

The Committee notes from the report that the basic principle of the Legal Aid Act (*Wet op de rechtsbijstand*)(section 12(1)) is that legal aid is to be granted to any natural person whose financial capacity, in respect of legal interests governed by the law of the Netherlands, does not exceed the limit stipulated in the Act. The litigant's nationality is therefore not relevant for the purposes of invoking this legislation. In other words, the conditions for entitlement to state-funded legal aid are identical for both migrant workers and Dutch citizens. The same basic principle is applied with regard to the assistance of an interpreter or translator. To be eligible, a migrant worker must meet the same requirements as a Dutch person.

Anyone who is involved in legal proceedings and is not proficient in Dutch is entitled to free assistance from an interpreter (and translation of the relevant court documents). In matters relating to criminal law, this right is established in the European Directive on the right to interpretation and translation in criminal proceedings, which has been enacted in Dutch legislation. With regard to cases involving immigration law, this right is likewise covered by European legislation. Litigants are also entitled to legal aid for both kinds of proceedings.

If civil or administrative proceedings require the assignment of counsel under the Legal Aid Act, the interpreting or translation costs are also eligible for reimbursement by the Legal Aid Council.

Under the aforementioned Act, counsel may be freely chosen but attorneys must be registered with the Legal Aid Council to be able to work on legal-aid cases. Pursuant to sections 14 and 15 of the Act, the Council can stipulate registration conditions.

The Committee 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, and that whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter (Conclusions 2011, Statement of Interpretation on Article 19§7). The Committee requests that the next report provide details of thresholds for eligibility for legal aid, and what criteria are applied.

The Committee refers to the Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid assistance.

### *Conclusion*

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

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

### *Paragraph 8 - Guarantees concerning deportation*

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

As regards its previous finding of non-conformity on the ground that a migrant worker's family members who have settled in the Netherlands as a result of family reunion may be expelled when the migrant worker is expelled, the Committee considers that upon a proper construction of the text of the Charter, the possibility of the expulsion of the family members of a migrant worker is more properly dealt with under Article 19§6 on the facilitation of family reunion, rather than under Article 19§8 which concerns only the expulsion of a migrant worker (Statement of Interpretation on Articles 19§6 and 19§8, Conclusions 2015).

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' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of Interpretation on Article 19§8, Conclusions 2015).

The Committee previously noted that convicted foreigners could be deported according to the length of prior residence and the seriousness of the offence and that administrative and judicial appeals existed against deportation (Conclusions XIII-4 (1996)). It asks the next report to provide updated and comprehensive information on the circumstances upon which a migrant worker can be deported and the appeals procedure available against deportation.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Netherlands is in conformity with Article 19§8 of the Charter.

**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 the Netherlands.

the Committee notes that there has been no change to the situation which it previously found to be in conformity with the Charter (Conclusions 2011). The Committee asks that the next report provide a full and up-to-date description of the situation.

The Committee recalls that migrants must be allowed to transfer money to their own country or any other country. With reference to its Statement of Interpretation on Article 19§9 (Conclusions 2011), the Committee asks whether there are any restrictions on the transfer of the movable property of migrant workers.

*Conclusion*

Pending receipt of the Committee concludes that the situation in the Netherlands is in conformity with Article 19§9 of the Charter.

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

### *Paragraph 10 - Equal treatment for the self-employed*

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

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.

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

The Committee has found the situation in the Netherlands not to be in conformity with Articles 19§4, 19§6 and 19§11. Accordingly, the Committee concludes that the situation in the Netherlands is not in conformity with Article 19§10 of the Charter.

### *Conclusion*

The Committee concludes that the situation in the Netherlands is not in conformity with Article 19§10 of the Charter as the grounds of non-conformity under Articles 19§4, 19§6 and 19§11 apply also to self-employed migrants.



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

### *Paragraph 11 - Teaching language of host state*

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

The Committee notes from the report that the Dutch government supports migrants seeking to learn Dutch in a variety of ways, for instance by making a self-study pack available in 21 languages. In addition, it provides up-to-date information online for migrants about learning the language. The Netherlands also subsidises various activities to help migrants improve their level of proficiency, such as 'language buddy' projects and the free website oefenen.nl, which contains exercises for practising Dutch. There is also a list of the nationally certified Dutch language courses available, and an overview of all formal and informal language courses in the Netherlands. Finally, under a social lending scheme, migrants can take out loans at favourable terms to pay for language courses.

The Committee recalls that the language of the host country is automatically taught to primary and secondary school students throughout the school curriculum but this is not enough to satisfy the obligations laid down by Article 19§11. States must make special effort to set up additional assistance for children of immigrants who have not attended primary school right from the beginning and who therefore lag behind their fellow students who are nationals of the country. The Committee asks that the next report provide information on what policies are in place concerning the teaching of Dutch to migrant workers' children of school age.

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

A requirement to pay substantial fees is not in conformity with the Charter. States are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible (Conclusions 2011, Norway). The Committee notes that financial assistance for courses in Dutch (which are run by private institutions) is limited to loans, which it considers do not sufficiently alleviate the financial burden of paying for integration charges. Migrants are no longer able to be reimbursed for these courses. The Committee considers that charges for language courses are likely to hinder the integration of migrant workers and their families. It therefore finds that the situation in the Netherlands is not in conformity with the Charter.

The Committee further recalls that States shall encourage the teaching of the national language in the workplace, in the voluntary sector or in public establishments such as universities. Such services shall be free of charge so as not to exacerbate the disadvantaged position of migrant workers in the labour market (Conclusions 2002, France). The Committee requests that the next report provide a full and up to date description of the provision of language teaching in relation to employment.

### *Conclusion*

The Committee concludes that the situation in Netherlands is not in conformity with Article 19§11 of the Charter on the ground that the charges for language courses are likely to hinder the integration of migrant workers and their families.

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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

The Committee recalls that the aim of Article 27§1 is to provide workers with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment. To be able to return to professional life, such persons may need special assistance in terms of vocational guidance and training. However, if the standard employment services (those available to everyone) are well developed, the lack of extra services for people with family responsibilities cannot be regarded as a human rights violation (Conclusions 2003, Sweden). Since under Articles 10§3 and 10§4 (Conclusions 2012, the Netherlands) the Committee expressed no objections as to the level of standard training and employment services, it therefore considers the quality of vocational guidance and training offered to people with family responsibilities to be compatible with the Charter.

The Committee notes from the report that amendments were made to the Working Hours Act and the Work and Care Act. In particular, the employee has the right to submit a request to his employer for changes to his working time schedule, in relation to parental responsibilities, for a period of one year or another period agreed on by the employee and the employees. The employer may not disadvantage an employee for exercising their statutory right to leave.

### ***Conditions of employment, social security***

In its previous conclusion (Conclusions 2011) the Committee wished to know to what extent periods of leave due to family responsibilities were taken into account for determining the right to pension and for calculating the amount of pension.

According to the report, leave due to family responsibilities does not affect an individual's entitlement to general old age pension. In the case of workplace (supplementary) pensions, it depends on the scheme in question whether or not an individual's entitlement continues to accumulate during periods of parental leave.

### ***Child day care services and other childcare arrangements***

The Committee takes note of childcare policy changes in the period of 2010- 2013.

According to the report, from 2010 compulsory registration in the National Childcare and Playgroups Register (LRKP) applies to all childcare providers, including childminders, for all the locations where care is provided. In order to be registered in the LRKP, childcare facilities must meet statutory quality standards. This is checked every year by the Municipal Health Services (GGD).

During their inspections, the GGD also checks the professional qualifications of childcare workers.

According to the the 2013 Act amending the Childcare Act, a number of requirements have been introduced, such as, among others:

- childcare workers are subject to continuous screening since 1 March 2013.
- work placement trainees, temporary agency workers and volunteers must present a new certificate of conduct every two years, as they do not fall under the continuous screening scheme.
- childcare employers must contact a confidential inspector at the Education Inspectorate if they have any indication that an employee may be abusing a child, sexually or otherwise.

*Conclusion*

The Committee concludes that the situation in the Netherlands is in conformity with Article 27§1 of the Charter.

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

*Paragraph 2 - Parental leave*

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

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.

It notes from the report that since 12 April 2012, employees who take up parental leave are protected by law against less favourable treatment by employers.

*Conclusion*

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

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

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

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

In its previous conclusion (Conclusions 2013) the Committee asked whether employees are also protected against dismissal because of obligations with respect to other members of the immediate family (elderly parents, for example) that require care.

The report states that under the Work and Care Act an employee may also take up short-term leave or extended leave to care for a first-degree blood relative other than a child. In other words, employees caring for a parent are also protected against dismissal.

According to the report, there is no upper limit to the amount of compensation that can be awarded in case of unlawful dismissal on the ground of family responsibilities.

### *Conclusion*

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

## **Article 31 - Right to housing**

### *Paragraph 1 - Adequate housing*

The Committee takes note of the information contained in the report submitted by the Netherlands, as well as of the additional information provided in an addendum to the report.

### ***Criteria for adequate housing***

The report states that the notion of adequate housing is laid down in the Buildings Decree, which contains minimum technical requirements that all buildings, such as houses, offices and shops must satisfy. This Decree contains requirements for safety, health, functionality, energy efficiency and the environment. The standards of housing apply to new constructions but also to the existing housing stock and to all categories of housing: rented, owner-occupied, social and private.

The Committee notes from the report that in 2012 there were 2.9 million households with an annual income of less than €33,000. These households were eligible for social housing with a regulated maximum rent. The stock of social housing was 3 million. While indicating that there was enough social housing for the target group, the report underlines that there may have been regional shortages. The market value of the social housing stock was about €120 billion. In a situation of shortage the waiting time for social housing could reach eight years.

### ***Responsibility for adequate housing***

In its previous conclusion (Conclusions 2011) the Committee asked details about the powers of the Housing Agreements Monitor, which compares and catalogues house building performances in different urban areas. It notably requested information on whether the Monitor may carry out inspections and how often, and whether its decisions have binding force. In view of the lack of information, the Committee repeats its questions.

The report indicates that the adequacy of housing is also monitored by the Government monitors by means of a national housing survey held every three years. The most recent survey was published in 2013. It looked at the quality of the housing stock, changes in rent levels and the incomes of various groups of tenants.

In reply to the Committee's question the report explains that the Buildings Decree applies to all landlords, both private landlords and housing associations. The municipalities are responsible for enforcing the Buildings Decree.

### ***Legal protection***

The report underlines that municipalities are responsible for ensuring that all households have appropriate housing. Therefore, in regions with a housing shortage, usually in the more affordable sector, municipalities can pass a bye-law to alleviate the shortage. Currently, about half the municipalities have passed such a bye-law. This latter allows tenants to lodge an objection or application for review with the municipality if they disagree with an allocation decision. In addition, cases of discrimination can be taken to the Institute for Human Rights.

The Committee recalls that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial judicial or other remedies (administrative review, etc.) (Conclusions 2003, France). Any appeal procedure must be effective (European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81).

The Committee notes from the information provided in the addendum to the report that tenants have the option to approach the civil courts. In case of disputes over the amount of rent and / or service charges tenants can recourse to the Rent Commission. The addendum to the report indicates that starting a procedure at the Rent Commission is relatively easy

and there are few costs associated with starting a procedure. Furthermore, the Rent Commission is independent. The members are appointed by the government. It is also possible for tenants to approach the National Ombudsman and the Municipal Ombudsman in case of disputes. Moreover, all housing corporations have a complaints commission.

### ***Measures in favour of vulnerable groups***

In its previous conclusion (Conclusions 2011) the Committee asked for information on progress made to meet the demand for more halting sites and better quality caravans. In this respect, the report mentions only that in 2012 there were more than 16,000 halting sites for caravans without providing information on the progress made and whether the demand for more halting sites and better quality caravans were met.

The Committee notes from the European Commission against Racism and Intolerance's (ECRI) report adopted in 2013 several information:

- a study of the RAXEN national focal point commissioned by the EU Fundamental Right's Agency (FRA) confirmed that there is a shortage of authorised sites and the authorities have progressively removed larger halting sites;
- articles in the press reported that the Mayor of Waalre stated publicly that trailer camps and sites must disappear and that persons who live in such dwellings must live in houses;
- municipal authorities have been faced with an increasingly hostile attitude from the local population against new sites and this has led them, in some instances, to place them in remote areas with substandard environmental conditions;
- Roma, Sinti and Travellers face difficulties in obtaining loans for caravans because the land on which they are stationed usually does not belong to them and/or because this type of accommodation is not considered regular housing.

In view of the foregoing, the Committee considers that the situation is not in conformity with the Charter on the ground that there is a failure to create a sufficient number of halting sites for non-sedentary populations and there are poor living conditions on such sites.

### ***Conclusion***

The Committee concludes that the situation in the Netherlands is not in conformity with Article 31§1 of the Charter on the ground that there is a failure to create a sufficient number of halting sites for non-sedentary populations and there are poor living conditions on such sites.

## **Article 31 - Right to housing**

### *Paragraph 2 - Reduction of homelessness*

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

### ***Preventing homelessness***

The report indicates that the implementation and results of the action plan mentioned in the previous conclusion of the Committee (Conclusions 2011) were monitored by the Trimbos Institute. A study published by this Institute in 2013 found that the current system did not guarantee adequate national access to community shelter services. It suggested improvement in several areas, such as the documentation of policy and objection procedures, the agreements reached between municipalities and shelters, and staff training. In response to the study, the report indicates that responsible members of the municipal authorities have committed themselves to guaranteeing national access to community shelter services in practice. In addition, the Ministry of Health, Welfare and Sport is funding a project to improve access to community shelter services, which is being carried out by the Association of Municipalities and the shelters' umbrella organisation.

Concerning the results achieved through the measures taken, the Trimbos Institute provides the following figures:

- 15,764 individual projects were started in the four largest cities (Amsterdam, Rotterdam, The Hague and Utrecht) to make housing, income, care and support as stable as possible;
- in total there were, in 2012, 70 rough sleepers on average per night in the four largest cities compared to 10,000 in 2006;
- in the other 39 municipalities that provide community shelter services there were 7,900 rough sleepers in 2011-2012, in comparison with 9,700 in 2009-2010.

The Committee asks the next report to indicate whether there are other measures planned to improve the situation. In this respect, it also refers to its remarks below on follow-up to decisions in collective complaints.

### ***Forced eviction***

The Committee refers to its previous conclusion (Conclusions 2011) for an overall description of legal protection for persons threatened by eviction. It notes here the answers to the questions asked previously.

Concerning legal aid offered to those who are in need of seeking redress from the courts, the report refers to the Legal Aid Act that provides a solid basis for access to justice for those who cannot pay legal fees themselves.

As regards compensation for illegal evictions, according to Article 6:162 of the Civil Code compensation can be claimed for a wrongful act. The victim can be awarded material and immaterial compensation by showing that actual and potential damage is due to illegal eviction.

As to the obligation to fix a reasonable notice period before eviction, the report indicates that the period before eviction of at least two weeks is considered reasonable. The Committee considers that a notice period of 2 months before eviction is reasonable (European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §§ 86-87; International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 78-79). It therefore finds that the situation is not in conformity with the Charter on the ground that a minimum notice period before eviction of two weeks is too short.



The report indicates that in 2013 out of 23,100 judicial decisions sought by housing associations, 6,980 led to evictions, representing 30% of all judicial decisions on eviction. The Committee wishes the next report to provide information on the implementation of judicial decisions.

### ***Right to shelter***

In its previous conclusion (Conclusions 2011) the Committee asked whether shelters/emergency accommodation satisfy security requirements and health and hygiene standards. Pursuant to the Social Support Act, certain municipalities are responsible for providing community shelter services. The report indicates that their policy plans must state the quality measures applicable to shelters in the community. Moreover shelters must be decent and safe with access to water, heating and sufficient lighting.

The Committee recalls that eviction from shelter should be banned as it can place the persons concerned in a situation of extreme helplessness which is contrary to the respect for their human dignity (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009). Furthermore, the Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited. The Committee wished in its previous conclusion to know whether the law prohibits eviction from shelters or emergency accommodation. The report states that the law does not prohibit eviction from shelters/emergency accommodation. The Committee therefore considers that the situation is not in conformity with the Charter.

As regards the complaints Defence for Children International (DCI) v. Netherlands, No. 47/2008, decision on the merits of 20 October 2009, Conference of European Churches (CEC) v. The Netherlands, No. 90/2013, decision on the merits of 1 July 2014 and European Federation of National Organisations working with the Homeless (FEANTSA) v. The Netherlands, No. 86/2012, decision on the merits of 2 July 2014, the Committee recalls that the follow-up will be made in Conclusions 2016.

### ***Conclusion***

The Committee concludes that the situation in the Netherlands is not in conformity with Article 31§2 of the Charter on the grounds that:

- the minimum notice period before eviction of two weeks is too short;
- the law does not prohibit eviction from emergency accommodation/shelters without the provision of alternative accommodation.

## **Article 31 - Right to housing**

### *Paragraph 3 - Affordable housing*

The Committee takes note of the information contained in the report submitted by the Netherlands, as well as of the additional information provided in the two addenda to the report. It also takes note of the information contained in the comments by the NGO *Stichting Gelijke Behandeling Volkshuisvesting* (SGBV) of 16 December 2014.

### **Social housing**

The Committee recalls that in order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show not the average affordability ratio (rent-to-income ratio) required of all those applying for housing, but rather that the affordability ratio of the poorest applicants for housing is compatible with their level of income (European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, § 72).

The report indicates that the average net rent-to-income ratio in 2012 was 26% but does not provide any figure on the average ratio in the lowest income quintile. The Committee therefore asks the next report to indicate the rent-to-income ratio for the lowest income quintile. In the meantime, it reserves its position on this issue.

In its previous conclusion (Conclusions 2011) the Committee asked information on any cases raised following the adoption of the Code of Conduct focusing on prevention of discrimination adopted in 2007 for Mortgage Credit Institutions. The report indicates that for the period 2007-2013, the Institute for Human Rights gave six opinions on discrimination relating to the granting of a mortgage. Moreover in 2013, there were ten cases relating to the granting of a mortgage, which were classified in the following categories:

- mortgage not granted because the applicant was a benefit recipient;
- mortgage not granted because the applicant was too old for a 30-year mortgage;
- mortgage not granted because the applicant or his/her partner was not a Dutch national, even though he/she had a valid residence permit and satisfied all other requirements.

As regards the requirements municipalities may impose on prospective residents, the report indicates the following ones: low-income households, length of time a person has been living in the municipality or has been registered as a home seeker, the municipality can give priority to urgent groups.

The report is silent on any complaints concerning allocation of housing to the most disadvantaged. The Committee therefore repeats its request.

Concerning relevant figures with respect to social housing demand, the Committee takes note for 2012 of the number of households who had an income below the ceiling for social housing and were living in housing association property with rents below those in the private sector.

As regards waiting times, the report indicates that no national data are available on waiting times for social housing, but data are available for some municipalities. In 2011, the average waiting time (registration time) for first-time tenants was 8.3 years in Amsterdam and 6.9 years in Utrecht. The report however explains that waiting times give a distorted view because many households on waiting lists are not in urgent need and are not actively seeking a home. It stresses that the time spent by people actively seeking a home gives a better indication: in Amsterdam it was 4 years and in Utrecht 4.3 years.

The Committee notes the information submitted on 16 December 2014 by a national NGO, SGBV, which states that the housing market reform resulted in a one-sided rise in housing costs for tenants of 4 to 6.5% yearly caused by the newly introduced Landlord Tax Law. In

its reply, dated of 4 March 2015, the Government stresses that rent increases are income-related, in order to create an incentive for higher incomes to leave social housing. The Committee asks the next report to provide information on the results of this reform.

Concerning judicial or other remedies (administrative review, etc.) that must be available when waiting periods are excessive, the Committee notes from the information provided in the addendum to the report that in case of an application for an urgency status the applicant can object against the rejection of the application at the municipality, which has taken the decision about the application. After the municipality has taken a decision about the objection, the applicant can appeal at the courts.

### ***Housing benefits***

The Committee notes that in 2012 1,445,000 households had an income that entitled them to housing benefits.

The report indicates that in 2011 230,000 housing benefit applications were rejected mainly on the ground that the applicant's income was too high. It also specifies that no information is available for the rest of the reference period. The Committee wishes the next report to indicate the number of refusals of housing benefits for the next reference period as well as the grounds on which housing benefits are generally refused.

Concerning the number of appeals lodged against refusals and the outcomes of such appeals the report provides no information. The Committee therefore repeats its questions in this respect. Should the next report not provide the requested information, there will be nothing to show that the situation is in conformity with the Charter in this respect.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Netherlands is in conformity with Article 31§3 of the Charter.



January 2016

# **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**NORWAY**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Norway which ratified the Charter on 7 January 2001. The deadline for submitting the 12th report was 31 October 2014 and Norway submitted it on 27 March 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

Norway has accepted all provisions from the above-mentioned group except Articles 7§4, 7§9, 8§2, 8§4, 8§5 and 27§3.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Norway concern 29 situations and are as follows:

- 19 conclusions of conformity: Articles 7§2, 7§6, 7§7, 7§10, 8§1, 8§3, 17§2, 19§1, 19§3, 19§5, 19§6, 19§7, 19§9, 19§11, 19§12, 27§1c, 27§2, 31§1 and 31§3
- 5 conclusions of non-conformity: Articles 7§1, 7§3, 16, 19§4 and 19§10

In respect of the other 5 situations related to Articles 7§5, 7§8, 17§1, 19§2 and 31§2, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Norway under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 17§1**

Regulation No. 1255 of 2011 relating to the right to health and care services for people without permanent residence: children who are unlawfully present have the same rights to health and care services as children who live in Norway.

The next report to be submitted by Norway will be a simplified report dealing with the follow up given to decisions on the merits of the following collective complaint in which the Committee found a violation:

- *Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011, decision on the merits of 2 July 2013, violation of Article 24 and Article 1§2.

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right of workers to take part in the determination and improvement of working conditions and working environment (Article 22)

- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 Norway.

The Committee previously examined the legal framework and found the situation to be in conformity with Article 7§1 of the Charter (Conclusions 2011). It noted that children under 15 years of age or attending compulsory education shall not perform work with the exceptions of (i) cultural work or the like; (ii) light work provided the child is 13 years of age or more; (iii) work that forms part of their schooling or practical vocational guidance approved by the school authorities provided the child is 14 years of age or more.

The Committee noted that in order to involve children in light or cultural work, the employer must obtain prior approval from the Labour Inspection Authority and have the written consent from the child's parents or legal guardian. The Committee takes note from the report of the number of applications and permits issued by the Labour Inspection Authority during the reference period. The report provides the checklist used by the Labour Inspection Authority when it conducts audits in enterprises with employees under 18 years of age.

The Committee notes from the report that under Section 11-2(1) of the Working Environment Act, children under the age of 15 or those who are subject to compulsory education, shall not work more than:

- 2 hours a day on days with teaching and 12 hours a week in weeks with teaching;
- 7 hours a day and 35 hours a week during school holidays.

The Committee notes from the report that during school holidays, children under the age of 15 are allowed to work up to 7 hours a day and 35 hours a week. It refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015). The Committee therefore concludes that the situation is not in conformity with Article 7§1 of the Charter on the ground that, during school holidays, the daily and weekly duration of light work for children under the age of 15 is excessive and therefore cannot be qualified as light work.

In its previous conclusion, the Committee asked whether the conditions under which home work is performed are supervised in practice. The report indicates that the Labour Inspection Authority is not entitled to conduct audits in private residences. If illegal work by children under the age of 15 is suspected in a private home, the Labour Inspection Authority may report or make the police aware of the matter. Non-compliance with the provisions in the regulation is subject to corporate penalty pursuant to the General Civil Penal Code, either alone or in addition to personal liability under the Working Environment Act.

The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide statistical data on the employment of children under the age of 15, as well as information on the number and nature of contraventions reported and sanctions imposed on employers.

### *Conclusion*

The Committee concludes that the situation in Norway is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly duration of light work permitted during



school holidays for children under the age of 15 is excessive and therefore cannot be qualified as light work.

## **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 Norway.

The Committee notes from the information provided in the report that there have been no changes to the legal framework which the Committee has previously found to be in conformity with Article 7§2 of the Charter.

The report indicates that during the period 2011-2013, between 2% and 3% of the total number of accidents reported to the Labour Inspection Authority regarded young workers under the age of 18. The Committee notes that according to the Labour Force Survey completed by Statistics Norway, 2.7% of young persons between the ages of 15 and 18 stated that they had been exposed to work-related accidents.

The Committee recalls that the situation in practice should be regularly monitored. It therefore asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment under the age of 18 for dangerous or unhealthy activities.

### *Conclusion*

The Committee concludes that the situation in Norway 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 Norway.

With regard to the working time of children who are subject to compulsory education, the report indicates that under Section 11-2(1) of the Working Environment Act, working hours for persons under 18 years of age shall be so arranged that they do not interfere with their schooling or prevent them from benefiting from their lessons. In case of children who attend compulsory education, working hours shall not exceed:

- 2 hours a day on days with teaching and 12 hours a week in weeks with teaching;
- 7 hours a day and 35 hours a week during school holidays.

The Committee notes that during school holidays, children who are subject to compulsory education are allowed to work up to 7 hours a day and 35 hours a week. The Committee refers to its Statement of Interpretation on the duration of light work. It recalls that it considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015). The Committee therefore concludes that the situation is not in conformity with Article 7§3 of the Charter on the ground that during school holidays the daily and weekly working time for children subject to compulsory education is excessive and therefore cannot be qualified as light work.

The report indicates that an employer must obtain the written consent of the child's parents or legal guardians before employing children under the age of 15 or who are still subject to compulsory education (Section 12-4 of Regulation No. 1355 of 6 December 2011 relating to organisation, management and influence). The report states that the Labour Inspection Authority has not registered any inquiries, complaints or orders on this matter. The report adds that an employer employing 20 or more employees must keep a list of all employees aged 18 and younger where, *inter alia*, the employee's address and birth date, parents' name and address (for children under the age of 15 or who are subject to compulsory education), daily working hours and daily school hours are listed. The list shall be at the disposal of the Labour Inspection Authority and the safety delegate.

In its previous conclusion, the Committee found that the situation was not in conformity with Article 7§3 of the Charter on the ground that it is possible for children who are still subject to compulsory education to deliver newspapers before school, from 6 a.m. for up to 2 hours per day, 5 days per week. The Committee notes from the information provided in the report that the situation has not changed. It therefore maintains its conclusion of non-conformity on this matter.

As regards rest periods during school holidays, the Committee referred previously to its Statement of Interpretation on Article 7§3, General Introduction to Conclusions 2011, and asked whether children subject to compulsory education are entitled to an uninterrupted rest period of at least two weeks during summer holidays (Conclusions 2011).

The report indicates that according to Section 11-5(4) of the Working Environment Act, persons under 18 years of age who attend school shall have at least four weeks holiday a year, of which at least two weeks shall be taken during the summer holiday. The report states that children and young persons under 18 years of age are thus obliged to take at least two of the four weeks during the summer holiday. However, the Act does not stipulate that these two holiday weeks must be consecutive. As noted in its Statement of interpretation on Article 7§3 (Conclusions 2011), the Committee considers that an uninterrupted period of rest which should under no circumstances be less than two weeks, must be provided for during summer holidays. The Committee recalls that the two weeks of

holiday granted during summer to children subject to compulsory education must be consecutive. It therefore considers that the situation is not in conformity with Article 7§3 of the Charter on this point.

The Committee recalls that the situation in practice should be regularly monitored. It invites asks the next report to provide information on the number and nature of violations detected by the Labour Inspection Authority as well as on measures taken/sanctions imposed on employers for breach of the regulations regarding prohibition of employment of children subject to compulsory education.

#### *Conclusion*

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

- the daily and weekly working time during school holidays for children subject to compulsory education is excessive and therefore cannot be qualified as light work;
- it is possible for children who are still subject to compulsory education to deliver newspapers, before school, from 6 a.m. for up to 2 hours per day, 5 days per week;
- young persons under 18 years of age who are still subject to compulsory education are not guaranteed an uninterrupted rest period of at least two weeks during summer holiday.

## **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 Norway.

The Committee concluded previously that the situation in Norway was not in conformity with 7§5 of the Charter on the ground that it has not been established that young workers receive a fair wage and that apprentices receive appropriate allowances (Conclusions 2011). It asked updated information on the net value, i.e. the amount after deduction of tax and social security contributions, of the minimum wage paid to young workers under the age of 18 and on the starting wages or minimum wages paid to adult workers.

### **Young workers**

The report reiterates that there is no statutory minimum wage in Norway. The wages of young workers and/or apprentices are established by the relevant collective agreements negotiated by the social partners. The report adds that the Tariff Board may extend the clauses of a collective agreement to all the employees in a sector. The regulations on wages and other working conditions in the agreement will apply to all persons performing work within the scope of the agreement, both Norwegian organised and non-organised workers and foreign workers.

The report provides examples of gross remuneration of young workers from some of the most widespread collective agreements. In the commerce and office sector, the minimum wage for employees under 18 is about 76% of the starting salary of an unskilled worker over 18, the latter being roughly € 16.40 per hour. The minimum wage for workers aged 17 in the hotel and restaurant industry is about 88% of the starting salary of an unskilled worker aged 18, the latter being roughly € 13.40 per hour, and within the mechanical, engineering, and shipyard industries the minimum wage for employees from 15 years of age to 17 and a half is within a range of 53–90% of the starting salary for an unskilled worker over the age of 18, the latter being roughly € 16.40 per hour.

However, the report does not provide data on the net values of minimum wages. It indicates that personal income in Norway is taxed according to a dual income tax system, consisting of a low flat rate on capital income, and a progressive rate on labour income. According to Statistics Norway figures for 2013 (table " Earnings for all employees) the gross average monthly wage was NOK 41,000 (€ 5,625.20 per month or € 67,502.40 per year). According to EUROSTAT data for 2013 (Table "earn\_nt\_net") the average yearly income for single workers without children was € 47,545.76 after social contributions and tax deductions.

The Committee recalls that the fair character of the wage is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults. Under Article 7§5 of the Charter, 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 recalls that 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).

As regards adults' wages, the Committee noted in its conclusion on Article 4§1 that the gross average wages in the State, municipal and regional public sectors and in the private sector come close to the gross average wage, and it therefore concluded that the situation is in conformity with the Charter on this issue. However, the Committee noted that the gross minimum wages agreed for seasonal agricultural workers, unskilled shipyard workers, unskilled construction workers and workers in the local and regional civil service did not come close to the gross average income. The Committee notes from the report that within the mechanical, engineering, and shipyard industries the minimum wage for employees from 15 years of age to 17 and a half is within a range of 53–90% of the starting salary for an

unskilled worker over the age of 18. It asks information on the young workers' wages (illustrated with examples) working in the above mentioned sectors. Pending receipt of the information requested, the Committee reserves its position on this point.

The Committee noted previously that in sectors not covered by sectoral collective agreements, wages are determined by the parties to the employment contract (Conclusions 2014 on Article 4§1). The Committee asks information on wages paid to young workers in sectors or for jobs (e.g. domestic work) which are not covered by collective agreements.

### ***Apprentices***

The Committee notes from the information provided by the Governmental Committee Report concerning Conclusions 2011 that the apprentices' allowances increase progressively during the second year of the apprenticeship. The allowance in the first year of apprenticeship is 30 to 40% compared to the wage of a skilled worker, while in the second year the allowance is increased to 60 to 80%.

The report indicates that apprentices in Norway are considered as employees of the relevant company and are therefore paid as stipulated by the collective wage agreements. The Committee asks information on the allowances paid to apprentices in sectors or for jobs which are not covered by collective agreements. Pending receipt of the information requested, the Committee reserves its position on this point.

### ***Conclusion***

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

## **Article 7 - Right of children and young persons to protection**

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

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

The information provided in the report as well as in the Report of the Governmental Committee concerning Conclusions 2011 is intended to bring clarification with regard to the Government's previous report. The Government states that under national law, apprentices and trainees are considered as full employees of the relevant company and are therefore paid according to the collective wage agreement for the trade concerned. The Committee asks information on the regulations applicable to time spent on vocational training in the situation of trainees/apprentices who are not covered by collective agreements.

The Committee notes the Government's statement that all time spent in the company is remunerated, whether it be when receiving training or participating in value-adding activities. The Committee understands that this means that time spent on vocational training is included in the normal working time. It asks the Government to confirm this understanding.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It therefore asks the next report to provide information on the activity of the Labour Inspection Authority of detecting situations in practice when the time spent on vocational training has not been considered as normal working time and thus remunerated as such.

### *Conclusion*

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

The Committee previously found the situation to be in conformity with Article 7§7 of the Charter and asked information on the monitoring activity of the Labour Inspection Authority (Conclusions 2011).

The report indicates that according to Section 11-5(4) of the Working Environment Act (WEA), persons under 18 years of age who attend school shall have at least four weeks holiday a year, of which at least two weeks shall be taken during the summer holiday.

The report indicates that the Labour Inspection Authority does not have a system to document to what extent employers in Norway safeguard the right of employees under the age of 18 to benefit of four weeks' paid holiday pursuant to Section 11-5(4) of the WEA. The report adds that the Labour Inspection Authority's information service receives many questions regarding rights associated with holiday, as well as questions concerning the relationship between holiday pay and holiday time. Nevertheless, very few inquiries concern the refusal of the employer to grant holidays to the employees.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It therefore asks the next report to provide information on the activity of the Labour Inspection Authority of detecting situations of breach and on the measures taken/ sanctions applied in cases of non-observance by the employers of the obligation to grant at least four weeks holiday a year to young persons under the age of 18.

### *Conclusion*

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

The Committee previously requested an estimate of the number of young persons between the ages of 15 and 18 who perform night work (Conclusions 2006). The Committee concluded in its previous conclusion that the situation in Norway was not in conformity with Article 7§8 of the Charter on the ground that it has not been established that the prohibition of night work covers the great majority of young workers (Conclusions 2011).

The report indicates that the Labour Inspection Authority does not record information on the number of young people performing night work in Norway and the Government states that it cannot provide relevant figures in this sense. The report further indicates that according to Statistics Norway's Labour Force Survey, 56,000 young people aged 15-24 work at night. According to Statistics Norway, the vast majority of the persons performing night work are aged 19 and above. The Committee takes note of the data provided by Statistics Norway. It asks what are the sectors in which young workers work at night and which is the estimate number of young workers aged 15-18 who perform night work. Pending receipt of the information requested, the Committee reserves its position.

As regards supervision, the report provides information on the number of orders issued by the Labour Inspection Authority for breaches of the regulations regarding prohibition of night work for young persons (Section 11-3 of the Working Environment Act) as follows: 16 orders in 2010, 2 orders in 2011, 2 orders in 2012 and 3 orders in 2013. The Committee asks which were the sanctions imposed on the employers.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

#### ***Protection against sexual exploitation***

The Committee notes that there have been no changes to the legislative framework regarding sexual exploitation of children. The Committee asks the next report to provide updated information about legal provisions protecting children( until 18) from all forms of exploitation, i.e. child prostitution and pornography (including simple possession of child pornography) and trafficking of children.

#### ***Protection against the misuse of information technologies***

According to the report, Norway has been dedicated to developing robust measures and actions to fight online child abuse for a number of years.

The Norwegian National Criminal Investigation Service (Kripos) takes part in international forums provided by e.g. Interpol and Europol to exchange evidence as well as to follow up international agreements and operations. In 2012, Norway signed up for the Global Alliance Against Child Sexual Abuse Online. An annual Action Plan financed with funds from the government ministries and operationalised through the Norwegian Safer Internet Centre has targeted actions concerning children and young people's use of the Internet. Sexual exploitation/exposure is one the topics handled through the plan.

Since 2007, the Government of Norway has established 10 Children's Advocacy Centres. The Centres are experienced in dealing with sexually exploited children and children who have been victims of violence and/or witnesses to violence, especially domestic violence. In addition to hearing the children as witnesses, the Centres offer medical research and treatment for traumatic experiences. The Norwegian National Criminal Investigation Service operates a service facilitating reporting of sexual exploitation of children, human trafficking and racism on the Internet. A red button is placed on a variety of websites to make it easier for the public to report. There have been indications that the reporting mechanism should be further developed to face new user patterns on mobile devices.

#### ***Protection from other forms of exploitation***

In response to the Committee's question the report states that there is nothing to indicate that there are street children in Norway.

The Committee notes from the Report of the Group of Experts on Action against Trafficking in Human Beings (GRETA) concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway (2013) that GRETA considers that the Norwegian authorities should adapt the system for providing assistance to child victims of trafficking, so that it is specifically tailored to their needs and includes specially-trained staff. Moreover, they should strengthen co-operation between child protection services, outreach services, police and immigration authorities so that child victims of trafficking receive adequate care taking into consideration their individual needs and best interests. They should also ensure that child victims of trafficking aged 15 to 18 are placed under the care and assistance of child welfare services, which should receive the necessary resources and training.

The Committee the next report to provide up-to-date information concerning the factual situation indicated in the recommendations of GRETA.

#### ***Conclusion***

The Committee concludes that the situation in Norway is in conformity with Article 7§10 of the Charter.

## **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 Norway.

### ***Right to maternity leave***

The Committee previously noted that under the Working Environment Act (WEA), which came into force in 2006, a woman is entitled to up to 12 weeks before birth, and 6 weeks after birth unless she produces a medical certificate stating that it's better for her to resume work. The period of maternity leave is part of a broader parental leave period of 52 weeks, which can be divided between parents, with the exception of the above-mentioned period of maternity leave. The report confirms that the same regime applies to women employed in the public sector.

### ***Right to maternity benefits***

The report indicates that the right to parental benefit is governed by the National Insurance Act. As of 1 July 2011, beneficiaries of parental benefit were entitled to 100% salary for 47 weeks or 80% salary for 57 weeks. As from 1 July 2013, the period of coverage was extended to 49 and 59 weeks respectively, a period which can be postponed until the child is three years old. At least 9 weeks (3 weeks before birth and 6 weeks after birth) of parental benefits are earmarked for the mother, and 10 weeks for the father, while the rest of it can be shared between the parents. The statutory paternal leave was increased respectively to 12 and 14 weeks in 2011 and 2013, then brought back to 10 weeks in 2014, out of the reference period.

In order to be entitled to parental benefits, the person must have been employed for at least six of the last ten months before the benefit period starts. Periods of receipt of some benefits, such as sickness and unemployment benefits, are considered to be equivalent to employment for the purpose of eligibility to parental benefits. In response to the Committee's question, the report confirms that parental benefit are granted to all employees, in the public as in the private sector, self-employed persons and freelancers who fulfil the qualification requirements.

The Committee refers to its Statement of Interpretation on Article 8§1 (Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

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

It previously noted that, pursuant to Section 12-8 of the Working Environment Act (WEA) of 2006, nursing mothers are entitled to request the amount of time off needed for nursing their infant, at least 30 minutes twice daily, or to request that working hours be reduced by one hour per day. However, the law did not provide for such breaks to be remunerated, although according to the authorities some 80% of working women enjoyed remunerated nursing breaks by virtue of the relevant collective agreements (Conclusions 2011).

The report indicates that a statutory right to remunerated nursing breaks has been introduced in the law with effect as from 1 January 2014, out of the reference period. Without prejudice to any more favourable clause which might be contained in the existing collective or individual agreements, this new statutory right applies to all women, in the public as in the private sector, who work for seven hours or more and breastfeed a child of up to one year of age. The Committee asks the next report to clarify whether women working for example two full working days twice a week are entitled to paid nursing breaks.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Norway is in conformity with Article 8§3 of the Charter.

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

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

### ***Social protection of families***

#### ***Housing for families***

Norway has accepted Article 31 of the Charter on the right to housing. As all aspects of housing of families covered by Article 16 are also covered by Article 31, for states that have accepted both articles, the Committee refers to Article 31 on matters relating to the housing of families.

#### ***Childcare facilities***

The Committee recalls that as Norway has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

#### ***Family counselling services***

The Family Counselling Offices Act constitutes the legal framework for family counselling services, which include counselling, guidance and therapy for couples, families or individuals who experience difficulties, conflicts or crises within the family. All services are given on a voluntary basis. There is at least one Family Counselling Office in each county (49 agencies in 19 counties). The staff is composed of psychologists and social workers specialised in family therapeutic skills. Offices are owned and run either by the State or by the Church.

#### ***Participation of associations representing families***

The Committee refers to its previous conclusion (Conclusions 2011), in which it found the situation to be in conformity with the Charter.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The report indicates that pursuant to the Marriage Act, spouses have a mutual obligation to support each other. If a spouse does not fulfil the obligation to make necessary funds available to the other, the court can order him or her to pay certain amounts. As to children, the report states that under the Children Act, parents are obliged to support their children. Both parents shall contribute to this support and education according to their financial capacity. The support obligation applies regardless of whether or not the parents live with the children.

The report provides no information on legal means of settling disputes between spouses . The Committee therefore asks the next report to provide information in this respect.

On legal means of settling disputes concerning children, the report indicates that parents decide and agree how to organise themselves after a separation. When the parents cannot agree, the courts can settle the issues if one of the parties brings the case before the court. It is a basic principle in both the Children Act and the Convention on the Rights of the Child that decisive emphasis shall be placed on the child's best interests when settling issues linked to children following a separation. This applies both when the parents themselves make decisions, and when the courts hand down rulings.

#### ***Mediation services***

The Committee refers to its previous conclusion (Conclusions 2011), in which it found the situation to be in conformity with the Charter.

### ***Domestic violence against women***

The Crisis Centre Act, which came into force on 1 January 2010, makes it obligatory for local authorities to provide shelter and assistance for victims of violence. In view of this new Act, the report indicates that in 2013 there was a total of 46 crisis centres, where 2,028 people, mostly women, lived. The number of daytime users was 2,302.

The Committee notes that in August 2013, the Government launched a fifth Action Plan on Domestic Violence for the period 2014-2017, which underlines that the issue of domestic violence calls for a broad range of measures making use of policy instruments in the fields of justice, gender equality, social welfare, health and education. A cross-ministerial working group has been set up to ensure implementation of the measures. The Action Plan was to help ensure that the police and support services are better trained, better coordinated and more capable of detecting, preventing and dealing with the many complex issues raised by domestic violence. The measures in the action plan include a five-year research programme on domestic violence, a new grant scheme for voluntary organisations for work with domestic violence and several measures directed at preventing such violence. Among these are electronic monitoring of the offender (reverse domestic violence alarms) and improved domestic violence alarms.

The report highlights that there has been a sharp rise in the number of reported cases of domestic violence in recent years. 2,829 cases were reported in 2013, and there was an increase of 32% from 2009 to 2013. According to the report, this increase is due to the increased efforts of the police in combating domestic violence in recent years.

### ***Economic protection of families***

#### ***Family benefits***

According to Eurostat data, the monthly median equivalised income in 2013 was €3,578.

According to MISSOC, in January 2015, the monthly amount of child benefit was €107 for each child. The child benefit is not means-tested and is not subject to taxation.

Thus, child benefit represents a percentage of that income as follows: 3% for each child. The Committee considers that, in order to comply with Article 16, child benefit must constitute an adequate income supplement, which is the case when it represents a significant percentage of the monthly median equivalised income.

The Committee considers that the amount of child benefit of 3% of the monthly median equivalised income is too low to represent a significant percentage. The Committee takes note of the information on tax relief and special deductions, but in order to assess whether benefits and tax relief for families with children taken together represent an adequate income supplement it needs to know whether they apply to all families and their actual amount for different family types. Meanwhile, the Committee reserves its position.

#### ***Vulnerable families***

In its previous conclusion (Conclusions 2011), the Committee asked what measures were taken to ensure the economic protection of Roma families. The report indicates that an Action Plan was presented in 2009 to improve the living conditions for Roma, most of whom live in Oslo. The Action Plan provides that Roma who face difficulties in the housing market can, just as other disadvantaged people, apply for loans and subsidies from the Norwegian State Housing Bank, for municipal rental housing and for other social housing services. In addition, an advisory service for Roma in Oslo has been established in Oslo with a view to providing information and guidance about education, housing, work and health. The Committee takes note of these measures and asks the next report to continue to provide information in relation to the economic protection of Roma families.

***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The Committee notes that pursuant to the Child Benefit Act, child benefit is granted to all children living in Norway regardless of nationality. A child is considered as living in Norway if he or she has resided/has been domiciled for more than 12 months. The Committee has held a period of 6 months to be reasonable and therefore in conformity with Article 16 (Conclusions XIV-1 (1998), Sweden). On the other hand it has held periods of 1 year, and *a fortiori*, 3-5 years to be manifestly excessive and therefore in violation of Article 16 (Conclusions XVIII-1 (2006), Denmark). The Committee therefore considers that the situation is not in conformity with the Charter on the ground that equal treatment of nationals of other States Parties regarding the payment of child benefit is not ensured because the length of residence requirement is excessive.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

***Conclusion***

The Committee concludes that the situation in Norway is not in conformity with Article 16 of the Charter on the ground that equal treatment of nationals of other States Parties regarding the payment of child benefit is not ensured because the length of residence requirement is excessive.

## **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 Norway.

### ***The legal status of the child***

The Committee notes that the situation which it has previously found to be in conformity with the Charter has not changed.

### ***Protection from ill-treatment and abuse***

The Committee notes that the situation which it has previously found to be in conformity with the Charter has not changed.

### ***Rights of children in public care***

In its previous conclusion (Conclusions 2011) the Committee asked what were the criteria for the restriction of custody or parental rights and what was the extent of such restrictions. It also asked what were the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances.

It notes from the report that only in exceptional circumstances children are placed outside the home in a foster home or an institution against the will of their parents. This happens, according to the report, when assistance measures are not sufficient and it is absolutely necessary that a child be placed outside the home. The Committee takes note of Section 4/12 of the Child Welfare Act which lays down the requirements for a care order.

The decision to place a child outside the home can only be made by the County Social Welfare Board or the courts if the Board's decision is appealed. Under Section 4/20 of the Child Welfare Act the Board may also decide that the parents shall be deprived of all parental responsibility. The Boards are independent and impartial agencies, with a judge as board chair and with one member from the committee of professional experts. The parents can appeal the Board's decisions to the District Court. They can regain daily care for the child if the care order is revoked by the Board or the court.

The Committee wishes to receive statistics about the number of children placed in foster or family type care as opposed to institutions. It also wishes to be informed of an average size of an institution.

### ***Right to education***

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

### ***Young offenders***

In its previous conclusion the Committee considered that a prison sentence of 21 years for a minor was excessive and therefore not in conformity with the Charter. It notes in this regard that the legislative proposal concerning juveniles in conflict with the law was approved by Parliament (*Stortinget*) and several legislative amendments entered into force on 20 January 2012. Section 184 of the Criminal Procedure Act states in its second paragraph that minors (between 15 and 18 years of age) shall not be imprisoned unless it is imperative to do so. A statutory maximum penalty of 15 years has been adopted.

The Committee observes that when referring to the juvenile justice, the competent international bodies require that the prison sentences imposed on juveniles should be as short as possible (Guidelines of the Committee of Ministers of the Council of Europe on child



friendly justice, Recommendation CM/Rec(2008)11 of the Committee of Ministers of the Council of Europe concerning the European Rules for juvenile offenders, United Nations Standard Minimum Rules for the Administration of Juvenile Justice). Accordingly, the Committee asks the States Parties to the Charter to take all possible measures to reduce the maximum length of prison sentence for young offenders, as well as to ensure that they make the best possible use of their right to education and vocational training, with a view to their reintegration into the society, once the sentence has been served.

In its previous conclusion the Committee asked what was the maximum time-limit of pre-trial detention of a minor which could no longer be extended. It notes in this regard that with the above mentioned legislative amendments the previous four week-limits to pre-trial detention in Section 183 in the Criminal Procedure Act has been reduced to two weeks if the Court decides to remand a charged person in custody. It may be extended by order up to two weeks at a time. The Committee considers that the reduction to two weeks is a positive development. However, it asks again what is the maximum overall permissible limit to pre-trial detention, including extensions. It holds 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.

According to the report, the number of minor prisoners is low, usually 10-15 at any time, and has remained quite stable over the last years. In 2012, according to the report, the number of incarcerated children fell to 51 (from 64 in 2010). In 2013 the number of incarcerated children dropped significantly to 27.

In its previous conclusion the Committee noted that to avoid the occurrence of juveniles serving their sentences in prisons together with adults, Norway was establishing separate prison units for young offenders. The Committee wished to be informed of the results. The Committee notes that the evaluation is currently in progress and observes that the report does not provide any further information on this point. The Committee asks the next report to provide precise information about the measures taken to separate juveniles for adult prisoners both in pre-trial detention facilities as well as prisons. The Committee holds 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.

According to the report, the Act relating to amendments to the General Civil Penal Code, the Criminal Procedure Act, the Execution of Sentences Act, National Mediation Service Act, etc. (children and sanctions) was adopted on 20 January 2012. A new sanction was introduced as an alternative to prison – juvenile sentence – for children between the ages of 15 and 18. The sanction must be imposed by a court and executed under the direction of the National Mediation Service. It will have a duration of between six months to two years (three years in exceptional cases), and requires the consent and participation of the child. By participating voluntarily and actively in the process, the offender will be aware of the consequences of their actions. The Committee wishes to be kept informed of the implementation of these amendments.

In its previous conclusion the Committee asked whether young offenders have a statutory right to education. It notes that prisoners have the same educational rights as the population in general, limited by security restrictions only. Hence, according to the report, juvenile prisoners have the right, as well as a duty, to free primary education, and the right to secondary education.

### ***Right to assistance***

According to the report, all children in Norway are entitled to immediate aid and necessary health and care services from the municipality and specialist health service, regardless of residence status. Children who are unlawfully present have the same rights to health and care services as children who live in Norway. They are entitled to a renewed assessment of the health condition following a referral from a general practitioner as well as to freely choose their treatment hospital and an individual plan. According to the report, this follows

from Regulation No. 1255 of 2011 relating to the right to health and care services for people without permanent residence.

*Conclusion*

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

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

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

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

In its previous conclusion (Conclusions 2011) the Committee took note of the Action Plan for Roma children. The Committee asked what concrete steps were taken in the framework of this Plan and what measures were taken to calculate the school enrolment and drop out rates for Roma children.

The Committee notes from the report that the City of Oslo has started a large number of different remedial actions to reduce unauthorised absence from schools and to increase the learning outcome for Roma children. Action includes increased guidance, reading courses and reading groups, increasing the Roma children's motivation for learning through guidance of the parents, organisation for social learning, playing and interaction across languages and cultures. A pilot project targeting Roma children has been implemented, where the target group were pupils aged 8-16 from Roma families with a high rate of absenteeism.

According to the report a good way to help children to complete compulsory education and to integrate them fully in society is to improve the life circumstances for their parents. The Roma initiative has started local community-based education in basic skills at or close to two primary schools. One of these schools reports that this course has improved communication and trust between the school and the Roma parents. This has resulted in a higher awareness about the need for continuity in schooling and acceptance of the importance of completing compulsory education. The parents now view the schools as less threatening. In May 2012, the schools reported that unauthorised absence, which was a major challenge in the past, was non-existent.

The Committee wishes to be informed about the statistics as regards absenteeism, enrolments and drop out rates of Roma children as well as all children.

The Committee also asks whether irregularly present children have a right to education.

### *Conclusion*

The Committee concludes that the situation in Norway is in conformity with Article 17§2 of the Charter.

## **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 Norway.

### ***Migration trends***

According to the International Organisation for Migration, over the past decade Norway has seen a considerable increase in the number of migrants applying for a work permit, especially from new members of the European Union like Poland, Lithuania and Latvia.

According to the Statistics Norway website, in 2015, there were 669,400 first generation immigrants, and 135,600 children who were born to immigrant parents, residing in Norway. This makes up 15.6 per cent of the population of the country. Of these, 342,333 were originally from EU/EEA countries, and 68,080 were from European countries outside of the EEA, but not including Turkey. Furthermore, there has been a sharp increase in immigrants from EU/EEA countries since 2006. The highest concentrations of persons with immigrant backgrounds are in Oslo, Drammen and Båtsfjord.

The IOM states that in 2010 Norway received a total number of 9,908 migrants via family reunification, which is a notable decrease from previous years. In 2011, Norway received 9,053 asylum applications, mainly from countries like Somalia, Eritrea, and Afghanistan. In the same year, 52% of the processed applications were granted asylum in Norway.

### ***Change in policy and the legal framework***

According to the report, an 'Action Plan to Promote Equality and Prevent Ethnic Discrimination 2009-2012' was adopted in 2009. The Committee asks for details on the initiatives contained within this Action Plan and on the steps taken to implement it. The report mentions that the results of the plan, which was extended throughout 2013, included increased awareness of ethnic discrimination, and a successful tripartite model for cooperation between employers and employees.

As of 1 January 2014, Norway has four separate Anti-Discrimination Acts: the Ethnicity Anti-Discrimination Act, the Anti-Discrimination and Accessibility Act, the Gender Equality Act and the Sexual Orientation Anti-Discrimination Act. The Ethnicity Anti-Discrimination Act primarily represents technical amendments to the former Anti-Discrimination Act. The Act prohibits discrimination based on ethnicity (which includes national origin, descent, skin colour and language), religion or belief. The purpose of this Act is to promote equality, ensure equal opportunities and rights and to prevent discrimination regardless of ethnicity, religion and belief.

The report also highlights the Action Plan for the Integration and Social Inclusion of the Immigrant Population 2007-2010, which resulted in a significant financial boost for integration measures. It states that most of the actions developed and initiated through the action plan are now part of the ordinary policy implemented in Norway.

The new Immigration Act came into force in January 2010, and according to the report, it tightened certain controls on immigration in response to increased applications, and with the objective of improving the integration prospects of those who were granted permits.

The Committee notes from the fifth report of the European Commission against Racism and Intolerance (ECRI) (adopted 2014) that the gap in unemployment rates between migrants and those born in Norway increased in 2013, and unemployment among migrants was 3.6 times higher than among those born in Norway. It asks the government to comment on these figures, and to indicate any measures which are being taken to ensure that discrimination against migrant workers is eradicated.

### ***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 report states that migrant workers who are nationals of States Parties to the Charter which are not members of the EU or EEA, and their families, are given a book made especially for migrant workers called “New in Norway”. The book provides information on rights and duties for labour immigrants in Norway and includes information regarding residence, work, children and schools, health, recreational activities, public agencies and other useful information. is available in English, Polish and Norwegian languages. This information is also accessible via free download in Norwegian, English, German, Lithuanian and Polish languages at [www.nyinorge.no/](http://www.nyinorge.no/). Further information is provided via the online web portal [www.workinnorway.no](http://www.workinnorway.no), which was launched in 2013. Workinnorway.no is a step-by-step guide to working or doing business in Norway – including how to find a job, get registered, tax and reporting, social security, and so on.

The Service Centres for Foreign Workers (SUAs), situated in Oslo, Bergen, Stavanger and Kirkenes, provide guidance for foreigners who come to Norway to work. EU/EEA citizens and nationals of other countries looking to apply for residence permits, as well as the family members of any of these people, can use these services. The service centres also provide information and assistance for employers.

The Ministry of Children, Equality and Social Inclusion provides grants to NGOs that provide information and guidance to new immigrants, especially to labour migrants and other immigrants who are not covered by the Introduction Act.

The Directorate of Integration and Diversity implements policies on behalf of the Ministry of Children, Equality and Social Inclusion. The objective of the Directorate is to promote and contribute to equal opportunities and equality in living conditions and diversity through employment, integration and participation. The Directorate’s areas of responsibility are the settlement of refugees in municipalities, customised qualification measures for immigrants through the Introduction Program for newcomers (refugees and their family members), Norwegian Language Training and Social Studies, a job opportunity program and municipal development funds.

With regard to emigrants, the report states that the Norwegian Labour and Welfare Service provides free information on how to apply for work abroad. Information for workers who are moving out of Norway can also be found on the Norwegian Labour and Welfare Services web page.

The Committee considers that the situation with regard to the provision of free information for migrant workers and their families is in conformity with the Charter.

### ***Measures against misleading propaganda relating to emigration and immigration***

The report states that the Action Plan to Promote Equality and Prevent Ethnic Discrimination (2009-2012) was extended throughout 2013. The action plan was evaluated by the Norwegian Institute for Urban and Regional Research. According to this evaluation, the plan resulted in increased awareness of ethnic discrimination in different areas as a consequence of the number of actors involved in the plan. The tripartite cooperation with the employer and employee organisations was one of the most successful elements in the plan.

As of 2014, the Directorate for Children, Youth and Family Affairs has been tasked with developing its own expertise as regards equality and anti-discrimination related to ethnicity, religion and belief. This includes knowledge concerning immigrants, indigenous peoples and national minorities. Additionally, they must use all tools available to promote equality and prevent discrimination on all discrimination grounds.

Norway has taken part in the EU's multi-year framework programme PROGRESS 2007-2013. The Equality and Anti-discrimination Ombud (LDO) has received funds from the programme in the period 2009-2013. The LDO has produced the training manual 'A practical approach to equality in public services'.

The report states that in 2014, the Ministry of Children, Equality and Social Inclusion funded the Norwegian campaign Young people combatting hate speech online. This campaign is part of the European No Hate Speech Movement.

In its fourth report on Norway which was adopted in June 2008, ECRI noted that the expression of anti-immigrant views in public debate, including politics, had become more common in Norway in recent years; in particular, Muslims were increasingly associated with terrorism and violence.

Committee notes from the abovementioned fifth ECRI report that in March 2011 the Committee on Elimination of Racial Discrimination (CERD) expressed concern about "racist views expressed by extremist groups, some representatives of political parties and in the media, which might lead to acts of hostility against certain minority groups".

ECRI notes that during the summer of 2012, public debate and media concentrated on Roma beggars and criminal gangs and lack of hygiene among Roma. Anti-immigration rhetoric is also directed against migrants from central and eastern European countries.

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information. It considers that in order to combat misleading propaganda, there must be effective organs to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere. It therefore asks what mechanisms exist in Norway to perform these functions.

In 2012, a survey by the Center for the Study of the Holocaust and Religious Minorities confirmed the existence of stereotypical notions of Jews in Norwegian society and found that overall, 12.5% of the population could be considered as being significantly prejudiced against Jews. The research shows that even more people are prejudiced against Muslims, Somalis and Roma: while 3% of the respondents stated that they would strongly dislike to have Jews as neighbours, the figure rose to 12% for Muslims, 19% for Somalis and 27% for Roma.

According to the abovementioned report of ECRI, almost 8% of migrants from non-western countries had experienced hate speech and other hate crime.

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. According to the report, in November 2012, the director of public prosecutions held a seminar on hate crime and racism; in 2013 he issued a circular to the effect that hate crime should be given special attention. The Committee asks for further information on the training of police officers and other officials dealing regularly with migrants.

An action plan on increasing employment among immigrants (2013 to 2016) and the National Strategy for immigrants' health 2013-2017 were adopted; but according to ECRI, as of December 2014 the new government has not taken any initiative to develop a new

general action plan. The Committee requests that the next report provide up to date information on all measures taken in practice to combat misleading propaganda relating to migrants.

The Committee recalls that States have an obligation to take measures or undertake programmes to prevent the dissemination of false information to departing nationals, as well as to prevent the misinformation of foreigners wishing to enter the country. Authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia). The Committee asks what other steps are being taken to combat human trafficking and other abuses of potentially vulnerable migrants.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Norway is in conformity with Article 19§1 of the Charter.

## **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 Norway.

### ***Departure, journey and reception of migrant workers***

The report states that there are no specific or targeted measures to facilitate the departure, travel and reception of migrant workers. It outlines that a temporary right to work can be given while the application for a residence permit is under consideration.

The Committee recalls that 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 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). Reception means the period of weeks which follows immediately from their 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). The Committee asks what specific steps are taken in the period following the arrival of migrants to assist them with matters such as those mentioned in the case-law of the Committee.

The report states that the Norwegian Labour and Welfare Administration comprises the municipalities' social services and the Norwegian Labour and Welfare Service, and includes the responsibilities and tasks of the former public employment service and the former National Insurance Service. Labour and Welfare Offices (NAV offices) are established in each municipality to provide these services, including ensuring income in the event of unemployment and following up people who need vocational assistance to find employment. The report indicates that these services are "guaranteed to all citizens, including migrant workers". The Committee notes from the Labour and Welfare Office's website ([www.nav.no](http://www.nav.no)) that membership of the National Insurance Scheme may be based upon residence or employment in Norway. It is necessary to have permission to stay in Norway for at least one year, in which case, subscription to the Insurance Scheme begins on the day of entry into Norway. It further notes from the abovementioned website that "entitlement to full rights under the law is contingent on being permanently and legally resident in Norway". The Committee asks that the next report detail clearly what services are available, in particular to migrants with temporary residence permits, upon arrival in Norway.

The Committee notes from the website 'New in Norway' that the Police, the Directorate of Immigration, the Tax Administration and the Labour Inspection Authority have established joint service centres for foreign workers in Norway. The service centres provide guidance on moving to Norway and swift processing of applications for residence. The centres help EU/EEA nationals, nationals of other countries who apply for a work permit as a skilled worker, and family members of these two groups. The service centres are situated nationwide, and users attend in person.

The Committee asks that the next report provide a full and up to date description of the situation with regard to the rights and opportunities of migrants upon arrival in Norway.

### ***Services for health, medical attention and hygienic conditions during 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 requests details of any measures taken in regard of collective recruitment, if it should occur.

*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 Norway.

The report states that there are no special regulation regarding contact or cooperation between the social services in Norway and the corresponding services in the migrant workers' home countries. It indicates that if necessary, contact must be made on a case by case basis.

The Committee recalls that formal arrangements are not necessary, especially if there is little migratory movement in a given country. 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.

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/she was employed (Conclusions XV-1 (2000), Finland).

The government refers to its previous report which states that immigrants from countries in Scandinavia, North America and EU/EEA countries are largely migrant workers. Among these it is very unusual to receive social assistance; between 1 and 2 percent were receiving such benefits in 2008 (whilst about 3% of the total population received such assistance). The Committee notes the relative absence of need in this area and considers that ad hoc contact with services in the migrants' home countries may be sufficient in such a case.

The Committee asks under what circumstances it is envisaged that contact may be made, and who would be responsible for establishing the connections. It requests that the next report provide evidence that such cooperation is possible and/or occurs in specific situations. It considers that should the next report fail to provide this information, there will be nothing to establish that the situation is in conformity with the Charter.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Norway is in conformity with Article 19§3 of the Charter.

## **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 Norway.

### ***Remuneration and other employment and working conditions***

Pursuant to the Act of 4 June 1993 No. 58 relating to general application of wage agreements, etc. (The General Application Act), a public board, the Tariff Board, is authorized to impose extension of a collective agreement in certain cases. If the Tariff Board makes such a decision in a regulation, the regulations on wages and other working conditions in question in the agreement will apply to all persons performing work within the scope of the agreement, both Norwegian organised and non-organised workers and foreign workers.

In its previous conclusion (Conclusions 2011), the Committee asked that the next report provide detailed information on the implementation of measures aimed at reinforcing the regulation and monitoring of working conditions, also in order to prevent exploitation of migrant workers, their irregular employment and to reduce unfair competition with national workers, and their impact on the problem of discrimination of migrant workers.

The report states that in the white paper Meld. St. 29 (2010-2011) "Joint responsibility for a good and decent working life", the Government proposed additional measures to improve conditions for all employees in exposed industries.

Regulations relating to general application of collective agreements for cleaning companies entered into force on 23 May 2013. The regulations contain, inter alia, a generally applicable minimum wage of 161.17 NOK (€ 16.89) per hour for over 18s and 121.01 NOK (€ 12.68) per hour for under 18s, as well as a supplement for unsociable hours. A separate Regulation (No. 408 of 8 May 2012) provides for registration of employers, and a system of ID cards for all employees.

As regards work assignments on construction sites, in the shipping and shipyard industries and within cleaning, where accommodation outside the home is necessary, the employer shall, according to agreement, cover necessary travel expenses at the start and end of the work assignment, and provide food and accommodation, but a fixed per diem payment can be arranged.

Furthermore, Regulations relating to general application of collective agreements for fishing industry companies were adopted in 2014. According to the report, Regulations relating to partial general application of the National Agreement Regarding Electrical Work will be adopted in 2015.

Pursuant to Section 11 of the General Application Act, the Labour Inspection Authority conducts audits to ensure that wages and working conditions that follow from the general application resolution are adhered to. If the rules are broken, the Labour Inspection Authority can issue a business order, compulsory fines, charges, stop work, or report the matter to the Police.

On 1 January 2013, Norway introduced new rules in the Working Environment Act and the Civil Service Act concerning equal treatment of temporary agency workers, as well as several measures to ensure compliance. The rules concerning the equal treatment principle, etc. are in compliance with and satisfy the requirements in EU Directive 2008/104/EC on Temporary Agency Work. One of the purposes of the Working Environment Act is to prevent social dumping. Temporary agency workers must therefore be given the same terms and conditions as would have been guaranteed had the employer directly hired the worker. In order to police this, the Act provides that the agencies and employers involved must make available the information enabling the worker, or the enterprises or agencies, to determine whether the terms and conditions are equal.

As of January 2014, the Labour Inspection Authority is able to issue *administrative fines* for breaches of the Working Environment Act and other staffing enterprise rules.

The Committee asks that the next report provide statistical data and other evidence concerning the work of the Labour Inspection Authority, in particular in relation to the number of violations concerning the employment of migrant workers.

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

The report states that wages in Norway are negotiated by the social partners. They are not determined by law, and no legal minimum wage applies, with the exception of areas covered by the regulations of general application. Migrant workers have the same rights as other workers to join trade unions and to enjoy the benefits of collective bargaining. The Committee asks how this right is ensured in practice.

The Committee recalls from the 8<sup>th</sup> report of the government that with regard to posted workers, the Posted Workers Directive is implemented in the Working Environment Act (WEA), section 1-7 and the regulation 16 December 2005 No. 1566 concerning posted workers.

The Committee refers to the Statement of Interpretation on Article 19§4 in the General Introduction (Conclusions 2015) and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

### ***Accommodation***

The report states that an overriding objective of Norwegian housing policy is that everyone shall live well and safe.

From 2007 till 2013 the Equality and Anti-discrimination Ombud received a total of 14 complaints concerning discrimination on the grounds of ethnicity (11) or religion (3) in the housing market. In the same period, the Ombud provided counselling in 48 cases regarding discrimination on grounds of ethnicity and four cases regarding religion in the housing market.

Start-up loans are given by municipalities to persons with long-term housing and financing problems. The target group for the scheme was made clear in the new regulations that came into force on 1 April 2014. People in the target group might be low-paid, single parents, refugees and handicapped.

An action plan was presented in 2009 to improve living conditions for Roma in Oslo. The target group for the action plan is people who belong to the Roma national minority who are registered in Norway's National Population Register and who define themselves as Roma. Roma who have problems in the housing market can, just as others who are disadvantaged, apply for loans and subsidies from the Norwegian State Housing Bank, for municipal rental housing and for other social housing services. An advisory service for Roma in Oslo has been established as a result of the action plan.

Immigrants who are registered in the National Population Register and have legal residence in Norway, are qualified for housing allowances and have the right, on equal terms with others, to be considered for the other financial housing instruments.

However, the Committee notes from the report that there are no general guidelines established at central level, that in practice municipalities are free to decide about the length of the residence, and that most municipalities require two years of residence in order to be assigned municipal housing. The Committee recalls that there must be no legal or *de facto* restrictions on home-buying, access to subsidised housing or housing aids, such as loans or other allowances (Conclusions IV (1975), Norway and Conclusions III (1973), Italy). The

Committee considers that the requirement of two years' residence prior to assignation of municipal housing is discriminatory as it prejudices migrants who recently arrived in Norway and require the same assistance as Norwegians. The Committee considers that a two-year residence requirement is excessive and therefore not in conformity with Article 19§4 of the Charter.

The report notes that on average, it takes longer for migrant workers to establish themselves in the housing market than is the case for Norwegians.

The report states that a number of information measures aimed at refugees/immigrants have been developed within the subject of housing. Together with Migranorsk AS, the Norwegian State Housing Bank has developed "Å bo" (Living), an online education tool on various aspects of acquiring a home and living in Norway. The tool is available in seven languages. Moreover a website, [www.nyinorge.no](http://www.nyinorge.no), has been established with information in several languages about subjects including the purchase and rental of housing and other housing-related topics. Together with the Norwegian Inclusion and Diversity Directorate (IMDi), the Norwegian State Housing Bank has prepared an information brochure about housing subsidies for refugees and immigrants.

According to the report, studies have shown that there are selection and discrimination mechanisms in the rental market that cause individuals to face particularly poor and expensive rent offers, and that disadvantaged and ethnic minority groups consistently pay higher rents than others and that they experience arbitrary lay-offs and rent increases. However, the government avers that discrimination is difficult to prove, as discrimination is legitimised or explained through other causes. The Committee therefore asks what other steps have been taken to reduce the incidence of discrimination in the housing market, for example, awareness campaigns.

#### *Conclusion*

The Committee concludes that the situation in Norway is not in conformity with Article 19§4 of the Charter on the ground that a two-year residence requirement for eligibility for municipal housing, as applied by some municipalities, is excessive and constitutes a discrimination against migrant workers and their families.

**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 Norway.

The report states that the situation, which it has previously considered to be in conformity with the Charter (Conclusions 2011), has not changed. The Committee finds no information to contradict this assessment. Accordingly, it reiterates its finding of conformity.

The Committee requests, however, that the next report provide a full and up to date description of the legal framework regarding the taxation and contributions of migrant workers in relation to employment.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Norway is in conformity with Article 19§5 of the Charter.

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

### *Paragraph 6 - Family reunion*

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

#### **Scope**

The Committee refers to its previous conclusion (Conclusions 2011) where it found that the scope of family reunion in Norway was in conformity with the Charter.

It recalls that the family member's residence permit will depend on which permit the sponsor hold as a resident in Norway. His or her permit will never be valid longer than the sponsor permit, and it will only form the basis for a permanent residence permit (settlement permit) if the sponsor's permit does. The family member can also be granted a permit if the sponsor is only staying in Norway for a short period. This right only applies to certain categories of persons living in Norway with respect to spouses/cohabitants and children.

The Committee notes that under Section 53 of the Immigration Act 2008, a spouse is entitled to renew their residence permit following the death of the sponsor, or after termination of the relationship where there is reason to assume that the spouse or a child has been abused during the cohabitation. It may also be granted where the foreign national, as a result of the breakdown of the marriage or cohabitation, will have unreasonable difficulties in his or her country of origin on account of the social or cultural conditions there. The Committee asks whether the family member is liable to expulsion if the sponsor's residence permit is rescinded and the sponsor is deported for reasons of national security or public interest.

#### **Conditions governing family reunion**

The Committee notes from the report that "the subsistence requirement was tightened in connection with the new Immigration Act and regulations that came into force on 1 January 2010." The objectives of the new measures included ensuring that residents could be supported without recourse to public benefits, and to increase the likelihood of effective integration. It is also observed in the report that "the tightening was also a measure to deal with the increasing influx of asylum seekers in 2008 and 2009". The Committee considers that the deliberate hindrance of family reunion in order to quell immigration, in particular of persons seeking refuge, does not accord with the object and purpose of Article 19§6. The Committee also notes from the report that an exception is made to the subsistence requirement for refugees, who need not prove such income when sponsoring a spouse or child, provided that the application is submitted within one year of gaining the residence permit.

Notwithstanding the foregoing, the Committee notes from the Statistics Norway website that the mean average annual earnings of Norwegian residents in 2014 were 503,800 NOK (€ 54,550). The median monthly earnings were 39,300 NOK (€ 4,250), from which the median annual earnings may be estimated to 471,600 NOK (€ 51,050). The report details that the subsistence requirement is currently set at a future and past income of 250,000 NOK per annum (€ 27,050). It also states that 99% of applications for family reunion by migrant workers are granted, and of those which are rejected, very few relate to the subsistence requirement. Among all groups of applicants, 75% of applications were granted during the period 2010-2013, and 15% overall failed due to failure to meet the subsistence requirement.

The Committee recalls that social benefits must not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of interpretation of Article 19§6). It notes that a number of benefits, except unemployment benefit, may be included in the calculation, such as sickness benefit, educational support, and payments under the Introduction Act. Conversely, payments of financial support under the Social Services in Labour and Welfare Administration Act in the year prior to application may disqualify the sponsor from family reunion. The Committee

requests confirmation that this refers to a specific category of unallocated financial support, and does not refer to national insurance payments or housing allowances. Furthermore, the Committee notes that if the family member has secured employment in Norway, their future income can also be included in the calculation.

Furthermore, the report states that sponsors who are permanent residents, Norwegian and Nordic citizens may be exempted from the requirement if they have completed a certain level of education.

Given the high levels of pay prevalent in Norway, and the low level of rejections of such applications for migrant workers, the Committee concludes that the means requirement set for family reunion does not constitute an unreasonable restriction and does not unduly hinder family reunion.

With respect to language requirements, the Committee notes from the report that completion of language training is not a condition for family reunion in Norway. The only substantial prior condition is the subsistence requirement.

The Committee asks that the next report provide up to date information on any requirements imposed for eligibility for family reunion, including, for example, accommodation, health, or length of residence.

#### *Conclusion*

The Committee concludes that the situation in Norway is in conformity with Article 19§6 of the Charter.



## **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 Norway.

According to the report, legal aid is provided by the local or central government to cover the costs of litigation entirely or partially. Assistance is given during the pre-trial phase (legal advice), the trial (legal representation) and through waiver of court fees. The right to assistance is dependent upon the assessment of the applicant's finances, and the type of case.

The Committee notes that foreigners applying for legal aid in Norway are treated the same way as Norwegians, following Norway's obligations under the Hague Convention on Civil Procedure of 1 March 1954. Legal advice prior to trial is not covered by that convention, however Norway applies the same equality of treatment for foreigners resident in Norway in cases where the problem has a specific connection to Norway and there is need to engage a lawyer in Norway.

With respect to interpretation, the expenses of each party for interpreters in connection with legal advice are covered to the extent that it is essential. In litigation matters, interpretation may be covered even where legal aid is not applied for. The Committee notes that such coverage increases equality before the law by putting the parties on an equal footing and removing the obstacle of language. The Legal Aid Act can also cover the cost of translating documents, however in practice this is usually performed by the public body itself.

In civil cases, the court may order the use of interpreters pursuant to Section 135 of the Court of Justice Act. In such cases, the cost is covered by the public purse where the party is a Norwegian citizen or permanent resident, or for other foreign applicants where the court deems it reasonable. The same rules apply to the translation of documents under Section 136 of the abovementioned Act.

The Committee refers to the Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid.

### *Conclusion*

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

**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 Norway.

The report states that the situation, which the Committee has previously found to be in conformity with the Charter (Conclusions 2011) has not changed.

With reference to its Statement of interpretation on Article 19§9 (Conclusions 2011), the Committee asks whether there are any restrictions on the transfer of the movable property of migrant workers.

*Conclusion*

The Committee concludes that the situation in Norway is in conformity with Article 19§9 of the Charter.

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

*Paragraph 10 - Equal treatment for the self-employed*

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

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.

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

The Committee has found the situation in Norway not to be in conformity with Article 19§4. Accordingly, the Committee concludes that the situation in Norway is not in conformity with Article 19§10 of the Charter.

*Conclusion*

The Committee concludes that the situation in Norway is not in conformity with Article 19§10 of the Charter as the ground of non-conformity under Article 19§4 applies also to self-employed migrants.

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

### *Paragraph 11 - Teaching language of host state*

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

The report states that the Introduction Act has updated the Introduction Program and the Norwegian Language Training and Social Studies schemes. In addition, the Job Opportunity Programme was introduced in 2013. The Norwegian Language Training and Social Studies course was revised beginning September 2012, with an increased focus on vocational language training, IT skills, and literacy modules for those who cannot read or write in their own language. The course is completed with two tests, in language and in social studies, which collect data on the efficacy of the training modules.

In 2013, 38,700 individuals participated in the training, which represents a small increase on the previous years. In 2013, around 1500 of the persons attending were labour migrants, the rest were family members and refugees. In 2013, over 57% of participants were women.

Since 2005 it has been compulsory for new adult immigrants between the ages of 16 and 55 to participate in the scheme if they hold permanent residence permits. Those over 55 have the possibility, but not the obligation, to join the classes. This also applies to family members of Norwegians and foreigners. The obligation can be waived for reasons of prior competence in Norwegian or Sami, health or other serious justification.

Residents of EEA/EFTA Agreement countries are not covered, and are neither obliged to participate nor entitled to free tuition. The Committee asks whether they are able to participate in the courses as paying students, and whether financial assistance is available for those who cannot afford to pay.

The Committee notes that refugees and others granted residence permits on humanitarian grounds are provided free tuition. It recalls from its previous conclusion (Conclusions 2011) that costs were between 15,000 NOK (€ 2,000) and 30,000 NOK (€ 4,000) for other students. It asks for clarification of precisely which groups of migrants must pay for the obligatory classes, and who are entitled to free education.

The Committee notes from the letter of 13 July 2012 from the Government to the Governmental Committee that Norway provides free assistance to persons granted asylum or other humanitarian relief. It declines to do so automatically for other migrants, including workers and their families, on the grounds of their more favourable position. For example, migrant workers are required to have an income in order to be permitted to reside. Nevertheless, the letter states that immigrants who cannot meet the cost may apply for economic support from the local social services in the municipality. Costs may be covered if the classes are considered likely to improve the person's possibilities of finding work or overcoming or adapting to a difficult situation. No statistics are available concerning the number of dispensations which have been granted. The Committee notes the possibility of covering the costs for persons in need and considers that the situation is therefore in conformity in this respect. It requests that the next report provide some statistical or evidential proof that migrants are not unreasonably required to pay the costs of their language classes, in particular where these are compulsory.

The Committee notes another scheme which provides free language classes as part of a qualification program for immigrants having difficulty finding work. Individuals are paid for their participation in these programs. According to the report, municipalities have also been known to organise free language training for people who are not entitled to other support, and employers may do likewise.

The report also states that asylum seekers residing in reception centres are entitled to 250 hours of free language training, in the second half of 2013, 4,700 asylum seekers attended such courses. The courses involve 600 hours of tuition, a significant rise from the previous 300 offered up until January 2012. Persons who need further training may receive up to

2,400 extra hours depending upon individual needs. The course is partially financed by central government grants to the municipalities.

The Committee notes that migrants are expected to enrol as soon as possible in education. In 2012, 11,500 individuals were recognised as being obliged to participate in the course, within 18 months 85 per cent of eligible women and 91% of eligible men had commenced the training. The Committee notes that a similar small discrepancy in the representation of men and women on such courses persists across other years for which data is provided in the report. The Committee asks whether steps are being taken to improve enrolment figures, in particular amongst women.

With respect to the language education of children, the Committee refers to its previous conclusion (Conclusions 2011) for a detailed examination. Schools provide adapted education without charge until the pupil is sufficiently proficient in Norwegian, and further assistance with homework and during summer schools is also available. No new information referring to schools is provided in the report. The report refers instead to the introduction of 20 free hours of *kindergarten* for children in six districts of Oslo and in areas of Bergen and Drammen. The purpose is to increase migrant children's participation and exposure to the language as early as possible, and according to local schools the initiative improves base levels of Norwegian upon entry to primary school.

Finally, both public and non-public actors have developed online language courses in Norwegian, in particular some of these have been funded or developed by Vox, the Norwegian Agency for Lifelong Learning. These courses provide material in a flexible manner to support other courses or to be used in isolation; however, the report states that most of these courses (with the exception of the Norwegian University of Science and Technology) charge a fee from participants who are not entitled to free language training.

#### *Conclusion*

The Committee concludes that the situation in Norway is in conformity with Article 19§11 of the Charter.

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

### *Paragraph 12 - Teaching mother tongue of migrant*

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

The report states that the situation has not changed since the previous conclusions (Conclusions 2011), and provides a description of the legislative and practical measures in place.

Sections 2 to 8 of the Education Act provide for the adapted education of children whose mother tongue is not Norwegian or Sami until they are sufficiently proficient to follow ordinary instruction.

The law states that “if necessary, such students are also entitled to mother tongue instruction, bilingual subject teaching, or both”. The Committee asks what is deemed to be meant by “necessary” in this context, and whether all who request it are given instruction in their mother tongue.

The law further states that instruction in the mother tongue of the child may be provided at a school other than that normally attended by the pupil. The municipality is under an obligation to provide instruction as far as possible.

The report indicates a decline in the use of mother tongue instruction, however it notes that special tuition has been stable. The Committee asks that the next report provide statistics concerning the number of children eligible for and receiving education in their mother tongue.

The government is currently implementing an initiative, *Kompetanse for mangfold* (Expertise for diversity) which aims to further educate school leaders in the regulations. It is intended to facilitate increased use of special language instruction, as described above, and to emphasise multilingualism as a resource.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Norway is in conformity with Article 19§12 of the Charter.

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

### *Paragraph 1 - Participation in working life*

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

The Committee notes that Norway has only accepted Article 27§1(c).

### ***Child day care services and other childcare arrangements***

The Committee notes from the report that as regards provision of places and guaranteeing access to kindergartens the Government has set as its goal to work towards increased flexibility in admission to kindergartens. It notes that in 2013 there were a total of 6,296 kindergartens, both public and private, including ordinary, family and open kindergartens. The total number of children in all kindergartens 2013 stood at 287,177.

The Committee also takes note of the information concerning financing of kindergartens and parental fees and subsidies for low income families.

As regards monitoring, according to the report, the municipalities are the official kindergarten authorities at the decentralised level and are responsible for the tasks that include supervision and inspection of both public and private kindergartens. The objective of supervision is to ensure that the kindergartens are operated in keeping with the Kindergarten Act and that they are adequate. The professional and personal competence of staff is the most important resource in kindergartens. National strategies for quality are therefore clearly linked to and concerned with staff competence. Between 2009 and 2012 the Ministry of Education and Research established 650 more places in kindergarten teacher education. The ongoing strategy for competence 2014-2020 addresses the problem of unqualified kindergarten staff.

The Committee wishes to be kept informed about the process as well as about the measures taken to reduce the shortage of kindergarten teachers.

### *Conclusion*

The Committee concludes that the situation in Norway is in conformity with Article 27§1(c) of the Charter.

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

*Paragraph 2 - Parental leave*

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

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.

*Conclusion*

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



## **Article 31 - Right to housing**

### *Paragraph 1 - Adequate housing*

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

### **Criteria for adequate housing**

The Housing Census carried out in 2011 provides the following information: on average there are 2.2 residents per dwelling; almost half of all residences are between 100 and 200 m<sup>2</sup> and only 7% of the dwellings are under 50 m<sup>2</sup>; on a national basis, 12% of all dwellings have less than 30 m<sup>2</sup> per occupant. The report underlines that the housing stock is dominated by high standards and well-equipped residences.

The Committee notes that in 2012 a survey has been carried out on housing conditions. The survey indicates the following: 6% live in cramped conditions; 8% live in housing with moisture and/or rot; 5% experience problems with dust, odours and other contaminants around the residence; 7% are bothered by outside noise.

The report indicates that the Planning and Building Act was revised in 2014, but also that none of the amendments will affect the quality of buildings.

### **Responsibility for adequate housing**

The report indicates that the Ministry of Local Government and Modernisation has overall responsibility for the Planning and Building Act. The responsibility principally entails preparing laws and regulations and a general duty to provide guidance on the rules contained therein. The responsibility to conduct inspections of newly erected and existing buildings is delegated to municipalities.

The report states that in 2013, a total of 7,204 building inspections were conducted and 1,878 rectification orders were issued. In this regard, the majority of the conditions, i.e. a total of 2,002, that were pointed out were corrected.

On the procedures relating to security norms, the report indicates that the role of the municipality is twofold. First, the municipality processes building applications, where it sets direct requirements concerning the quality of the measures such as architectural design, infrastructure, etc. Second, concerning quality requirements of a "more structural nature", the municipality assesses the technical requirements by inspection.

### **Legal protection**

The Committee refers to its previous conclusion (Conclusions 2011) for an overall description of the legal protection concerning the right to adequate housing. In the present conclusion it will take into account the most recent developments.

In 2010, the Ministry appointed a public committee to make recommendations and propose measures to improve the situation of disadvantaged people in the housing market. The report of this committee titled "Room for all" was issued in August 2011. It emphasised that proposals for new regulations do not give the individual the right to require that the municipality provide him or her with housing. As far as Rent Disputes Tribunals are concerned, they have been extended to five counties.

The Committee notes that for the period 2007-2013 the Equality and Anti-discrimination Ombud (LDO) received a total of 14 complaints concerning discrimination in the housing market. These complaints concerned ethnicity (11) and religion (3). In the same period, the Ombud provided counselling in relation to the housing market in 48 cases regarding discrimination on grounds of ethnicity and 4 cases regarding religion.

The Committee wishes the next report to provide information on any relevant case law concerning access to adequate housing.

### ***Measures in favour of vulnerable groups***

In its previous conclusion (Conclusions 2011) the Committee asked to be provided with detailed information on the Housing Bank's housing policy instruments, i.e. start-up loans and housing allowance.

The report states that start-up loans are given by municipalities to persons with long-term housing and financing problems. The target group for the scheme was made clear in the new regulations that came into force on 1 April 2014 (outside the reference period). People in the target group might be low-paid, single parents, refugees and persons with disabilities. Housing allowance is a support scheme that ensures those with low incomes and high housing costs, suitable housing. The Housing Bank grants also rental housing to municipalities in order for these latter to resettle refugees.

An action plan was presented in 2009 to improve living conditions for Roma in Oslo. The target group for the action plan is people who belong to the Roma national minority who are registered in Norway's National Population Register and who define themselves as Roma. Roma who have problems in the housing market can, just as others who are disadvantaged, apply for loans and subsidies from the Norwegian State Housing Bank, for municipal rental housing and for other social housing services. An advisory service for Roma in Oslo has been established as a result of the action plan.

Norway has accepted Article 19§4(c) of the Charter on the right of migrant workers and their families to a treatment not less favourable than that of nationals in respect of accommodation. For States that have accepted both Article 19§4(c) and 31§1 of the Charter, the Committee refers to its conclusion on Article 19§4(c) in respect of this matter.

### ***Conclusion***

The Committee concludes that the situation in Norway is in conformity with Article 31§1 of the Charter.

## **Article 31 - Right to housing**

### *Paragraph 2 - Reduction of homelessness*

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

The report indicates that according to a survey on homelessness, the total number of homeless persons was 6,259 at the end of November 2012, this number being 2.6% higher than in 2008. The Committee notes from the report that 42% of the homeless persons are concentrated in the 4 major cities and that 70% of the homeless persons are male. The great majority of the homeless (77%) were born in Norway.

The Committee notes from the report that for the purpose of the survey referred to above, the definition of homeless person "extends much further than those individuals who sleep rough (...)". The largest group – 39%– lives– temporarily with friends, acquaintances and relatives. The second most common group – 23% – lives in temporary housing.

The Committee recalls that under Article 31§2 homeless persons are those persons who legally do not have at their disposal a dwelling or another form of adequate housing in the terms of Article 31§1 (Conclusions 2003, Sweden).

### **Preventing homelessness**

The report indicates that the work on homelessness is now integrated into the national social housing strategy – *Housing for welfare*. The strategy was presented in 2014 (outside the reference period) and will apply until 2020. The following ministries are behind the strategy: The Ministry of Labour and Social Affairs, Ministry of Children, Equality and Social Inclusion, Ministry of Health and Care Services, Ministry of Justice and Public Security and Ministry of Local Government and Modernisation, which has also coordinated work.

There are three overarching goals for the work and each goal is concretised through priority areas:

- everyone should have a good place to live, i.e. assistance from temporary to permanent housing, assistance in obtaining a suitable home;
- everyone with a need for services, will receive assistance with their living arrangements, i.e. prevent evictions, provide follow-up and services in the home;
- public efforts will be comprehensive and effective, i.e. secure good management and goal orientation of the work, stimulate new ideas and social innovation, planning for good living environments.

The report underlines that these goals are aiming at putting social housing work on the agendas of the central and local government as well as partners. The strategy has a special focus on families with children and young people.

The Committee notes that the Directorate of Labour and Welfare is responsible for grants for follow-up services in housing for homeless and substance abusers. In 2014, the grant to local authorities amounted to €6.5 million.

The Committee asks the next report to provide information on the results of the national social housing strategy in eradicating homelessness and guaranteeing access to a permanent home for all.

### **Forced eviction**

The Committee refers to its previous conclusion (Conclusions 2011), in which it found that procedural safeguards during evictions were *prima facie* in conformity with the Charter.

It however asked for further clarification on the accessibility to legal remedies, given that it noted from the past report that "when the eviction is actually concluded the tenant is no longer entitled to complain". The report indicates that pursuant to the Enforcement of Judgements Act appeals against the enforcement authorities' decision on enforcement may

be appealed only to the extent that enforcement is not "completed". An eviction will not be deemed completed until the subjects are removed and the property is emptied of contents. The report adds that enforcement, however will not preclude a tenant from filing a civil lawsuit to be reinstated in the possession of the dwelling. If the matter is urgent and a basis for security exists, the tenant may also apply for an interim court order to be reinstated in the possession of the dwelling.

The Committee asks the next report to make reference to any relevant case-law.

### ***Right to shelter***

In its previous conclusion (Conclusions 2011) the Committee asked clarification on whether:

- shelters/emergency accommodation satisfy security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether they are equipped with basic amenities such as access to water and heating and sufficient lighting);
- shelter/emergency accommodation is provided regardless of residence status;
- the law prohibits eviction from shelters or emergency accommodation.

Concerning security requirements and health and hygiene standards, the report indicates that the Directorate of Labour and Welfare has prepared national guidelines to ensure an acceptable standard of temporary accommodation used by the municipalities. This includes a bathroom and toilet, kitchen for preparing food and washing machine. The temporary accommodation should meet the applicant's needs. This also includes security, electricity and secure environments for children to play and socialise. Some evaluations and feedback have shown that the quality of temporary accommodations used by the municipalities is inadequate. In view of this, measures to increase the quality of temporary accommodations have therefore been an important issue for governments in recent years.

The Committee recalls that since the right to shelter is closely connected to the right to life and is crucial for the respect of every person's human dignity, under Article 31§2 of the Charter, States Parties are required to provide adequate shelter to adults and children unlawfully present in their territory for as long as they are in their jurisdiction (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §61).

On residence status, the report states that the Act relating to Social Services in the Labour and Welfare Administration applies to everyone who is in the country lawfully. Entitlement to full rights under the law is contingent on being permanently and legally resident in Norway. Asylum seekers are entitled to shelter in reception centres. The Committee considered in its conclusion in 2013 on Article 13§4 that foreign nationals who are unlawfully present in Norway have the right to social assistance (food, shelter, clothing) until they are obliged to leave the country. It asks whether this is still the case. It more specifically asks whether emergency accommodation/shelter is provided to persons, such as adults and children, whose asylum claims have been rejected and are in a situation of need. In the meantime, it defers its conclusion on this issue.

The Committee recalls that eviction from shelter should be banned as it would place the persons concerned in a situation of extreme helplessness which is contrary to the respect for their human dignity (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009). Furthermore, the Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited.

The report indicates that the law does not prohibit eviction from shelters/emergency accommodation. The Committee however notes that if a person is evicted from a shelter or emergency accommodation, the local municipality is obliged to find a new temporary accommodation, if the person has no other place to stay the following night. Temporary

accommodation is not meant to be a long-term option. According to the national guidelines mentioned above, this kind of accommodation should not be used more for than three months. When temporary accommodation is provided, the local municipality should help find permanent housing as soon as possible.

*Conclusion*

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

## **Article 31 - Right to housing**

### *Paragraph 3 - Affordable housing*

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

### ***Social housing***

The Committee refers to its previous conclusion (Conclusions 2011) for an explanation on the bodies and organisations involved in the provision of housing for disadvantaged groups and their powers and responsibilities.

In its previous conclusion, the Committee asked for figures about the eventual shortage of municipal housing.

It recalls that the requirement to maintain statistics is particularly important in the case of the right to housing because of the range of policy responses involved, the interaction between them and the unwanted side-effects that may occur as a result of this complexity (International Movement ATD Fourth World (ATD) v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, § 63).

The report indicates that in 2013 there were just under 105,000 municipal housing units and that approximately 13,000 of them were allocated. It stresses that an analysis of data on the allocation of municipal housing shows that with fewer applicants, more people were allocated housing and fewer were on the waiting list. The report however fails to provide exact data on the demand for social housing and on average waiting time.

In view of the lack of data, the Committee therefore asks the next report to indicate data on the demand for municipal housing and on average waiting time for such housing.

### ***Housing benefits***

The Committee notes that housing allowance became a general scheme in 2009 and refers to its previous conclusion (Conclusions 2011) for an overall description.

The report indicates that in 2013 there were 120,600 applicants and 114,400 recipients of housing allowances. More than 80% of recipients live in rented housing. If households receive start-up loans to help establish themselves in owned housing, the report states that housing allowances are often included in the calculation. The Committee wishes the next report to provide information on legal remedies available in case of refusal.

The Committee recalls that all the rights must be guaranteed without discrimination, in particular as in respect of Roma or travellers (International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 149-155). It therefore requests that the next report confirm that there is a no discrimination policy in respect of Roma and travellers.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Norway is in conformity with Article 31§3 of the Charter.



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**PORTUGAL**

*This text may be subject to editorial revision*





The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Portugal which ratified the Charter on 30 May 2002. The deadline for submitting the 10<sup>th</sup> report was 31 October 2014 and Portugal submitted it on 19 December 2014.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns information requested by the Committee in Conclusions 2013 in respect of its conclusions of non-conformity due to a repeated lack of information<sup>1</sup>:

- Right to protection of health – Advisory and educational facilities (Article 11§2)
- Right to benefit from social services – Promotion or provision of social services (Article 14§1)

The Committee adopted one conclusion of conformity (Article 11§2) and one conclusion of non-conformity (Article 14§1).

The next report by Portugal will deal with the accepted provisions of the thematic group "Employment, training and equal opportunities":

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

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- Right to bargain collectively – Joint consultation (Article 6§4: compulsory arbitration)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter)

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<sup>1</sup>Portugal also submitted a report on follow-up to decisions on the merits in collective complaints. The Committee's findings in this respect are available in a separate document.

## **Article 11 - Right to protection of health**

### *Paragraph 2 - Advisory and educational facilities*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Portugal in response to the conclusion that it had not been established that prevention through screening is used as a contribution to the health of the population (Conclusions 2013, Portugal).

The Committee recalls that screening should exist and preferably be systematic for all the diseases that constitute the principal causes of death (Conclusions 2005, Republic of Moldova). The Committee has ruled that "where it has proved to be an effective means of prevention, screening must be used to the full" (Conclusions XV-2 (2001), Belgium).

The report states that the National Health Service carries out regular population-based screenings in the areas of cancer and diabetes. Population screening is organised on a regional basis under the responsibility of the five Regional Health Administrations.

Cancer is the main cause of death before age 70 (i.e., the main cause of premature death) and it is the second leading cause of death in all age groups. According to the Government secondary prevention, based on early diagnosis and prompt treatment provision, requires the organization of effective screening tests, and people's access to the screenings must be guaranteed with full respect for the equity principle.

The Committee notes that one of the goals of the National Programme for Cancer Diseases is to continue with the implementation of the Council Recommendation (2003/878/EC) and conduct cervical cancer screenings with cervical cytology aimed at women aged 30-60, breast cancer screenings with mammography, every two years, aimed at women aged 50-69, and colorectal cancer screenings with faecal occult blood test aimed at the population aged 50-74. Further to the adoption of Order No. 4803/2013 of 8 April, population-based screening programmes of cancer diseases (colon and rectum, cervix and breast) are to be periodically monitored. The Government explains that standardization of monitoring indicators (the same for all the Regional Health Administrations) and the follow-up of the screening programmes' evolution will allow real-time monitoring of the situation at national level.

The Committee takes note of the information on the geographical coverage of the various cancer screening programmes as well as on early detection efforts in respect of oral cancer.

With respect to diabetes the Committee notes that one of the specific goals of the National Programme for the Prevention and Control of Diabetes is to ensure regular screenings for diabetic retinopathy, diabetic foot and diabetic nephropathy. In this respect it also notes the statistical information on diabetic retinopathy screening programme.

The Committee asks that the next report contain up-dated information on any other screening programmes (for example in respect of cardiovascular diseases) as well as on coverage rates (number of persons screened from the target population and on the impact of all existing screening programmes (impact on early diagnosis rates, survival rates, etc.).

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 11§2 of the Charter as regards the use of screening as a contribution to the health of the population.

## **Article 14 - Right to benefit from social services**

### *Paragraph 1 - Promotion or provision of social services*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Portugal in response to the conclusion that it had not been established that there is an adequate number of staff and that staff have sufficient qualifications (Conclusions 2013, Portugal).

The Committee recalls that social services must have resources that match their responsibilities and the changing needs of users, which implies, *inter alia*, that staff shall be qualified and in sufficient numbers (Statement of interpretation on Article 14§1, Conclusions 2005, Bulgaria).

The report states that the number of human resources and their academic and training requirements are provided for in legislation and regulations in force. Each social service ("social response") has its own legislation which defines the categories and ratios of professionals necessary to meet the needs of a defined number of users. It is the responsibility of the Social Security Institute to ensure that the ratios established in the legislation are completely fulfilled, either through cooperation agreements concluded with solidarity sector institutions, or on the basis of operating licenses granted to profit-oriented private service providers.

However, the report also states that the Social Security Institute does not have statistical data on staff numbers and their qualifications. It emphasises that the absence of data does not mean that the established conditions are not fulfilled.

The Committee underlines that in order to make a proper assessment of the situation it must be provided with information on staff numbers and their qualifications. It asks that the next report provide this information both overall and broken down by the different types of social services. In this respect it also asks to receive information on the staff-user ratios referred to above and it would also be interested to know how the Government monitors compliance with the ratios fixed by statute in the absence of any statistical data.

Meanwhile, the Committee reiterates its conclusion that it has not been established that the situation is in conformity with the Charter.

### *Conclusion*

The Committee concludes that the situation in Portugal is not in conformity with Article 14§1 of the Charter on the ground that it has not been established that there is an adequate number of staff and that staff have sufficient qualifications.



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**ROMANIA**

*This text may be subject to editorial revision.*



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Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Romania which ratified the Charter on 7 May 1999. The deadline for submitting the 14th report was 31 October 2014 and Romania submitted it on 8 May 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report contains also information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to protection of health – advisory and educational facilities (Article 11§2)
- the right to social security – existence of a social security system (Article 12§1)
- the right to social and medical assistance – adequate assistance for every person in need (Article 13§1)
- the right to social and medical assistance – prevention, abolition or alleviation of need (Article 13§3)

Romania has accepted all provisions from the above-mentioned group except Articles 19§1, 19§2, 19§3, 19§4, 19§5, 19§6, 19§9, 19§10, 19§11, 19§12, 27§1, 27§3, 31§1, 31§2 and 31§3.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Romania concern 25 situations and are as follows:

– 11 conclusions of conformity: Articles 7§2, 7§4, 7§8, 7§9, 8§3, 8§4, 8§5, 17§1, 17§2, 19§7 and 27§2;

– 11 conclusions of non-conformity: Articles 7§1, 7§3, 7§5, 7§6, 7§7, 8§2, 11§2, 12§1, 13§1, 13§3 and 16.

In respect of the other 3 situations related to Articles 7§10, 8§1 and 19§8, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Romania under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),

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

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 1 - Prohibition of employment under the age of 15*

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

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

As regards light work which young persons between 15 and 18 years of age are allowed to perform, the Committee concluded previously that the situation was not in conformity with Article 7§1 of the Charter on the ground that light work was not defined by national legislation or practice (Conclusions 2011).

The Committee notes that according to Section 3(c) of Government Decision No. 600/2007, "light work" is defined as any work, which on account of the inherent nature of the tasks which it involves and the particular conditions under which it is performed is not likely to be harmful to the safety, health or development of children; not such as to prejudice their attendance at school, their participation in vocational guidance or training programmes approved by the school management, or their capacity to benefit from the instruction received. The report indicates that the Government Decision No. 867/2009 on the Prohibition of Hazardous Work for Children provides a full list of types of hazardous/intolerable work prohibited for children under 18 years of age, as well as the sanctions imposed on the parents or other persons, who involve children in hazardous activities. The Committee takes note from another source of the Government's statement that all the activities or types of work not covered by the Government Decision No. 867/2009 shall be considered as light work which young persons between 15 and 18 years of age will be allowed to perform (Observation ILO (CEACR) – adopted 2011, published 101st ILC session (2012), Minimum Age Convention, 1973 (No. 138). The Committee considers that the situation is now in conformity on this point.

The report states that there are no specific provisions concerning light work for children under 15 years of age and that a draft law regarding the regulation of children activities in cultural, artistic, sportive, advertising and modeling is currently under debate. The Committee asks the next report to provide information on any developments on this matter.

The Committee notes that under the terms of Section 2, the Labour Code applies only to persons employed on the basis of a labour contract. Thus, it appears that the Labour Code and its provisions relating to the minimum age of admission to employment or work, do not apply to work performed outside the framework of a formal labour relationship, such as self-employment or non-remunerated work. The Committee recalls that 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, whether paid or not.

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



As regards supervision, the report indicates that during the reference period a total of 139 cases were brought before the criminal investigation authorities for employing minors in violation of the legal provisions regarding the minimum age of employment or of the regulations governing their working conditions. The report does not provide information on the measures taken and sanctions imposed either by the Labour Inspectorate or by other bodies with regard to prohibition of employment under the age of 15.

The Committee notes from another source that some children, mostly Roma, were involved in street begging, washing cars at dangerous intersections, loading and unloading heavy merchandise, or collecting waste products such as scrap iron, glass or paper, as well as in agriculture, including animal farming, and the construction sector. The children who were occasionally found on the streets were forced to beg or perform other activities in very difficult conditions and in unsafe environments, some for over eight hours per day, the majority of them having dropped out of school at an early age. In its concluding observations of 30 June 2009, the Committee of the Rights of the Child, while noting the reported decrease in the number of children living in the streets, was concerned that many street children had to work for their sustenance, and said that the majority do not go to school and lack birth certificates (CRC/C/ROM/CO/4, para. 84). According to the Government's statement, in 2012, 226 children were found living in the streets with their families, 236 children were found living in the street without their families, and 291 street children were found working (Direct Request (CEACR) – adopted 2013, published 103rd ILC session (2014), Worst Forms of Child Labour Convention, 1999 (No. 182) – Romania).

The Committee notes from the Report of the Governmental Committee concerning Conclusions 2011 that child labour had been the subject of a campaign to prevent and combat the employment of children and young people under the age of 18 conducted by the Ministry of Labour, Family and Social Protection, under which labour inspectors carried out controls from 28 August to 8 September 2012. A preliminary assessment showed that 1,370 employers were inspected; 21 employers were prosecuted for employing people without any form of employment, and 9 of these were sanctioned for employing young people between 15 and 18 years of age without an individual written contract. In all, 1,016 fines were imposed; a total of 2,861 cases of violation of labour relations were identified, out of which 1,128 cases concerned failure to comply with legal provisions regarding the employment of minors. Causes of such violations were the lack of individual labour contracts; failure to provide the minimum salary for minors and the supplementary leave for minors; overtime work by minors; miscalculation of wages for part-time work.

The Committee previously found the situation not to be in conformity with the Charter on the ground that the prohibition of employment under the age of 15 was not guaranteed in practice (Conclusions 2011). Given the lack of information on the situation in practice with regard to work performed by children under 15, the Committee concludes that the situation is not in conformity with the Charter on the ground that it has not been established that prohibition of employment under the age of 15 is effectively guaranteed.

### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 7§1 of the Charter on the ground that it has not been established that prohibition of employment under the age of 15 is effectively guaranteed.

## **Article 7 - Right of children and young persons to protection**

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

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

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

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

The Committee previously asked for information concerning violations identified and measures applied by the Labour Inspectorate in cases of violations. The report indicates that during 2008-2009 young workers were identified to perform unhealthy activities dealing with industrial sacrifice of animals, dangerous works with tubes, basins, tanks containing chemical substances, work with machines. The report indicates that 32 penalties were applied in cases of non-compliance with the regulations.

The Committee takes note of the information provided in the report. However, the above mentioned data do not concern the reference period. The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide up-to-date information on the activities and findings of the Labour Inspectorate in relation to the prohibition of employment under the age of 18 for dangerous or unhealthy activities, including the number of violations detected and sanctions applied.

### *Conclusion*

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

The report indicates that under Section 5(1) of the Government Decision No. 600/2007 on the protection of young people at work, employment of children under 15 is prohibited. Exceptions to this provision are however provided, under Section 5(2) of the same Decision, allowing children of at least 16 years of age who are subject to compulsory schooling to conclude an individual contract of employment for light work, and under Section 5(3), allowing children of at least 15 years of age, who are subject to compulsory education, to carry out activities which are adequate to their physical development, skills and knowledge, upon consent of their parents or legal representatives and provided that such activities are not detrimental/ harmful to their health, development and training.

The Committee noted previously that compulsory education in Romania continues up to the 10th grade which corresponds to the age of 16 or 17. It also noted that there are no specific provisions regarding light work for children under 15 (Conclusions 2011). The report indicates that a draft law on the regulation of cultural, artistic, sportive, advertising and modeling activities for children is currently under debate. The Committee asks information on any progress in the next report.

Concerning the employment of children above 15 years of age who are still subject to compulsory education, the Committee noted that between 2 working days, there will be a minimum rest period of 14 consecutive days (Section 14(2) of the Government Decision on the protection of young people at work). The report indicates that young persons between 15 and 18 are allowed to work a maximum duration of 6 hours per day and 30 hours per week. The Committee asks whether these limits apply also to young persons above 15 who are still subject to compulsory education. Otherwise, it asks what is the daily and weekly maximum duration of work during school term and outside school term for children above 15 who are still subject to compulsory education.

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

In its previous conclusion, the Committee referred to its Statement of Interpretation on Article 7§3 in the General Introduction of Conclusions 2011 and asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday (Conclusions 2011). The report does not provide any information on this point. The Committee notes that under Section 15(2) of the Government Decision No. 600/2007 on the protection of young people at work, the employers should ensure that the period free of any work is included within the duration of school holidays for children above 15 years of age who are still subject to compulsory education. The Committee asks information on the duration of school holidays in Romania. It reiterates its question whether children are guaranteed at least two consecutive weeks free of any work during the summer holidays and holds that should the next report fail to

answer it, there will be no evidence that the situation is in conformity with the Charter on this point. The Committee reserves in the meantime its position on this point.

The Committee noted previously that the situation in practice continued to show that many children subject to compulsory education were involved in illegal employment or work that was not light, and therefore concluded that the situation was not in conformity with Article 7§3 of the Charter on the ground that the right of children to fully benefit from compulsory education is not guaranteed due to the ineffective application of the legislation. The Committee notes from the Report of the Governmental Committee concerning Conclusions 2011 that there is still a high drop-out rate among Roma children and children from remote rural or disadvantaged areas. In the absence of any other information to evidence that the situation in practice has improved, the Committee maintains its conclusion of non-conformity.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (*International Commission of Jurists (CIJ) v. Portugal*, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28). The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide information on the number and nature of violations detected as well as on any measures taken and sanctions imposed on employers for breach of the regulations regarding prohibition of employment of children subject to compulsory education.

#### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 7§3 of the Charter on the ground that the protection against employment of children subject to compulsory education is not effectively guaranteed.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 4 - Working time*

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

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

The report indicates that according to Section 10 of the Government Decision No. 600/2007 on the Protection of Young People at Work, the maximum working time for young workers is 6 hours per day and 30 hours per week. The Committee notes that young persons are defined as persons between 15 and 18 years of age. Young workers are not allowed to perform overtime work. The report further indicates that young workers shall have a lunch break of at least 30 minutes if their daily working time is more than 4 hours and a half. Between two working days, young workers are entitled to a minimum rest period of 12 uninterrupted hours. Young workers benefit also from a weekly rest period of 2 consecutive days, usually on Saturdays and Sundays.

The Committee previously asked what sanctions are imposed in cases of violations. The report indicates that in case of failure of the employers to observe the legal provisions on the labour regime of young workers (including the duration of working hours), the labour inspectors may notify the employer to remedy the violations within a fixed deadline or impose sanctions on employers (Section 19 of Law No. 108/1999 on the establishment and organisation of labour inspection).

The report indicates that during the reference period, the labour inspectorates notified the criminal investigation bodies when they found evidence of violation of the legal provisions on the labour regime of children in 139 cases. No statistical information is available with regard to the number of referrals to the criminal investigation bodies for non-observance of the legal requirements specifically regarding the duration of labour time for young workers.

The Committee recalls that the situation in practice should be regularly monitored. It therefore asks for information in the next report on the number and nature of violations detected as well as on sanctions imposed on employers for breach of the regulations regarding working time for young workers under the age of 18 who are no longer subject to compulsory schooling.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 5 - Fair pay*

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

### ***Young workers***

The Committee previously concluded (Conclusions 2011) that the situation in Romania was not in conformity with Article 7§5 of the Charter on the ground that the right of young workers and apprentices to a fair wage and other appropriate allowances was not guaranteed in practice.

The Committee notes from the Report of the Governmental Committee concerning Conclusions 2011 that according to the Labour Code, all employees enjoy the right to equal pay for equal work and the minimum wage levels are set by the applicable collective agreements.

With regard to the minimum wage of adult workers, in its Conclusions 2014, the Committee found the situation in Romania not to be in conformity with Article 4§1 of the Charter on the ground that the monthly minimum wage does not ensure a decent standard of living as it amounted up to only 34.32% of the net average wage, in contrast with the 60% of the net average wage which is considered as a satisfactory threshold under Article 4§1.

The Committee recalls that 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. For 15-16 year-olds, a wage of 30% lower than the adult starting wage is acceptable. For 16-18 year-olds, the difference may not exceed 20%. 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.

The Committee notes that in the present case the young workers are paid the same wage for the same kind of work as adults and that the monthly minimum wage of adults represents only 34.32% of the net average wage. Under Article 7§5, the Committee examines if young workers are paid the equivalent of 80% of a minimum wage in line with the Article 4§1 fairness threshold (60% of the net average wage). Thus, if young workers' wage amounts to 80% of the minimum threshold required for adult workers (60% of the net average wage), the situation would be in conformity with Article 7§5 (Conclusions XVII-2 (2005), Spain). The Committee notes that the young workers' wage represents only 34.32% of the average net wage, which does not meet the requirements of Article 7§5 of the Charter. It therefore considers that the situation is not in conformity with the Charter on the ground that the young workers' wages are not fair.

The Committee recalls that, in order to assess the situation, each report should provide information on net values of both minimum and average wages 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***

With regard to apprentices, the report indicates that according to Law No. 279/2005 on Apprenticeship at the Workplace, an apprentice is any natural person of 16 years of age but not more than 25. The duration of the apprenticeship cannot be less than 12 months and more than 3 years.

The Law on Apprenticeship at the Workplace provides that the basic monthly wage established by the apprenticeship contract shall be at least equal to the gross minimum wage in the country for 8 working hours daily, respectively 40 h per week. The duration of working time in case of

young workers under 18 years of age is 6 hours daily and 30 hours weekly. The Committee notes that according to the same Law, the time necessary for the theoretical training of the apprentices shall be included in the normal working time.

The report indicates that the non-observance of the legal provisions regarding the apprentices' allowance is sanctioned with a fine of 10,000 Romanian Lei (RON) (€ 2,260). The Committee asks information on how the above mentioned legal provisions are implemented into practice. It also asks information on the monitoring activity and findings of the Labour Inspectorate, the number and nature of violations detected and sanctions imposed in relation to allowances paid to apprentices. Pending receipt of the information requested, the Committee reserves its position on this point.

#### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

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

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

The Committee concluded previously that the situation in Romania was not in conformity with Article 7§6 of the Charter on the ground that it has not been established that the right to have the time spent on vocational training included in the normal working time and remunerated as such is guaranteed in practice (Conclusions 2011). In the absence of any information in the report indicating that the situation has changed, the Committee maintains its conclusion of non-conformity.

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. 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. 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 Committee notes that the Labour Code of Romania contains extensive provisions regulating the conditions of vocational training both at the initiative of employers and employees (Sections 192-207 and 154-158 of the Labour Code). It also notes that the Government Ordinance No. 129/2000 on Adult Vocational Training was amended and republished in the Official Gazette No. 110 of 13 February 2014. Thus, the Committee asks for a detailed and up-to-date report on the legal framework regulating the time spent on vocational training by young workers and its remuneration in the case of (i) vocational training financed by the employer; (ii) vocational training with the consent of the employer, but not financed by the latter.

The report does not provide information on how the situation in practice is supervised by the authorities. The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the monitoring activities and findings of the Labour Inspectorate in relation to the inclusion of time spent on vocational training in the normal working time and its remuneration for young workers.

### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 7§6 of the Charter on the ground that it has not been established that the right to have the time spent on vocational training included in the normal working time and remunerated as such is guaranteed in practice.



## **Article 7 - Right of children and young persons to protection**

### *Paragraph 7 - Paid annual holidays*

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

The report indicates that according to the Labour Code, the annual leave shall have a minimum length of 20 working days (Article 145). Furthermore, young workers are entitled to 3 additional working days of holidays under Section 15 of the Government Decision 600/2007 on the Protection of Young People at Work and Article 147 of the Labour Code.

The report adds that the annual paid holiday is guaranteed to all employees. The right to annual paid holiday may not be subject to any transfer, waive or limitation. The compensation in money of the leave not taken shall only be allowed at the termination of the individual employment contract. The Labour Code further provides that the annual leave may be suspended at the request of the employee for objective reasons. The Committee asks clarification on what represents "objective reasons" and in which circumstances and for how long the annual leave may be suspended/interrupted at the request of the employee.

In its previous conclusion, given the lack of information in relation to this provision, the Committee found that the situation was not in conformity with Article 7§7 of the Charter on the ground that it has not been established that the right to paid annual leave is guaranteed in practice (Conclusions 2011). The current report provides information on the legal framework applicable to paid annual holidays for young workers under 18 years of age. However, the report does not provide any information on the implementation of the legal framework in practice. In the absence of any information on the situation in practice, the Committee maintains its conclusion of non-conformity.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation, if this is not effectively applied and rigorously supervised. It recalls that the situation in practice should be regularly monitored and asks that the next report provides 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.

### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 7§7 of the Charter on the ground that it has not been established that the right to paid annual leave is guaranteed in practice.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 8 - Prohibition of night work*

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

The Committee previously noted that young workers up to 18 years cannot be employed in night work (Section 12 of the Government Decision No. 600/700 on the Protection of Young People at Work). It also noted that young workers above 15 and 16 years of age, who are subject to compulsory schooling, cannot perform work between 8 p.m. and 6 a.m. (Conclusions 2011). According to the Labour Code, the night work is defined as work performed between 10 p.m. and 6 a.m.

In its previous conclusion, the Committee asked whether there are exceptions to prohibition of night work and, should this be the case, what is the content of these exceptions and how is the practical situation supervised (Conclusions 2011). The report does not answer to the Committee's question. The Committee reiterates its question. It also asks what are the rules governing young workers' professional formation and apprenticeship in cases when these require, at least partially, night work.

The Committee recalls that 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 265 of the Labour Code, the failure of an employer to observe the legal provisions regarding the labour regime of young workers under 18 years of age represents an offence and may be sanctioned with imprisonment from 3 months to 2 years or with a fine.

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

### *Conclusion*

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

The report indicates that the Government Decision No. 355/2007 on Workers' Health Surveillance establishes that the requirements on workers' health surveillance equally apply to young workers and apprentices. Young workers are subject to regular medical examination. The Annex 1 to G.D. No. 355/2007 prescribes the intervals at which medical examinations must be performed and the content of such medical examinations.

The Committee notes from the Annex 1 of the G.D. No. 355/2007 that the medical examinations must be performed once per year. The report indicates that the periodical medical examination may be carried out within shorter intervals than those mentioned in the Annex, if provided by the collective labour contract with the employer's and employees' representatives' consent and on the proposal of the labour medicine physician.

The Committee previously asked for information regarding the activity of Labour Inspectorate in relation to medical examination of young workers, including information on the violations detected and sanctions imposed in practice.

The report indicates that the recruitment of workers at the work place without carrying out the medical control or the lack of the periodical medical control during employment represents a contravention and it is sanctioned with a fine (Ron 4,000 to Ron 8,000, € 902 to 1 806) according to Section 39(4) of Law No. 319/2006 on Safety and Health of Workers at Work.

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

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

### ***Protection against sexual exploitation***

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with the Charter as the simple possession of child pornography was not a criminal offence.

The Committee notes from the report of the Governmental Committee concerning Conclusions 2011 that a new Criminal Code was adopted by Law No. 286/2009 of 2 October 2011 and entered into force on 1 February 2014 (out of the reference period). Its Article 374 incriminates production, possession for display or distribution, purchase or storage, display, promotion, distribution and simple possession of child pornographic materials, and punishes such conduct by 1 to 5 years of imprisonment or, if such conduct was committed through a computer system or other means of data storage, by 2 to 7 years of imprisonment.

The Committee asks whether the new Criminal Code criminalises all forms of child pornography and prostitution until 18 years of age, defined as follows:

- child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration;
- child pornography is given an extensive definition and takes account of the fact that new technology has changed the nature of child pornography – it includes the procurement, production, distribution, making available and possession of material that visually depicts a child engaged in sexually explicit conduct.
- trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.

### ***Protection against the misuse of information technologies***

The Committee asks what measures have been taken to strengthen the protection of children against the misuse of information technologies.

### ***Protection from other forms of exploitation***

In its previous conclusion, the Committee found that it had not been established that measures taken to combat trafficking and sexual exploitation of children were sufficient. The Committee asked how the Government monitored the scope of the problem of trafficking.

The Committee notes in this regard that in 2012 the National Strategy against the Trafficking of Human beings for 2012-2016 was approved. The Strategy aims at lowering the impact and dimensions of trafficking. The objectives of the strategy are the acceleration of prevention activities, improvement of protection quality and support to victims, improvement of institutional ability of investigation of trafficking offences especially as regards minors' trafficking cases, the development of data gathering and analysis as well as optimisation and expansion of inter-institutional cooperation process for the implementation of the strategy.

In reply to the Committee's question regarding street children, the report states that according to the National Agency for the Protection of Children's Rights (NAPRCA) the official statistics are based on the official reports made by the local competent authorities. As regards intervention services, they are financed by the local authorities on the basis of real needs and situation in their area of competence.

According to the report, being aware of the persistence of this problem, the authorities have also prepared, within the new strategy on child protection, another set of measures directly addressed to this category of children. The authorities intend to approach the problem of child trafficking from a multi-institutional point of view, being aware that the situation of these children cannot be handled only by providing for their basic needs.

The Committee notes from the Report of the Group of Experts on Action against Trafficking in Human Beings (GRETA) concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Romania (2012) that GRETA invites the Romanian authorities to design future training programmes with a view to improving the knowledge and skills of relevant professionals, which enable them to identify victims of trafficking and to assist and protect them, by placing a particular emphasis on multidisciplinary training sessions for law enforcement officials and judges. Training should also be provided to staff working in shelters for adult and child victims, as well as staff working with children in difficult situations or under institutional care.

GRETA also considers that the Romanian authorities should enhance their efforts to strengthen the prevention of trafficking in children, particularly through the recording of all children in the civil status register and by finding solutions for children left behind by their parents who have gone abroad to work, as well as street children.

The Committee further notes that ECPAT names as one of the priority areas of action the need to include provisions to specifically address children belonging to the most vulnerable groups (e.g. roma children, children with hiv/aids, street children) in both the National Strategy for the Promotion and Protection of the Rights of Children and the National Plan of Action against Child Trafficking.

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

#### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 1 - Maternity leave*

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

### ***Right to maternity leave***

The report indicates that, pursuant to Articles 23 and 24 of the Government Emergency Ordinance No. 158/2005 on leaves and health insurance indemnities, the length of maternity leave is 126 days, that is 63 days before birth and 63 days after birth, with 42 days of compulsory postnatal leave. The Committee asked whether the same regime applies to women employed in the public sector. As the report does not answer this question, the Committee reiterates it and holds that, should the next report fail to answer it, there will be no evidence that the situation is in conformity with the Charter on this point.

### ***Right to maternity benefits***

The Committee previously noted that maternity benefits are available to employees who have contributed to the scheme at least one month over the last twelve months and that the amount of maternity benefits granted corresponds to 85% of the average monthly wage of the worker over the last 6 months. The benefits are granted for the whole duration of the maternity leave. The Committee asked whether this also applies to women employed in the public sector, and asked for a full update to be provided in the next report. As the report does not answer these questions, the Committee reiterates them and holds that, should the next report fail to answer them, there will be no evidence that the situation is in conformity with the Charter on this point. It reserves in the meantime its position.

The Committee furthermore refers to its Statement of Interpretation on Article 8§1 (Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

### *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 Romania.

### ***Prohibition of dismissal***

The report refers to Article 21 of the Government Emergency Ordinance No. 96/2003 on maternity protection at work, which forbids to dismiss an employee who has notified her pregnancy, who has given birth in the last six months or is breastfeeding. As an exception, dismissal can be allowed in cases of judicial reorganisation or bankruptcy of the employer. The Committee had previously found that this situation was in conformity with the Charter, but had asked whether the same regime applies to women employed in the public sector. As the report does not answer this question, the Committee reiterates it and holds that, should the next report fail to answer it, there will be no evidence that the situation is in conformity with the Charter on this point. It reserves in the meantime its position on this point.

### ***Redress in case of unlawful dismissal***

The Committee recalls that, in cases of dismissal contravening Article 8§2 of the Charter, national legislation must provide for adequate and effective judicial remedies. In particular, reinstatement of the women concerned should be the rule. Exceptionally, if this is impossible (e.g. where the enterprise closes down) or the employee concerned does not wish it, adequate compensation must be available, whose level should be sufficient both to deter the employer and fully compensate the victim of dismissal.

The Committee had previously requested information concerning the available remedies in case of unlawful dismissal for reasons connected to pregnancy or maternity (Conclusions 2005 and 2011), in particular as regards the level of compensation awarded in addition to reinstatement and underlined that, should the report not provide this information, there would be nothing to establish the conformity of the situation. The Committee furthermore asked for information as regards the regime applicable to women employed in the public sector, in particular those with temporary contracts.

As the report does not provide any information in response to the outstanding questions, the Committee reiterates them and considers in the meantime that it has not been established that adequate redress is provided for in cases of unlawful dismissal during pregnancy or maternity leave.

### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 8§2 of the Charter on the ground that it has not been established that adequate redress is provided for in cases of unlawful dismissal during pregnancy or maternity leave.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

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

The report refers to Article 17 of the Government Emergency Ordinance No. 96/2003 on maternity protection at work, as amended, which provides for the employer's obligation to grant to nursing employees two breaks of one hour each (including travelling time) until the child is one year old. At the employee's request, the breaks can be replaced by a two-hours reduction in the daily working hours. These breaks are included in the working hours and paid as such.

The Committee asks the next report to clarify whether the same regime applies to women employed in the public as in the private sector and whether women working full days but on a part-time basis – for instance two full working days twice a week – are entitled to paid nursing breaks.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Romania is in conformity with Article 8§3 of the Charter.



## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 4 - Regulation of night work*

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

The report indicates that Article 19 of the Government Emergency Ordinance No. 96/2003 on maternity protection in the workplace, as amended, provides that pregnant women, women having given birth in the last six months and women nursing their child cannot be obliged to perform night work. If night work affects their health, the employer is obliged, at their written request, supported by a medical certificate, to transfer them to daily work without loss of pay, for the period indicated by the certificate. If, for objectively justified reasons, the employee cannot be transferred, she is entitled to maternity leave and risk maternity benefit. The Committee asks the next report to explain how the notion of "objectively justified reasons" is construed in the case law of domestic courts.

The Committee previously asked whether the same regime applies to women employed in the public sector. As the report does not answer this question, the Committee reiterates it and holds that, should the next report fail to answer it, there will be no evidence that the situation is in conformity with the Charter on this point.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Romania is in conformity with Article 8§4 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

The report refers to Article 14 of the Government Emergency Ordinance No. 96/2003 on maternity protection in the workplace, as amended, which provides that pregnant and nursing women cannot be obliged to perform activities which, according to the risk assessment, would expose them to the hazardous agents or conditions of work listed in the Annex No. 2, lettes A and B of the Ordinance. In particular, they cannot be employed in underground mining activities and exposed to lead and their components, to the extent that there is a risk of absorption by the human body. Pregnant women cannot furthermore be employed to perform work in hyperbaric environment (as for example in precincts under pressure and underwater diving) or exposing them to toxoplasm and rubella virus, unless it is proven that they are sufficiently protected against these agents by immunisation.

Pursuant to Article 20 of the same Ordinance, pregnant women, women having given birth in the last six months and nursing women cannot be obliged to work in unhealthy or hard conditions, as defined by the implementing norms. In this respect, Article 26 of the Government Decision No. 537/2004 implementing certain provisions of the Government Emergency Ordinance No. 96/2003 defines as unhealthy or hard working conditions the following activities:

- collection, transportation and storage of domestic, human and animal dejections;
- digging of ditches;
- loading or unloading by shovelling of different products;
- raising weights heavier than 10 kg;
- labour under extreme temperatures, in conformity with the provisions of Government Emergency Ordinance No. 99/2000 on measures to be applied to employees during periods with extreme temperatures, approved by Law No. 436/2001.

The Committee asks whether other dangerous activities, such as those involving exposure to benzene, ionizing radiation or vibration are also prohibited or strictly regulated for the categories of women concerned. It furthermore asks whether the same protection applies to domestic workers which are pregnant, have recently given birth or are nursing their infant.

According to the report, upon written request by the concerned women (pregnant women, women having given birth in the last six months and nursing women), the employer must transfer them to another post, without loss of salary for the period specified by a medical certificate. If, for objectively justified reasons, the employee cannot be transferred, she is entitled to maternity leave and risk maternity benefit. The Committee previously noted that the risk maternity benefit represented 75% of her average salary over the last ten months and asked how the notion of "objectively justified reasons" was construed in the case law of domestic courts. It furthermore asked whether the same regime applies to women employed in the public sector.

As the report does not provide any information in response to these questions, the Committee reiterates them and holds that, should the next report fail to answer them, there will be no evidence that the situation is in conformity with the Charter.

It furthermore asks the next report to indicate whether, in case of temporary transfert to another post the woman concerned retains the right to return to her previous employment at the end of the protected period.

*Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Romania is in conformity with Article 8§5 of the Charter.

## **Article 11 - Right to protection of health**

### *Paragraph 2 - Advisory and educational facilities*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Romania in response to the conclusion that it had not been established firstly that counselling and screening for pregnant women and children were frequent enough or that the proportion of mother and children covered was sufficient and secondly that prevention through screening was used as a contribution to the health of the population.

The Committee recalls that there must be free and regular consultation and screening for pregnant women and children throughout the country. Moreover, there should be screening, preferably systematic, for all the diseases that constitute the principal causes of death (Conclusions 2005, Republic of Moldova). The Committee has ruled that "where it has proved to be an effective means of prevention, screening must be used to the full" (Conclusions XV-2 (2001), Belgium).

The Committee notes the information on maternal and infant mortality and their causes. However, the report does not contain the requested information on the frequency and coverage of counselling and screening, including preventive medical check-ups, for pregnant women and children as well as on what mass screening programmes are available to the population at large and it therefore reiterates its conclusion of non-conformity.

### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 11§2 of the Charter on the grounds that it has not been established that

- counselling and screening for pregnant women and children are frequent enough or that the proportion of mother and children covered is sufficient;
- prevention through screening is used as a contribution to the health of the population.

## **Article 12 - Right to social security**

### *Paragraph 1 - Existence of a social security system*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Romania in response to the conclusion that it had not been established that legislation provides an effective guarantee of protection against unemployment risk by providing for a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching his previous skills and that the minimum level of sickness benefit was adequate.

On the first ground of non-conformity, the Committee recalls that there must be a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching his previous skills without losing his unemployment benefits (Conclusions XVIII-1 (2006), Germany).

The report states that according to Section 42 of Law No. 76/2002 on the unemployment insurance system and employment stimulation, persons who upon applying for unemployment benefit refuse a job suitable to his/her training or education or refuse to participate in employment stimulation and vocational training services provided by the agencies for employment cannot (continue to) receive unemployment benefit. Under Section 44 of the above law, the payment of the unemployment benefit ceases upon unjustified refusal to take up offered employment suitable to the person's training or education or upon unjustified refusal to participate in employment stimulation or vocational training services, or upon discontinuing participation in such services for reasons attributable to the person.

Moreover, according to information provided by the Government to the Governmental Committee (Governmental Committee, Report concerning Conclusions 2013) the applicable legislation does not provide for a specific initial period during which a person in receipt of unemployment benefits may refuse an unsuitable job offer without losing the benefits.

The Committee understands that in principle offered employment or training may be refused if the refusal is duly justified. It asks that the next report confirm this understanding and indicate what are the circumstances which could justify a refusal, including information on any actual cases where offered employment or training has been refused without loss of benefits. Meanwhile, it reserves its position in this respect.

As regards the second ground of non-conformity concerning the minimum level of sickness benefit, the Committee recalls that under Article 12§1 benefits provided within the different branches of social security should be adequate and in particular income-substituting benefits should not be so low as to result in the beneficiaries falling into poverty. Moreover, the level of benefits should be such as to stand in reasonable proportion to the previous income and should not fall below the poverty threshold defined as 50% of the median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold value (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, §§59-63).

The report provides no information in this respect. The Committee notes the information on the legal framework for sickness benefit which was provided by the Government to the Governmental Committee (Governmental Committee, Report concerning Conclusions 2013), and which confirms the information previously noted by the Committee, namely that sickness benefit is paid to the insured persons by the employer from the first day until the 5th day of temporary work incapacity. It amounts to 75% of the average insured gross earnings over the

last 6 months. The amount is increased to 100% of the average insured earnings over the last 6 months if the sickness is caused by: tuberculosis, AIDS, any type of cancer, group A infectious and contagious diseases and medical and surgical emergencies. However, in the absence of information on minimum levels of sickness benefit actually paid (to a full-time employee calculated on a monthly basis), the Committee reiterates its finding of non-conformity.

*Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 12§1 of the Charter on the ground that it has not been established that the minimum level of sickness benefit is adequate.

## **Article 13 - Right to social and medical assistance**

### *Paragraph 1 - Adequate assistance for every person in need*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Romania in response to the conclusion that it had not been established that the level of social and medical assistance was adequate.

The Committee recalls that, under Article 13§1, the level of social assistance must be such as to make it possible to live a decent life and to cover the individual's basic needs. In order to assess the level of assistance, the Committee takes into account basic benefits, additional benefits and the poverty threshold in the country, which is set at 50% of the median equivalised disposable income and calculated on the basis on the Eurostat at-risk-of-poverty threshold (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, §112). The Committee further recalls that, given that Romania has not accepted Article 23 of the Charter (the right of elderly persons to social protection), the Committee assesses the level of non-contributory pension paid to a single person without resources under Article 13§1 (Conclusions 2013, Italy).

The report states that families and single persons with net monthly incomes below the guaranteed minimum income and at least one family member earning salary revenues are entitled to a 15% increase in the amount of family social support. Furthermore, all recipients of the guaranteed minimum income are entitled to allowances covering between 10% and 90% of home heating costs (social protection in winter). However, the report does not indicate the total amounts of these and any other supplementary benefits that may be received by beneficiaries of the guaranteed minimum income.

From MISSOC the Committee notes that the guaranteed minimum income as of 1 January 2015 was RON 141.5 (32.02€) per month for a single person, amounting to 18.5% of median equivalised income. The threshold of 50% of median equivalised income per month corresponded to €86 in 2013 (most recent value). While noting the existence of different supplementary benefits, the Committee considers this level of social assistance to be manifestly inadequate.

As regards the elderly, the report states that a Social Allowance for Pensioners (*indemnizatie sociala pentru pensionari*) is payable to retired persons if the amount of the benefit received is below the minimum pension. As of 1 January 2015 this allowance amounted to up to RON 400 (€89) per month (according to MISSOC). However, the report also states that elderly persons who do not fulfil the conditions for entitlement to old-age pension receive social assistance. As the level of social assistance is manifestly inadequate (see above) the Committee considers, for the same reasons, that the level of social assistance for elderly persons without resources is not in conformity with the Charter.

With respect to medical assistance, the Committee recalls that the right to medical assistance should not be confined to emergency situations (Conclusions 2009, Armenia), and that a system covering expenses for a limited time or not including primary or specialised outpatient medical care does not sufficiently ensure health care for poor or socially vulnerable persons (European Roma Rights Centre (ERRC) v. Bulgaria, complaint No. 46/2007, Decision on the merits of 3 December 2008, §44).

The report states that under Section 210 of Law No. 95/2006 uninsured persons are only entitled to a minimum package of medical services such as care for medical emergencies and

diseases with endemic-epidemic potential. Furthermore, the Committee previously noted from another source (FEANTSA country fiche 2012, see Conclusions 2013) that uninsured persons can only receive a maximum of 72 hours of medical care. In view of the Charter's requirement as quoted above, the Committee considers that the situation is not in conformity with the Charter as medical assistance under Article 13§1 should not be limited to a minimum package in emergencies.

#### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 13§1 of the Charter on the grounds that:

- the level of social assistance is manifestly inadequate, including for elderly persons without resources;
- uninsured persons are not entitled to adequate medical assistance.



## **Article 13 - Right to social and medical assistance**

### *Paragraph 3 - Prevention, abolition or alleviation of need*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Romania in response to the conclusion that it had not been established that persons without resources or at risk of becoming so have effective access to adequate services offering advice and personal assistance to prevent, remove or to alleviate personal or family want.

The Committee recalls that Article 13§3 specifically concerns services offering advice and personal assistance to persons without adequate resources or at risk of becoming so and requires the states to guarantee that such persons are offered advice and assistance to make them fully aware of their rights to social and medical assistance and of the ways to exercise these rights. In this context, the Committee had previously specifically asked whether primary services are provided with sufficient means to give appropriate assistance as necessary, what was the total spending on these services and whether access to them was free of charge.

The report explains in detail the specific measures implemented under Law No. 116/2002 for preventing and fighting social exclusion of young people aged between 16 and 25, which include professional counselling, mediation and employment support (contract of solidarity). In this regard, the report states that, in 2010, 1,005 young people from disadvantaged groups received mediation and professional counselling, 943 solidarity contracts were concluded and 392 "insertion employers" were identified.

As regards the amounts spent for assistance measures aimed at fighting social exclusion in general, the report indicates that, in 2010, the local councils facilitated the access to housing to 36% of the socially excluded single persons (5,751 individuals) and 35.1% of the socially excluded families (4,379 families) for a total budget of RON 34,324,233 (€8,130,550), representing 43% of the amounts needed. 37,315 single persons and 32,108 excluded families benefited of access to strict necessity public services, for a budget of RON 23,638,628 (€5,599,400). The report indicates that although the allocated amounts represented 67.5% of the amounts needed, having regard to the number of beneficiaries, it nevertheless ensured the access of 92.6% of the socially excluded individuals and 82.8% of the excluded families. During the same period, 38,471 individuals and 34,817 socially excluded families have benefited of other measures taken by local councils for preventing and fighting social exclusion, for a cost of RON 32,817,386 (€7,773,610). In total, in 2010, the amount spent for these measures was RON 90,780,247 (€21,503,600). According to the report this amount, corresponded to only to 59.8% of the estimated amounts needed.

The Committee takes note of this information. Nevertheless, considering the fact that the information provided does not indicate to what extent people without resources or at risk of becoming so effectively have access to services offering advice and personal assistance and the fact that the resources allocated to these services are by the Government's own admission insufficient to meet the needs, it considers that the situation is not in conformity with Article 13§3 of the Charter.

### *Conclusion*

The Committee concludes that the situation in Romania is not in conformity with Article 13§3 of the Charter on the ground that persons without resources or at risk of becoming so do not have effective access to adequate services offering advice and personal assistance to prevent, remove or to alleviate personal or family want.

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

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

### ***Social protection of families***

#### ***Housing for families***

The Committee notes from the report that the Dwelling Law No 114/1996, republished, provides in its Section 43 that social dwellings are distributed by the local public authorities that manage them based upon the yearly established criteria. The categories of persons who may benefit from them are, among others, persons and families evicted or who are to be evicted from their dwellings, the youth who are up to 35 years old, persons with disabilities, pensioners.

The Committee wishes to be informed about the implementation of the Dwelling Law. In particular, the Committee wishes to know the total number of actual beneficiaries of social housing and the total number of eligible persons.

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as the living conditions of Roma families in housing were not adequate.

The Committee notes that the report does not provide any information on this issue.

The Committee notes from the ECRI report on Romania of 2014 that several Roma communities have been evicted from their homes by the authorities with little advance notice, in the absence of prior consultation and have been relocated to insalubrious sites and segregated areas. According to ECRI, the most serious cases of eviction have taken place in Baia Mare, where, as reports have indicated, in 2012 around 500 persons of Roma origin were evicted from their homes and relocated to buildings belonging to a disused chemical factory. As a result of exposure to toxic substances present in the buildings, 22 children and two adults were hospitalised.

According to ECRI, another incident was the construction of a two-meter high and 200-meter long wall around an apartment building primarily inhabited by persons of Roma origin in Baia Mare in 2011. The local authorities have stated that the purpose of the wall is to separate the building from the adjacent road in order to minimise the risk of accidents. Civil society has raised concerns about enhanced segregation of the Roma community.

Furthermore, ECRI has been informed that in 2013, around 30 families living in Baia Mare were served with demolition orders by the local police. As a result, 15 homes were torn down. The owners were not provided with alternative accommodation.

ECRI has been informed by the authorities that they are aware of the dramatic living conditions of most Roma and that a programme addressing this problem was launched in 2010. This programme aimed to build 300 housing units, including social housing, for the Roma in eight regions. The authorities however, have revealed that due to budgetary cuts, the programme could not be finalised.

The Committee further notes that the Human Rights Commissioner also expressed his deep concern about the evictions of more than 300 Roma families and their relocation to buildings formerly owned by a disused chemical factory in the Romanian city of Baia Mare.

The Committee also observes from the Third Opinion on Romania of the Advisory Committee on the Framework Convention for the Protection of National Minorities (2012) that the National Agency for Roma, in consultation with different ministries and representatives of the civil society, developed the new National Strategy for Roma 2011-2020, with the aim of, among

others, improving their health and housing conditions. However, the funds for the implementation of the strategy have neither been clearly defined nor allocated.

The Advisory Committee expressed its concern about the practice of evictions of Roma families and especially about the resettlement of Roma in places lacking the necessary standards both as regards the quality of the housing itself, but also other services, such as transportation facilities, access to schools, health centres and employment opportunities.

The Advisory Committee also notes that the National Council for Combating Discrimination, having examined a complaint lodged by the inhabitants, and non-governmental organisations, imposed a fine of € 1,400 on the mayor of the city and recommended that the wall be pulled down and that measures be taken to improve the living conditions of Roma inhabitants of the settlement.

In the light of the above finding of the monitoring bodies and in the absence of any information in the report, the Committee considers that there is no evidence that the situation as regards housing and adequate living conditions of Roma families has improved. Moreover, there is no evidence that the security from unlawful eviction has been guaranteed, as required by Article 16 of the Charter (*European Roma Rights Centre (ERRC) v. Greece*, Complaint No 15/2003, decision on the merits of 8 December 2004, § 24). Therefore, the situation is not in conformity with the Charter.

In its previous conclusion the Committee asked for more detailed information as regards legal safeguards against unlawful eviction. In particular, the Committee wished to know whether legal protection for persons threatened by eviction included an obligation to consult the parties in order to find alternative solutions to eviction, an obligation to fix a reasonable notice period and whether legal remedies and legal aid were accessible for such persons.

The report does not provide any information on this issue. Therefore, the Committee considers that it has not been established that there are adequate procedural safeguards against unlawful eviction for families.

### ***Childcare facilities***

In its previous conclusion the Committee asked the next report to provide information as to how the Government ensured that affordable, good quality children facilities were available, in particular, in terms of number of children under the age of six in childcare, staff qualifications and suitability of the premises and the size of the financial contribution parents were asked to make. The Committee notes that the report does not provide this information. Therefore, it considers that it has not been established that affordable and good quality childcare is ensured for families.

### ***Family counselling services***

The Committee recalls that families must be able to consult appropriate social services, particularly when they are in difficulty. States are required in particular to set up family counselling services and services providing psychological support for children's education. As the report does not reply the Committee's reiterated request for information on family counselling services (Conclusions 2006 and 2011), the Committee considers that it has not been established that adequate family counselling services are available.

### ***Participation of associations representing families***

The report does not contain any of the requested information concerning the participation of relevant associations representing families in the framing of family policies. The Committee

accordingly reiterates its question and considers that, should the next report fail to address this issue, there will be nothing to show that the situation is in conformity on this point.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The Committee previously noted that under Article 48 of the Constitution and Article 258 of the Civil Code, the family is founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of the parents to ensure the upbringing, education and instruction of their children. Article 258 of the Civil Code specifies that the state is bound to support through economic and social measures the making of marriage and the development and consolidation of the family.

The Civil Code provides for divorce procedures (Articles 373-403). When issuing a divorce decree, the court also decides about the custody of minor children, taking into account their best interest and after having heard the parents, the guardianship authority and children of ten years and over. According to Article 397 of the Civil Code, both parents usually retain joint parental authority, unless there are important reasons to do otherwise. If the parental authority is granted to one parent, the other parent maintains the right to have personal contact with the child and to oversee its upbringing and education (Article 398). As an exception, the court may decide the child's placement with a relative or a foster family or person or in a care institution, which will then be responsible for exercising parental authority on the child. The court shall determine whom will exercise the child's property rights (Article 399) and where the child should live (Article 400). The parent(s) not living with the child have the right to maintain personal relations with him/her. In case of dispute, the guardianship court, having heard the child, decides how this right should be exercised (Article 401). The court also determines in the divorce decision each parent's contribution to the allowance, education, teaching and training of the child (Article 402). The rights and obligations of the parents can be modified by the court, if there is a change of circumstances (Article 403).

#### ***Mediation services***

In response to the Committee's question, the report indicates that mediation is regulated by Law No. 192/2006 as a public interest activity (Article 4§1) aimed at the prevention or solution of disputes and exercised by people specially trained as mediators and registered as such. Mediation is available to all persons without discrimination based on race, colour, nationality, ethnic origins, language, religion, sex, opinion, political affiliation, fortune or social origin (Article 3). The Law provides that the judicial and arbitral bodies, as well as other authorities with jurisdictional competences, shall inform the Parties on the possibilities and advantages of using mediation procedure and shall advise them to use this modality to settle the existing conflicts / disputes among them. The Law applies *inter alia* to disputes in the field of family law, including as regards the dissolution of marriage, parental rights, the residence of the children, children alimony etc. Any agreement reached by the spouses through mediation on these issues needs to be submitted to the competent court seized of the divorce procedure.

The report states that there are 8,456 certified mediators, with a uniform distribution across the country.

The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the provision of mediation services whose object should be to avoid the further deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from seeking such

services for financial reasons. Providing these services free of charge constitutes an adequate measure to this end. Otherwise, in case of need, a possibility of access for families should be provided. The Committee asks the next report to indicate what assistance is available for families in case of need.

It furthermore asks whether any statistical data exist on recourse to mediation services, particularly in the field of family law.

### ***Domestic violence against women***

As regards the measures taken to combat domestic violence against women, the report recalls that Article 199 of the Penal Code, as amended in 2000, provides for penalties increased by one fourth in case of violence committed by a family member (the criminal liability is however removed in case of reconciliation). The Penal Code also provides for a number of measures which can be taken to restrict or prevent the contacts between the perpetrator of violence and the victim.

The report also refers to the Government's decisions Nos. 1084/2010 and 967/2010 redefining the competence of the General Directorates of Social Assistance and Child's Protection (DGASPC) in respect of family support and fight against domestic violence and decision No. 49/2011 setting up a Frame methodology of prevention and multi-disciplinary intervention in the field of domestic violence and violence against minors. The Frame methodology provides in particular for a coordinated action of public authorities and specialised NGOs and covers also measures against the aggressor and rehabilitation of the victims.

The most important step taken in this field, according to the report, was however the amendment in 2012 of the Law on Domestic Violence of 2003 (Law No. 25 of 9 March 2012, amending Law No. 217/2003). The amendment has better defined what constitutes domestic violence and has empowered courts to issue protection orders. The request for a protection order can be made by the victim herself, free of charge, or by the public prosecutor, the relevant local authorities competent on domestic violence or by social service providers with recognized competence in this field (including registered NGOs). Requests for protection orders are examined through a fast-track procedure and, in case of emergency, the court can also issue the protection order the same day, based on the documents submitted without the parties' conclusions. Once a protection order is issued by the court, it is immediately transmitted to the police for its implementation. In case of breach of the protection order, the aggressor is liable to imprisonment from one month to one year. If the circumstances so require (for example, if the aggressor has followed the prescribed treatment), the protection order can be lifted.

The Committee takes note of the project developed by the Ministry of Labor, in partnership with eight competent NGOs, to raise the population's awareness on domestic violence and the protection offered by the new law. It also notes the adoption of a National Strategy 2013-2017 for the prevention and fighting against domestic violence (Government Decision No. 1156/2012). The report also refers to a national campaign of activities raising awareness of domestic violence; the setting up, in 2011, of a special website to provide information on domestic violence and its prevention; another National Interest Program (PIN 2) in 2010-2012 on "Intervention in the Domestic Violence situations" and other specific initiatives (information, awareness-raising and setting up of a dedicated phone line) in Vaslui and Alba. Furthermore, Romania signed on 27 June 2014 (out of the reference period) the Istanbul Convention on preventing and combating violence against women and domestic violence, which remains however to be ratified.

According to the report, the persons sentenced for domestic violence were 557 in 2011, 942 in 2012 and 806 in 2013; the number of victims was 243 in 2011, 446 in 2012 and 450 in 2013; the

number of protection orders issued since the entry into force of the new law was 67 in 2012 and 229 in 2013. According to the report, the courts issued protection orders in slightly more than 40% of the requests made. Despite the emergency required, the issuing of protection orders took however on average 33 days. The report acknowledges the lack of appropriate funding and training to ensure the efficient implementation of the law. The Committee asks the next report to provide updated information on the implementation of measures to prevent and combat domestic violence, as well as statistical data and relevant examples of case-law in order to assess in particular how the new law is interpreted and applied. It reserves in the meantime its position on this issue.

### ***Economic protection of families***

#### ***Family benefits***

The Committee notes from MISSOC that the State Allowance for children, and Family Support Allowance are financed by the State and paid universally to all children who are resident or domiciled in Romania.

The Committee notes that the State Allowance for children stood at € 44.4 for children up to 2 years of age and € 9.3 for children between 2-18 years of age.

The Committee also notes that the Family Support Allowance is paid to families with a monthly average net income per family member up to € 44 (the Reference Social Indicator) in the amount of € 8.8 for the first child, € 17 for the second child and € 26 for the third child.

The Committee notes from Eurostat that the median equivalised income stood at € 172 in 2013. The State Allowance for children between 2-18 years old represented 5.4% of the median equivalised income. In addition, families whose net income per family member is less than the amount of the Reference Social Indicator, are entitled to Family Support Allowance.

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

#### ***Vulnerable families***

The Committee requests that the next report provide information on how the State ensures the protection of vulnerable families, notably, single-parent families and Roma families, in accordance with the principle of equality of treatment. The Committee notes 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 on this point.

#### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

According to the report, the Social Assistance Law No. 292/2011 provides that all foreign nationals and stateless persons who have their domicile or residence in Romania have the right to social assistance under the same conditions as Romanian citizens. The Committee notes that both State Allowance for children as well as Family Support Allowance are included in social assistance scheme and therefore are also provided to all eligible persons domiciled or resident in Romania.

The Committee asks the next report to indicate whether refugees are treated equally with regard to family benefits.

### *Conclusion*

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

- the right to adequate housing is not guaranteed for Roma families;
- it has not been established that there are adequate procedural safeguards against unlawful eviction for families;
- it has not been established that affordable and good quality childcare is ensured for families;
- it has not been established that adequate family counselling services are available.

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

### *Paragraph 1 - Assistance, education and training*

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

### ***The legal status of the child***

The Committee asks under what circumstances – if any- the right of an adopted child to know his/her origins can be restricted.

### ***Protection from ill-treatment and abuse***

The Committee notes from the Global Initiative to End Corporal Punishment of Children that corporal punishment is prohibited in all settings- in the home, in schools and in institutions.

### ***Rights of children in public care***

In its previous conclusion (Conclusions 2011) the Committee noted that there was no unified protocol to guide the planning and monitoring of the decisions on placing a child in out-of-family care and no assessment of the child's individual needs. It asked whether there was an adequate supervision of the child welfare system and a procedure for complaining about the care and treatment in institutions. The Committee also asked what were the criteria for the restriction of custody or parental rights.

According to the report, the termination of parental rights may be pronounced by the tutelary court, at the request of the public administration authorities, if the parent endangers his/her child's life, health or development, by bad treatments applied to him/her, by the alcohol or drugs consumption, by abusive behaviour, by serious negligence in the fulfilment of parental liabilities or by serious infringement of the child's best interests. The termination of parental rights does not exempt the parent of his liability to give allowance to his child.

The court gives back to the parent the exercise of parental rights, if the circumstances that have led to the disqualification of their exercise cease to exist and if the parent does not endanger anymore the child's life, health and development.

The court's decision, whereby it decides the termination of parental rights may be appealed within 30 days from the communication of the decision.

The Committee asks the next report to provide updated information on the numbers of children placed in foster or family type care as opposed to institutions. It also wishes to know the the average size of a childcare institution.

### ***Right to education***

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

### ***Young offenders***

In its previous conclusion the Committee asked what was the maximum length of a prison sentence for young offenders. The Committee also asked whether minors could be imprisoned together with adults.

According to the report, the new Criminal Code, applicable since 1 February 2014 (outside the reference period), has brought significant changes concerning the criminal liability of young offenders. As regards the limits of criminal liability, they have remained unchanged, but the



sanctions applicable to minors were amended. In accordance with the new Criminal Code, the minors no longer receive corrections, but only educational measures, which come in two types: non-custodial and custodial.

With regard to the period of admission in specialised institutions, when the penalty provided for the committed act is imprisonment for 20 years or longer or life detention, the minor will be sanctioned with educational measures of admission in a detention centre for a period of 5 – 15 years.

Regarding the situation in the reference period, Article 160 of the Criminal Code (in force before 2014) provides that entirely exceptionally, a minor aged between 14 and 16 years, who is criminally liable, can be detained by disposition from the prosecutor or from the criminal investigation body, with the notification and under the control of the prosecutor, for a period not longer than 10 hours, if there is indubitable information that the minor has committed an offence sanctioned by law with life detention or 10 years in prison or longer. The preventive arrest of the minor during the criminal prosecution may not exceed, 60 days in total, each of the extensions not exceeding 15 days. In exceptional cases, when the penalty provided by law is life sentence or 20 years in prison, pre-trial detention of the minor aged 14 – 16 during the criminal prosecution can be extended up to 180 days.

The Committee asks what is the maximum length of pre-trial detention that can be imposed on minors under the age of 18, under the amended Criminal Code.

In reply to the Committee question on whether young offenders are always separated from adults, it notes from the report that according to Article 142 of the Criminal Procedure Code, during detention and custody, the minors are kept separate from the adults. Pursuant to Section 32 of Law No 275/2006 on execution of prison sentences, minors convicted to custodial penalties execute the penalty separate from adult convicts in special detention premises.

According to Section 161 of the same law, every admitted individual is entitled to education, in accordance with his needs and capacities, and to an appropriate professional training.

### ***Right to assistance***

According to the report, as regards unlawfully present non-accompanied minors, Article 131 of the Emergency Ordinance No. 194/2002 on the regime of aliens in Romania contains provisions concerning the legal regime applicable to this category of individuals. It provides that irrespective of the way they entered Romania, they receive representation through a competent institution under the law, which ensures appropriate protection and care, including accommodation in special centres of protection for minors under the same conditions as for the Romanian minors.

The removal of a non-accompanied minor can be made, following a prior assessment made by the competent authorities, only if the minor is sent to the parents, when they are identified and do not have their residence in the Romania, to the family members, with their agreement, to the assigned guardian or to some appropriate reception centres in the returning state. If the parents or other members of the family are not identified or if the minor is not accepted in the country of origin, the minor is granted the right to temporary stay in Romania.

### ***Conclusion***

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

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

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

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

The Committee notes from the UNESCO Institute of Statistics that the gross enrolment rate in secondary education in 2012 stood at 95%.

In its previous conclusion (Conclusions 2011) the Committee noted that pre-school and primary school enrolment rates of Roma children, as well as their school attendance rates, were significantly lower and asked what measures were taken to raise them.

The Committee takes note of the strategic directions and the programmes initiated by the Ministry of National Education (MEN) with a view to increasing participation of Roma children in schools, such as providing continuing training and language classes. Continuing training was also provided at university level, to future Roma language teachers and specialists. Emphasis has been placed on preserving the Roma language, history and culture in the teaching steps by ensuring continuous teaching of 3-4 hours/week of Romani mother tongue in schools, continuous support for integral teaching in the Roma mother tongue at the level of pre-school education as well as secondary school. MEN provided funding and ensured publishing each year the necessary school manuals for reaching the language, history and traditions of the Roma people. Continuous training was provided to Roma school mediators.

As regards access and participation in education, the Ministry has taken steps to increase participation in education of the main vulnerable groups, such as the population from rural areas and the areas disadvantaged in social and economic terms, the Roma population and children with special education needs.

The Committee takes note in this regard of the direct intervention measures related to school non-attendance, such as the introduction of the programme 'the second change', promotion of a programme for the education of parents to improve their parenting skills, the design and the development of a strategy regarding the importance of the early education in order to increase the quality of national education and ensure the right of each child to education and the maximum development of its potential. It also takes note of measures for the stimulation of the participation into the educational process of Roma children, such as the granting of an enhanced number of positions within the academic level of education, especially assigned for the Roma candidates, the denomination of Roma scholar inspectors in each of the county's scholar inspectorate, development of the section of Roma language and literature within the Faculty of Foreign Languages and Literature.

As regards the measures for social protection in order to facilitate access to education, the Committee notes the granting of social scholarships and other forms of support for the pupils within the State educational system, provision of school materials to pupils coming from families with low incomes, reimbursement of transport costs for pupils attending schools at a distance greater than 50 km.

The Committee recalls that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that states parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2, 2011).

The Committee asks whether unlawfully present children have a right to education.

*Conclusion*

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

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

### *Paragraph 7 - Equality regarding legal proceedings*

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

The Committee recalls that the right to free legal assistance in civil procedures was amended by the Emergency Ordinance no. 51/2008.

The report states that pursuant to Articles 90 and 91 of the Code of Civil Procedure, “the person who is unable to meet the expenses incurred by the triggering and sustaining a civil lawsuit, without jeopardizing his own welfare or that of his family may be qualified for legal assistance in accordance with the provisions of the law regarding the legal public aid.” The report confirms that this is applied without distinction regarding citizenship. Anyone who has residence in an EU country, including Romania, is eligible to apply for public legal aid pursuant to Section 2 of the Emergency Ordinance no. 51/2008.

The report states that the right to representation in civil proceedings extends to labour conflicts, housing claims, financial rights and other connected litigation, accordingly the Committee notes that it may cover the aspects dealt with under Article 19.

Section 6 of the abovementioned Ordinance provides that legal aid may cover the cost of court fees, representation and legal assistance, as well as the services of a translator or interpreter.

Under the abovementioned Ordinance, reimbursement is limited to the amount of the minimum annual salary. Under Section 8, for those whose income is below 500 lei (€110) per family member, legal aid is provided in full. For those whose income per family member is between 500 and 800 lei, only 50% of the total costs shall be reimbursed. For those whose income is above 800 lei (€180), Section 8(3) provides for a discretionary allowance in proportion to the needs of the applicant. According to a study by Roxana Prisacariu on Public Legal Aid in Romania (2009), the discretion to grant legal aid remains with the presiding court.

According to the same study, legal aid for criminal proceedings was not changed significantly. The report details that the New Code of Penal Procedure grants the right to an attorney to litigants, and if one is not appointed, provides for the automatic appointment of a representative in mandatory assistance cases. The report does not provide further information on the funding of this representation. The Committee asks that the next report provide an up to date description of the regime for payment of legal aid fees in criminal proceedings.

According to the preliminary conclusions and observations by the United Nations Special Rapporteur on the Independence of Judges and Lawyers on visiting Romania in 2011, legal aid is, however, curtailed in practice in Romania to individuals defending criminal charges. The Committee invites the authorities to comment on these observation in the next report.

With regard to interpretation, the report states that the defendant has a right to an interpreter during the trial under Article 83 of the Criminal Procedure Code when he does not understand Romanian or cannot properly defend himself in the Romanian language. This will be provided free of charge. The defendant also has the right to an interpreter when receiving legal assistance to prepare the defence. Furthermore, under Article 18(3) of the Criminal Procedure Code, “foreign citizens and stateless persons who do not understand or do not speak Romanian have the right to take cognizance of all documents and materials within the file, to speak in court and to draw conclusions, by means of an authorized translator”.

The Committee refers to the Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid assistance.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Romania is in conformity with Article 19§7 of the Charter.

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

### *Paragraph 8 - Guarantees concerning deportation*

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

The report states that in accordance with Article 94 of the Government Emergency Ordinance (GEO) No. 194/2002, the foreigner's right of staying ends lawfully at the date at which the expulsion order is made following conviction of a criminal offence.

The competent court has the sole jurisdiction to expel a foreigner following the commission of a crime. The report avers that "this measure is disposed only if the foreigner who has the right to reside in Romania constitutes a threat of the state security or is against public order or good behaviour".

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' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of interpretation on Article 19§8, Conclusions 2015).

The Committee previously asked what types of criminal offence may lead to a migrant worker being expelled. It appears from the report that there are no constraints on which offences may lead to an expulsion order. The Committee asks for confirmation that any offence may lead to an expulsion order. It also asks what criteria or rules are followed by judges in determining whether or not to expel a foreigner, and whether all aspects of the non-nationals' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State will be taken into account. In addition, it asks that the next report provide statistics on expulsions and information on which offences have led to the deportation of a foreigner.

The Committee recalls that States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake (Conclusions V (1977), United Kingdom). The Committee asks whether foreigners subject to an expulsion order have the right to appeal that decision, and if so to which body will hear the appeal.

Article 92 of the GEO No. 194/2002 mentions the situations in which the measures for final removal from the Romanian territory may be stayed. They include where the foreigner is married to a Romanian or another foreigner who has a long term residence permit, and the marriage is not a convenience marriage.

### *Conclusion*

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

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

*Paragraph 2 - Parental leave*

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

In reply to the Committee's question the report states that as of 1 January 2011, persons who, in the year prior to the birth of the child obtained income for 12 months, either as revenues from wages or independent activities, or revenues from agrarian activities have a right to maternity leave of up to one year as well as a monthly allowance, established at 85% of the average net revenues in the last 12 months. They also have a right to a childcare leave of up to 2 years, and a monthly indemnity, established at 85% of the average of net revenues in the last 12 months.

In its previous conclusion the Committee noted that the parental leave may be taken by the biological or adoptive parents. It asks whether fathers have an individual right to parental leave and whether at least a part of it is non-transferable.

*Conclusion*

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



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**RUSSIAN FEDERATION**

*This text may be subject to editorial revision.*





The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns the Russian Federation which ratified the Charter on 14 September 2000. The deadline for submitting the 4th report was 31 October 2014 and the Russian Federation submitted it on 1 December 2014.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

The Russian Federation has accepted all provisions from the above-mentioned group except Articles 19§1, 19§2, 19§3, 19§4, 19§6, 19§7, 19§8, 19§10, 19§11, 19§12 and 31.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to the Russian Federation concern 23 situations and are as follows:

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

– 2 conclusions of non-conformity: Articles 16 and 17§1

In respect of the other 7 situations related to Articles 7§1, 7§3, 7§5, 7§6, 7§10, 17§2 and 27§3, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by the Russian Federation under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 17§1**

The Decree of the Government on the activities of establishments for orphans and children deprived of parental care was adopted on 24 May 2014. Paragraph 35 of the Decree provides that the number of children in one unit should not exceed 8 persons.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),

- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 the Russian Federation.

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).

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).

The report indicates that Article 63 of the Labour Code prohibits children under 16 years of age from concluding an employment contract. The report specifies that this prohibition applies to all employers and refer to all categories of workers including home-based workers and to employment by a natural person of "personal assistants" and assistants in housekeeping.

The report further indicates that young persons who have reached the age of 15 may be employed in light work which does not cause harm to their health. The report indicates that the law does not list the easy jobs, but it provides for sanitation and epidemiological requirements for safe labour conditions for workers under 18. The report indicates that teenagers are not allowed to work in: working conditions and activities requiring significant intellectual effort; working conditions and activities requiring a high degree of concentration and sensory attention; working conditions with considerable emotional stress. Machinery, equipment, instruments, controls, furniture at the workplace shall meet the ergonomic requirements taking into account teenagers physical growth and development.

The report finally indicates that the Labour Code also provides for the possibility to conclude an employment contract with teenagers of 14 years and older still undergoing a general education course, but subject to the following conditions (Article 63 (3) of the Labour Code): (i) such teenagers shall be employed only when they are free from their education time; (ii) an employment contract shall include only easy labour, not causing detrimental effect on the teenager's health and not interfering with the general education program; (iii) the consent of one of the parents (guardian) and guardianship body is required for the employment of teenagers of 14 – 15- year olds, specifying the duration of the daily working hours and the other conditions under which work may be performed. The report indicates that concluding an employment contract with teenagers under 14 years old is forbidden with the exception of work performed in the field of:

- cinematography, theatres and concert activities, circuses, provided that such work is not harmful to the health and morality of the young person and only with the consent of one of the parents (guardian) or permission of the guardianship body (Article 63(4) of the Labour Code);
- in case of sportsmen – in activities of preparation for sporting events and participating in sporting competitions in certain kinds of sports; the parental and guardianship consent necessary for concluding an employment agreement with a sportsman is issued only after preliminary medical examination.

The Committee asks how the Labour Inspectorate monitors the above mentioned exceptions in practice. It recalls that work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work”, especially the maximum permitted duration and the prescribed rest periods so as to allow supervision by the competent services. Even though it has not set a general limit on the duration of permitted light work, the Committee has considered that a situation in which a child under the age of fifteen years works for between twenty and twenty-five hours per week during school term (Conclusions II, p. 32), or three hours per school day and six to eight hours on week days when there is no school is contrary to the Charter (Conclusions IV, p. 54) (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §31)

The Committee notes from another source that many children are working outside the scope of an employment contract or in the informal economy. The same source indicates that a study carried out in 2009 by ILO-IPEC reveals that children, some as young as 8 and 9 years old, were engaged in economic activities such as collecting empty bottles and recycling paper, transporting goods, cleaning workplaces, looking after property, street trading and cleaning cars (Observation (CEACR) – adopted 2013, published 103rd ILC session (2014), Minimum Age Convention 1973 (No. 138) – Russian Federation). The Committee recalls that 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. It also underlines that work which is unsuitable because of the physical effort involved, working conditions (noise, heat, etc.) or possible psychological repercussions may have harmful consequences not only on the child’s health and development, but also on its ability to obtain maximum advantage from schooling and, more generally, its potential for satisfactory integration in society (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §30). The Committee asks what are the measures taken by the State authorities to detect cases of children under the age of 15 working in the informal economy, outside the scope of an employment contract.

The report provides information on the activities of the State Labour Inspectorate of monitoring compliance with labour regulations related to the employment of young workers under 18 in 2010, 2011 and 2012. For example, in 2011, 3,400 cases of violations of labour legislation were identified, concerning the provision of annual leave for less than 31 calendar days, employment of workers under eighteen in overtime work, employment of workers under eighteen in work with harmful and/or dangerous working conditions. In order to eliminate the violations detected in respect of employees under eighteen years old, the Federal Labour Inspectorate officials issued 1,022 binding orders, 731 persons responsible of violations of labour legislation (officials, legal persons and individuals engaged in entrepreneurial activities without forming a legal person) were subjected to fines.

The report states that violation of labour legislation, including the violation of prohibitions and restrictions with regard to the employment of young workers under 18, shall result in administrative fines imposed on the employers in the amount of 1,000 to 5,000 Russian rubles (€ 11.67 to € 58.34) for natural persons and of 30,000 to 50,000 Russian rubles (€ 350.03 to € 583.39) or the suspension of activity for up to 90 days in case of legal persons.

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 the next report to provide information on the activities and findings of the Labour Inspectorate of monitoring the prohibition of employment under the age of 15. The Committee asks if the State authorities monitor work done at home by children and domestic work and which are their findings in this respect.

*Conclusion*

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

## **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 the Russian Federation.

In application of Article 7§2, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work (Conclusions 2006, France).

However, if such work proves absolutely necessary for their vocational training, they may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary. The Labour Inspectorate must monitor these arrangements (Conclusions 2006, Norway). The Appendix to Article 7§2 also permits exceptions in cases where young persons under the age of 18 have completed their training for performing dangerous tasks and, thus, received the necessary information. The Labour Inspectorate must monitor these arrangements too (Conclusions 2006, Portugal).

The report indicates that it is prohibited to employ persons under the age of 18 in jobs involving harmful and/or dangerous work conditions, underground work, and jobs that could cause harm to their health and moral development (gambling businesses, cabarets and nightclubs, and the production, transportation, and sale of alcoholic beverages, tobacco products, and narcotic and other toxic compounds). It shall be prohibited for workers under the age of 18 to carry or move loads in excess of the limits established for them (Article 265 of the Labour Code).

The report indicates that the list of jobs for which the employment of persons under the age of 18 is prohibited, as well as the maximum loads to be carried, shall be approved following procedures established by the Government of the Russian Federation, with the recommendation of the Russian Tripartite Commission on the Regulation of Social and Labour Relations. The report provides the specific list of works prohibited to young persons under 18. The list includes, among others: underground work, construction work, mounting and repair work, work involving chemical products, production of medical and biological products, mechanical engineering, metalwork etc. The report states that the prohibition of employment of young persons under 18 for works listed as dangerous applies to all enterprises and organisations regardless of their legal status and possession.

The report states that the legislation provides for certain exceptions from the above mentioned rule. Students of general educational institutions and secondary vocational education of 16 years old and above (upon training) may perform the works included in the list of dangerous activities, but not longer than four hours a day with the strict observance of sanitary standards and norms of safety engineering. Graduates of educational institutes having passed at least three years of professional training for works specified in the list of dangerous activities, but not reached the age of 18, could be admitted to such works on certified working place subject to strict observance of sanitary standards and norms of safety engineering. The report indicates that companies and organisations are responsible of providing safe conditions during the students' apprenticeship in accordance with safety engineering and sanitary requirements, and only students who had successfully passed a medical examination shall be admitted to the apprenticeship course.

The report indicates that only qualified persons of 20 years old and above have the right to be employed for works with toxic chemicals related to chemical weapons. The report adds that young workers under 18 are not allowed to perform works involving lifting and moving loads exceeding the specified limits except when they are getting prepared or participate in

sport events, if it is necessary for such events and such load is not prohibited according to the medical report.

The report indicates that in 2011 the State Labour Inspectorate detected 1,860 of violations related to work safety, including employment of young persons under 18 who were not subject to a preliminary medical examination.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activities and findings of the Labour Inspectorate in relation to the prohibition of employment for dangerous activities of young persons under 18. It also asks how the Labour Inspectorate monitors the above mentioned derogations. The Committee asks information on the applicable sanctions in cases of violation of the prohibition of employment under the age of 18 in dangerous or unhealthy activities.

#### *Conclusion*

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

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.

During school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework. Allowing children to work before school begins in the morning is, in principle, contrary to Article 7§3. Allowing children aged 15 years still subject to compulsory education to deliver newspapers from 6 a.m. for up to 2 hours per day, 5 days per week before school is not in conformity with the Charter.

The report indicates that students are subject to compulsory secondary education until they reach the age of 18 according to Section 66 of the Law on Education. The Labour Code provides for the possibility to conclude an employment contract with young persons of 14 years and older still undergoing general education course, with the conditions that the work performed is easy, does not harm their health, does not interfere with the education program and it is performed during the time free from study (Article 63(3) of the Labour Code). The report indicates that the same conditions apply to all young persons subject to compulsory education and that work and rest shall be organised in such a way that does not hinder attendance to school. In case of young persons of 14 and 15 years of age, the consent of one of the parents (guardian) and the guardianship agency is required before employment. The permission of the guardianship body shall include an indication of the duration of the daily working hours and the other conditions under which the work may be performed.

The report further indicates that it is prohibited for workers under the age of 18 to be dispatched on business travel or assigned to work overtime or at night, on weekends, or on public holidays (with the exception of creative workers in the mass media, cinematography, television and film crew, theaters, theatrical and concert organisations, circuses, and other persons participating in the creation and/or performance (exhibition) of creative productions as specified in the list of works, occupations and positions of such employees, approved by the Government of the Russian Federation, taking into account the opinion of the Russian Tripartite Commission on the Regulation of Social and Labour Relations (Article 268 of the Labour Code). Young persons under 18 are prohibited to be employed for work under rotation system which could prevent attendance at school.

The report states that the Labour Codes establishes reduced weekly and daily working time for young persons under 18. Thus, the length of the working time of students of general educational institutions up to 18 years of age who are still subject to compulsory education may not be longer than 12 hours per week for young persons under 16 and 17,5 hours per week for young employees aged from 16 to 18 (Article 92 of the Labour Code). The daily working hours shall not exceed 2.5 hours for children aged 14-16 and 4 hours for young persons from 16 up to 18 years of age who are still subject to compulsory education (Article 94 of the Labour Code). The Committee asks how the Labour Inspectorate monitors the working weekly and daily hours of children who are subject to compulsory education and information on its findings.

The Committee refers to its Statement of Interpretation on Article 7§3 (Conclusions 2011) and recalls that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays. Its duration shall not be less than 2 weeks during the summer holidays (Statement of Interpretation on Article 7§3, Conclusions 2011). The Committee asks if children who are still in compulsory education benefit of two consecutive weeks free from any work during the summer holidays. Pending receipt of the information requested, the Committee reserves its position on this point.

*Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 4 - Working time*

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

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

The report indicates that the legislation provides reduced weekly and daily working hours for young persons under 18 years of age. The Labour Code provides that young employees under 16 may work up to 24 hours a week and the employees aged between 16 and 18 are allowed to work maximum 35 hours a week (Article 92 of the Labour Code). The daily working hours cannot exceed 5 hours for the 15-16 year-olds and 7 hours for the 16-18 year-olds. The report underlines that all the above mentioned standards are mandatory and cannot be derogated from by the parties.

The report indicates that as an exception, the duration of daily work for sportsmen who have not reached the age of eighteen may be established by collective contracts, agreements, local normative acts with the observance of the maximum duration of the weekly working time as established by the Labour Code (Article 92). The Committee asks how the Labour Inspectorate monitors these arrangements.

In this respect, the Committee recalls that the situation in practice should be regularly monitored. It asks that the next report provide information on the activity of the Labour Inspectorate, its findings and sanctions applied in cases of breach of the applicable regulations to reduced working time of young workers who are no longer subject to compulsory schooling.

### *Conclusion*

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

## **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 Russian Federation.

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.

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.

### **Young workers**

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

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 report states that according to the Labour Code wages shall be paid to workers under the age of eighteen by taking into account their reduced working hours. The labour of workers under eighteen who are employed in piecework shall be compensated at the established piece rates. Compensation for the work performed by young persons under eighteen who are students in general education institutions and institutions of basic, secondary, and higher vocational education and work during time free from their studies shall be made in proportion to time worked or based on their output. An employer may establish payments to such workers in addition to their wages, at his own expense (Article 271 Labour Code).

The report underlines that in contrast to adult workers who receive wages in full, the amount of wages of young persons under 18 depends/is subject to the duration of working time. The report adds that young workers under 18 are paid less than adults because they are trusted with easy works, they are less experienced than the adult workers and the working hours of young workers are reduced.

The report indicates that there are no official data published by the Federal State Statistics Service (*Rosstat*) on the amount of wages paid to young workers under 18 years of age.

In order to assess the situation, the Committee needs information on the minimum wage of young workers calculated net. It also requests information on the starting wages or minimum wages of adult workers as well as on the average wage. 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. Pending receipt of the information requested, the Committee reserves its position on this point.

### **Apprentices**

Apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from

its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period (Conclusions II (1971), Statement of interpretation on Article 7§5), starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (Conclusions 2006, Portugal).

The report indicates that during a period of an apprenticeship, trainees shall be paid a stipend whose amount shall be determined by the apprenticeship contract and shall depend on the profession, specialty, and skills obtained, but may not be lower than the minimum wage established by federal law. Work performed by a trainee in practical exercises shall be compensated at the established piece rates (Article 204 of the Labour Code). The Committee asks what it is understood by "the minimum wage established by federal law" and which is the net value of such minimum wage.

The report does not provide adequate information on the allowances paid to apprentices during the reference period. The Committee requests to be provided with the net values of the allowances paid to apprentices (after deduction of social security contributions) at the beginning and at the end of the apprenticeship. Pending receipt of the information requested, the Committee reserves its position on this point.

#### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

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

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

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 states that the time spent in professional training, undertaken during working hours, is considered as a part of working time. However, the report indicates that the Russian legislation does not provide specific guarantees for young persons undertaking professional training during the working time. The report provides examples of benefits and reimbursements associated with business travel. The Committee asks clarification whether the legislation provides that the time spent in vocational training is considered as normal working time and thus remunerated as such.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity and findings of the Labour Inspectorate in relation to the inclusion of time spent on vocational training in the normal working time.

### *Conclusion*

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

## **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 the Russian Federation.

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.

The report indicates that young workers under 18 years of age are entitled to an annual paid leave of 31 calendar days, at their convenience (Article 267 of the Labour Code). The Labour Code provides further restrictions in respect to the annual holiday of the young workers, namely: (i) the employers are prohibited to refuse to grant the annual holiday with pay to the young workers under 18 years of age; (ii) young workers under 18 cannot be revoked from their leave; (iii) financial compensation for unused annual leave is not allowed in case of young employees under 18.

The report indicates that in case of illness or accident of an employee during the leave, the paid annual leave must be extended or moved to another date, as determined by the employer, taking the employee's wishes into account (Article 124(1) of the Labour Code).

The report indicates that in 2011 the State Labour Inspectorate identified 3,400 cases of violations of labour legislation which concerned annual leave for less than 31 calendar days granted to young workers, employment of workers under eighteen years old in overtime work, employment of workers under eighteen years old in work with harmful and/or dangerous working conditions. The report does not indicate how many breaches concerned the annual holidays of young workers under 18.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity and findings of the Labour Inspectorate in relation to the paid annual holidays of young workers.

### *Conclusion*

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

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 under Russian legislation the night time is considered the time from 22 to 8 o'clock. It states that, as a general rule, young persons under 18 are not allowed to perform night work (Article 96 of the Labour Code), with the exception of young persons involved in creation and/or execution of art works and sportsmen.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity of the Labour Inspectorate, its findings and applicable sanctions in relation to possible illegal involvement of young workers under 18 in night work.

### *Conclusion*

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

The Committee recalls that the obligation 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. 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 the Labour Code, all persons under 18 shall be employed only after a preliminary medical examination and shall be subject to a compulsory medical examination yearly until they reach the age of 18 (Article 266 of the Labour Code). All medical examinations shall be performed at the employer's expense.

The report indicates that the procedure of medical examination and the medical health requirements is determined by the Ministry of Health of the Russian Federation. Young persons under 18 shall not be admitted to work if they are not subject to a medical examination and do not have a medical assessment report. According to the report, young persons with disabilities are subject to examination by medical-social expert commissions and can be employed according to their recommendations at the workplace complying with working conditions hygienic requirements for disabled people, taking into account the risk degree of injury and compliance with sanitary regulations.

The report indicates that administrative sanctions may be imposed on the employers in case of employment of young persons under 18 without the preliminary medical examination. The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity and findings of the Labour Inspectorate.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

### ***Protection against sexual exploitation***

The Committee recalls that under Article 7§10 of the Charter, States 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. The following are the minimum obligations:

- as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised. In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts. Furthermore, States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.
- a national action plan combating the sexual exploitation of children should be adopted.

An effective policy against commercial sexual exploitation of children should cover primary and interrelated forms: child prostitution, child pornography and trafficking in children.

- child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration;
- child pornography is given an extensive definition and takes account of the fact that new technology has changed the nature of child pornography. It includes the procurement, production, distribution, making available and possession of material that visually depicts a child engaged in sexually explicit conduct.
- trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.

The Committee takes note of provisions of the Criminal Code, as amended by the Federal Law No. 14-FZ of February 29, 2012, protecting children against sexual exploitation:

- Article 240 (3) - inducing a minor to prostitution or forcing to continue prostitution shall be punishable by deprivation of liberty for a term of three to eight years;
- Article 241 (2 c)- organisation of prostitution, as well as the maintenance of hangouts for prostitution or the systematic provision of premises for prostitution with the involvement of minors in prostitution, shall be punishable by deprivation of liberty for a term of up to six years;
- Article 242 (1) criminalises the making, acquisition, storage and/or movement across the border for the purpose of distribution, public demonstration or advertising, or distribution, of materials or objects with pornographic pictures of minors, which shall be punishable by deprivation of liberty for a term of two to eight years;
- Article 242 (2) criminalises the use of a minor for the purpose of making photos, films or videotapes showing a minor or attracting a minor as a performer in an entertainment of pornographic nature by a person who has reached 18 years of age. This crime shall be punishable by deprivation of liberty for a term of 3 to 10 years;
- Article 6 (20) of the Administrative Code provides for the imposition on legal persons of an administrative penalty in the amount from 1 million to 5 million

roubles with confiscation of materials or objects with pornographic images of underage children and equipment used for manufacture of such materials or objects.

The Committee understands that all these provisions protect children until the age of 18. It asks whether this understanding is correct.

The Committee notes that ECPAT (Global monitoring status of action against commercial sexual exploitation of children, the Russian Federation) names among the *priority areas of action* the need to criminalise the simple possession of child pornography, to introduce laws specifically on grooming, to increase the number of prosecutions, investigations, and convictions for trafficking offences and to provide trainings on commercial sexual exploitation of children to lawyers, judges, law enforcement, government officials, social workers and other relevant stakeholders.

The Committee also notes from the Concluding observations on the combined fourth and fifth periodic reports of the Russian Federation of the UN Committee on the Rights of the Child (UN-CRC, 13–31 January 2014) that there has been a large number of cases of sexual exploitation and abuse of children and the lack of cooperation between the law enforcement agencies and the social system to prevent such offences or to rehabilitate victims of sexual violence and sexual abuse.

The UN-CRC recommends that the authorities establish interdepartmental cooperation at the federal, regional and local levels, in particular between law enforcement agencies and social services structures in order to prevent the sexual exploitation and abuse of children and to provide timely and effective rehabilitation to victims of such crimes.

According to the report, (the Office of the Prosecutor General of the Russian Federation), in 2011 more than 93,000 children were victims of crimes. The Committee wishes to be informed of the number of cases of sexual exploitation of children that have been identified and prosecuted.

The Committee further asks whether simple possession of child pornography is criminalised. It also asks whether child victims of sexual exploitation may be prosecuted for any act connected with this exploitation.

### ***Protection against the misuse of information technologies***

In light of the fact that new information technologies have made the sexual exploitation of children easier, States parties must adopt measures in law and in practice to protect children from their misuse. As for example the Internet is becoming one of the most frequently used tools for the spread of child pornography, States parties must take measures to combat this, such as by providing that Internet service providers be responsible for controlling the material they host, encouraging the development and use of the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.).

The Committee asks for full information concerning supervisory mechanisms and sanctions for sexual exploitation of children through the information technologies. It further asks whether legislation or codes of conduct for Internet service providers is foreseen in order to protect children.

### ***Protection from other forms of exploitation***

The Committee recalls that under Article 7§10 States must prohibit the use of children in other forms of exploitation such as, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs. States parties must also take measures to prevent and assist street children. States parties must ensure not only that

they have the necessary legislation to prevent exploitation and protect children and young persons, but also that this legislation is effective in practice.

According to the report, Article 6 (19) of the Administrative Code imposes a liability for creation by legal persons of conditions for trafficking and/or exploitation of children, such as the provision of premises, vehicles or other material supplies, the domestic conditions for trafficking and / or exploitation of children, services that promote child trafficking and exploitation of children, or the financing of child trafficking and / or exploitation of children. The liability entails the imposition of an administrative fine on legal persons in the amount from 1 million to 5 million roubles or administrative suspension of activity for up to 90 days.

According to the report, a comprehensive analysis of the problem of street child labour were carried out in 2000-2001 in Russia as a part of the International programme of the liquidation of child labour (IPEC) in Moscow, St. Petersburg and the Leningrad region and relevant reports were prepared. The main aim of the study was quantitative and qualitative assessment of the problem of street child labour, its causes, typical kinds and forms of child labour, risks for health, physical, moral and intellectual growth development of children.

The Committee asks for an updated information regarding the numbers of cases involving labour exploitation, begging and trafficking of children. It asks what measures are taken to assist street children.

#### *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 the Russian Federation.

### ***Right to maternity leave***

According to the report, the same rules apply to employees of the public and private sector: under Article 255 of the Labour Code all employed women are entitled to maternity leave for 70 days before and 70 days after childbirth, with the payment of benefits from social insurance in the amount established by federal laws. Longer periods of maternity leave are provided in certain circumstances, for example in case of multiple births. Maternity leave is granted upon written request of the employee concerned and submission of a medical certificate of temporary disability.

The Committee notes that, according to the report, the maternity leave can be used partially. It asks whether the law provides for a minimum compulsory length of postnatal leave, which can not be relinquished, not even at the employee's request. If no such compulsory leave is provided for, it asks the next report to clarify what legal safeguards exist to avoid any undue pressure on employees to shorten their maternity leave, in particular whether there is legislation against discrimination at work based on gender and family responsibilities, an agreement between social partners protecting the freedom of choice of the women concerned, or other guarantees enshrined in the general legal framework surrounding maternity, for instance a parental leave system whereby either parents can take paid leave at the end of the maternity leave. It furthermore asks the next report to provide any relevant statistical data on the average length of maternity leave effectively taken. It reserves in the meantime its position on this issue.

### ***Right to maternity benefits***

The report indicates that maternity benefits are mainly regulated by the Federal Law No. 81-FZ of 19 May 1995 on state payments to citizens having children and by the Federal Law No. 255-FZ of 29 December 2006 on compulsory social insurance in case of temporary disability and in connection with maternity. The report furthermore refers to the Order of the Health Ministry No. 1012n of 23 December 2009 on approval of the procedure and conditions for granting and payment of state benefits to citizens with children and the Governmental Decree No. 375 of 15 June 2007 on approval of the Regulation on the procedure of benefits calculation in case of temporary disability, maternity, monthly payment for child care for citizens covered by compulsory social insurance.

According to the report, maternity benefits corresponding to 100% of the average earnings are paid for the whole period of maternity leave by the social insurance fund. Are entitled to maternity benefits all women subject to compulsory social insurance in case of temporary disability and maternity, women dismissed in case of business liquidation, women in full-time professional education, women on military service with an employment contract and on service in internal security and penitentiary bodies. The report explains that under Article 2 of the Federal Law No. 255-FZ the persons covered by compulsory social insurance in case of temporary disability and maternity include Russian citizens but also foreign and stateless persons residing temporarily or permanently in the territory of the Russian Federation. Furthermore, the report specifies the categories of persons covered, which include employed persons in the private sector as well as civil servants.

As from January 2013, maternity benefits are calculated on the basis of the average earnings of the insured person during the two previous calendar years, up to a ceiling of RUB 168,383.60 (€3728 at the rate of 31 December 2013) for 140 days maternity leave. If

during the two previous years the insured person already took a maternity leave, the year used as a reference to calculate the average earnings can be replaced. Similarly, if during the previous two years the insured person had no income or if the average earnings were less than the minimum wage, then the benefits are calculated on the basis of the minimum wage. If the insured person is working part-time, the average earnings on which the benefits are calculated shall be determined in proportion to the hours of work of the insured person. The average earnings include all type of payments and other benefits in favour of the insured person, which accrued insurance contributions (premiums) to the social insurance fund. Unemployment benefits and other payments of obligatory social insurance, most compensation payments for damages or dismissal are not subject to insurance contributions.

The report describes in detail the criteria used in calculating the average daily earnings and the corresponding amount of maternity benefits. These are determined by multiplying the amount of the daily benefit for the number of calendar days per period of maternity leave. The amount of the base limit value for calculating insurance contributions was RUB 463,000 in 2011 (€11,095 at the rate of 31 December 2011), RUB 512,000 in 2012 (€12,706 at the rate of 31 December 2012) and RUB 568,000 in 2013 (€12,577 at the rate of 31 December 2013). As a result, in 2013 the maximum average daily earnings for the calculation of maternity benefits would not exceed  $(463,000 + 512,000) : 730 = \text{RUB } 1,335.61$  (€30) and the maximum amount of maternity benefits for 140 days of maternity leave corresponded in 2013 to  $\text{RUB } 1,335.61 \times 140 = \text{RUB } 186,986$  (€ 4,140). The report indicates that the maximum monthly amount of benefits was in 2013 about RUB 47,333 when the average nominal monthly wage was RUB 29,940. According to the data of the social insurance fund, the number of paid maternity leave days was 145.4 in 2010 and 156.5 in 2011. In the light of the information provided, the Committee considers that the situation, as regards the right to maternity benefits, is in conformity with Article 8§1 of the Charter.

With reference to its Statement of interpretation on Article 8§1 (Conclusions 2015), the Committee asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

#### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Russian Federation is in conformity with Article 8§1 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

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

### ***Prohibition of dismissal***

Under the Labour Code the dismissal of a pregnant employee is only allowed in case of liquidation of the undertaking (Article 261§1 of the Labour Code) and, according to the report, the case law considers such dismissal to be unlawful even when the employer was unaware of the pregnancy. The report specifies that this also applies to women in civil and municipal state service (Resolution No. 1 of the Plenum by the Supreme Court of 28 January 2014, paragraph 26).

The Committee notes the information provided concerning the dismissal of employees whose fixed-term contract expires during the pregnancy. It notes in particular that, in such case, the employment contract can be extended, at the employee's request, until the end of the pregnancy. It recalls that Article 8§2 does not lay down an absolute prohibition on dismissal of pregnant employees: exceptions are allowed in certain cases such as misconduct which justifies the breaking off the employment relationship, if the undertaking ceases to operate or if the period prescribed in the employment contract expires. In light of the information provided, the Committee finds that the situation in the Russian Federation is in conformity with Article 8§2 of the Charter.

### ***Redress in case of unlawful dismissal***

In case of unlawful dismissal, Article 394 of the Labour Code provides for the employee's reinstatement at work as well as compensation for the moral damage suffered. The reinstatement also applies even when the pregnancy no longer subsists by the time the court examines the claim.

The Committee takes note of the information provided on the inspections performed on the regulation of the labour of women and persons with family responsibilities and asks the next report to provide more specific information concerning dismissal of pregnant employees and, in particular, the relevant case law on reinstatement and compensation in case of unlawful dismissal of pregnant employees. It asks what criteria are applied in deciding compensation, when reinstatement is not possible, and whether any upper limit apply to such compensation.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

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

It notes that, in addition to the standard rest and meals breaks, working women with children aged below one and a half years are granted nursing breaks of at least 30 minutes every three hours or, in case of two or more children, at least one hour every three hours. These breaks can be added to the standard breaks or cumulated at the beginning or the end of the working day. The nursing breaks are included in the working time and paid at the rate of the average salary (Article 258 of the Labour Code). The report indicates that no restriction on nursing breaks apply in case the employee works part-time.

The Committee notes from the information provided in the report that the same rules also apply to employees of the public sector.

### *Conclusion*

The Committee concludes that the situation in the Russian Federation 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 the Russian Federation.

It notes that Article 259 of the Labour Code prohibits sending pregnant workers on business trips and having them performing overtime work, night work, work on free days and holidays. Female employees who have children under three years old may be sent on business trips or work overtime, nighttime, on free days and holidays only upon their written agreement and if there is no medical reason preventing it, according to a medical report issued according to the procedure established by the Federal Laws and other normative legal acts. Female employees who have children under three years old should be informed in writing of their right to refuse business trips, overtime work, night work and work on free days and holidays. The Committee asks the next report to clarify whether the employed women concerned are transferred to daytime work until their child is three years old and what rules apply if such transfer is not possible.

The Committee notes from the information provided in the report that the same rules also apply to employees of the public sector.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

It notes that the Labour Code prohibits all women (not only in relation to maternity) to perform hard, dangerous or unhealthy activities, as well as underground work. The list of activities for which the employment of women is prohibited or restricted on account of the risks involved, as well as the maximum weight which women workers are allowed to lift and move manually, are established by the Government in consultation with the Tripartite Commission for regulation of social and labour relations: the Governmental Decree No. 162 of 25 February 2000 accordingly identifies 456 types of activities, and 38 industries, where women employment is in principle proscribed. This list includes activities involving the lifting and moving of heavy weights, underground physical work (with certain exceptions), heavy and harmful activities in certain sectors (metalworks, mining, oil and gas, etc.). The legislation does not establish an absolute prohibition to employ women in these activities, as long as the employer can guarantee a safe working environment, as assessed by the Sanitary Inspection.

According to the report, the working conditions requirements for pregnant workers, in particular the levels of physical activities which are allowed or prohibited for them, are defined more specifically by the Sanitary Rules and Regulations adopted in 1996. For instance, pregnant women should not perform manufacturing operations associated with lifting of working material above shoulder level or lifting from the floor, or requiring to a prevalent extent to work in forced posture with the legs or abdominal muscles in tension (squatting, kneeling, stooping, supporting by abdomen and chest to equipment and working material) with the body bending more than 15 degrees. Work on equipments using foot pedal control, on conveyor with a forced rhythm of work, connected with a neuro-emotional stress is also excluded for pregnant women. The employment of pregnant workers is furthermore specifically prohibited in activities involving:

- exposure to infectious, parasitic and fungal diseases;
- exposure to infrared radiation and temperatures exceeding 35°C;
- wetting of clothes and shoes and working in draft;
- exposure to barometric pressure variations;
- exposure to harmful chemicals, industrial aerosols, vibration, ultrasound.

Employment of pregnant workers in activities involving infrasound, constant electric and magnetic fields, ionizing radiation, atmospheric pressure, biological agents is allowed as long as their level does not exceed that of the natural background. Similarly, the authorised noise level is set at 50-60 dB A and the optimal parameters of non-ionizing radiation, indoor temperature, humidity, ventilation and illumination are also determined by the Sanitary Rules. For example, pregnant women are not allowed to work in premises deprived of natural light (including underground mining).

Work involving the use of video display terminals and computers is prohibited for pregnant and nursing women by the Sanitary Rules, while the Sanitary-Epidemiological Rules and Regulations of 2003 prescribe that such work should be limited to no more than 3 hours per shift for pregnant workers, unless they are transferred to tasks not involving the use of a computer during the pregnancy. The Sanitary Rules furthermore prohibit pregnant women to work permanently sitting, standing or moving and prescribe that their workplace should be organised in such a way that they can freely change position during their work. The Hygienic Recommendations for Rational Employment of Pregnant Women of 21 December 1993 provide guidelines in this respect. These Recommendations provide inter alia that the differential norms on output be reduced on average to 40%, while keeping the previous average pay. A reduction in the expected output and standards is also provided by Article

254 of the Labour Code, as well as the transferral of the concerned worker to other tasks, not exposed to unfavourable working conditions. In either cases, the previous level of salary should be maintained and the same applies if neither solution is possible and the worker is therefore exempted from working.

Employed women with children aged below 18 months are entitled to request transferral to another post, regardless of whether they are nursing their infant or not, on grounds of "inability to perform the same work" without having to prove the existence of a medical ground for such transferral and without loss of salary. However, according to the report, if the requested transferral is not possible, the employer is not obliged – as it's the case for pregnant women – to release the employee from work while preserving her average pay. In such case, the concerned employee is nevertheless entitled to use her parental leave. The Committee recalls that Article 8§5 of the Charter requires domestic law to make provision for the reassignment of women who are pregnant or nursing their infant if their work is unsuitable to their condition, with no loss of pay. If this is not possible, such women should be entitled to paid leave. Furthermore, they should retain the right to return to their previous employment. In light thereof, the Committee asks whether paid leave is provided to nursing employees when it is not possible to reassign them to another post and whether women who have been reassigned or exempted from work in connection with maternity have a legal right to return to their previous employment when their protected period comes to an end.

The Committee notes from the information provided in the report that the same rules apply to employees of the public and private sector.

#### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in the Russian Federation is in conformity with Article 8§5 of the Charter.

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

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

### ***Social protection of families***

#### ***Housing for families***

The Committee notes that pursuant to Article 40 of the Constitution, everyone has the right to housing and no one shall be arbitrarily deprived of it. For poor and other citizens, specified by the law, which are in need of housing, it is available for free or at affordable payment from the state, municipal and other housing funds according to the statutory regulations. At the federal level, housing relations are regulated by the Housing Code and other federal laws. The Housing Code provides that accommodations are provided to citizens, registered as in need of accommodation, in order of priority, based on the time of registration following a decision of the local government. It also provides that citizens are provided with the subsidies to pay for accommodations and communal services.

The report indicates that state housing policy is defined by the Decree of the President of 7 May 2012 N 600 "On measures to provide the citizens of the Russian Federation with available and comfortable housing and to improve the quality of housing and communal services". The goal of this Decree is that by 2020, 60% of families are provided with comfortable housing. The report also mentions the Decree of the President of the 27th July 2013 N 651 "On the Council under the President of the Russian Federation on the housing policy and increasing the housing availability", according to which the Council coordinates the implementation of the state housing policy and prepares proposals to the President on additional measures of state regulation and state assistance.

The Committee notes from the report that beginning 2012, 2.8 million families were registered as in need of housing and that by end of 2012, 186,000 families had received housing units and improved living conditions. In view of this figure on the evolution of the situation, the Committee asks the next report to provide detailed information on the measures taken to improve it. In the meantime, it reserves its position on this point.

The Committee has constantly interpreted the right to economic, legal and social protection of family life provided for in Article 16 as guaranteeing the right to adequate housing for families, which encompasses secure tenure supported by law (*Centre on Housing Rights and Evictions (COHRE) v. Croatia*, Complaint No. 52/2010, decision on the merits of 22 June 2010, § 54).

Under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment. The Committee recalls that this obligation extends to ensuring protection against unlawful eviction (*European Roma Rights Center (ERRC) v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24).

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies. Any appeal procedure must be effective (*Conclusions 2003 France, Italy Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, decision on the merits of 5 December 2007, §§ 80-81).

Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction

To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards access to adequate housing for the families, the Committee asks for information in the next report on all the aforementioned points.

As regards access to housing for vulnerable families and Roma in particular, the Committee has held that as a result of their history, the Roma have become a specific group of disadvantaged and vulnerable minority. They therefore require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community (Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40). The Committee asks that the next report provide information on measures taken to improve the housing situation of Roma families.

### ***Childcare facilities***

The Committee notes that as the Russian Federation has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

### ***Family counselling services***

The Committee recalls that families should have access to appropriate social services, in particular in times of difficulty. States should provide *inter alia* family counselling and psychological guidance advice on childrearing.

In this regard, the report indicates that Article 15 of the Family Code will enter into force on 1 January 2015 and will provide for the professional standard of a specialist who works with a family. The tasks of the specialist will consist in providing support to families which are in an unfavorable situation, developing programs for the rehabilitation and reintegration of a child/ a family in society, improving the social and psychological situation in the family and the responsibility of parents for parenting and consulting families with children in difficult life situations. The Committee asks the next report to indicate the outcomes of the work done by this specialist in practice and its distribution across the country.

In case of medical necessity, Federal Law No. 323-FZ of 21 November 2011 "On the basis of health protection in the Russian Federation" provides that every citizen has the right to consulting on family planning, psychological aspects of family and marital relationships free of charge.

### ***Participation of associations representing families***

The Committee recalls that in order to ensure that the views of families are taken into account in the formulation of family policy, all civil organisations representing families should be consulted by the relevant authorities (Conclusions 2006, Statement of interpretation on Article 16).

The Committee asks the next report to provide information on the participation of associations representing families in the light of its above-mentioned case-law.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The Committee recalls that spouses must be equal, particularly in respect of rights and duties within the couple (reciprocal responsibility, ownership, administration and use of property, etc.) (Conclusions XVI-1 (2002), United Kingdom) and children (parental authority, management of children's property). It also states that in cases of family breakdown, Article 16 requires the provision of legal arrangements to settle marital conflicts and, in particular, conflicts relating to children: care and maintenance, custody and access to children.

The Committee asks the next report to provide information on the rights and obligations of spouses in the light of its above-mentioned case-law.

#### ***Mediation services***

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 considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided.

The Committee asks the next report to provide information on mediation services in the light of these points.

#### ***Domestic violence against women***

The Committee recalls that Article 16 requires that protection for women exists both in law (through appropriate measures and punishments for perpetrators, including restraining orders, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (through the collection and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims) (Conclusions 2006, Statement of interpretation on Article 16).

The Committee asks the next report to provide information on domestic violence against women in the light of its above-mentioned case-law.

## ***Economic protection of families***

### ***Family benefits***

The Committee notes from MISSCEO that child benefit is only paid to families with an average per capita income not exceeding the minimum subsistence level, which amounted in 2013 to €133 per month according to the Federal State Statistics Service.

The Committee recalls that child benefit must constitute an adequate income supplement, which is the case when it represents an adequate percentage of median equivalised income, for a significant number of families (Conclusions 2006, Statement of Interpretation on Article 16).

The Committee asks the next report to indicate the monthly median equivalised income or similar indicators, such as the national subsistence level, average income or the national poverty threshold, etc. and the amount of the monthly child benefit. In the meantime, it considers that the situation is not in conformity with the Charter on the ground that family benefits do not cover a significant number of families.

The Committee asks the next report to provide information on childbirth allowances, such as their amount and the number of families likely to benefit from these.

### ***Vulnerable families***

The Committee recalls that States are required to ensure the protection of vulnerable families such as single-parent families, Roma families, in accordance with the principle of equality of treatment. The Committee consequently asks what measures are taken to ensure the economic protection of vulnerable families, such as single-parent families and Roma families.

### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The Committee recalls that States Parties must ensure equal treatment of foreign nationals of other States Parties who are lawfully resident or regularly working in their territory and stateless persons with respect to family benefits. The Committee asks the next report to indicate whether foreign nationals are treated equally with regard to family benefits.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

### ***Conclusion***

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 16 of the Charter on the ground that family benefits do not cover a significant number of families.

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

### *Paragraph 1 - Assistance, education and training*

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

The Committee notes that the National Strategy of Action on Children was approved for the period of 2012-2017. It is the main policy document in the field of the rights of children and young persons to social, legal and economic protection. The Coordinating Council on the implementation of the National Strategy for Action in favour of children was created under the President of the Russian Federation.

### ***The legal status of the child***

The Committee recalls that under Article 17 of the Charter there should be no discrimination between children born within marriage and outside marriage, for example in matters relating to inheritance rights and maintenance obligations. The Committee wishes to be informed about the applicable legislation in this regard.

According to Article 13 of the Family Code the unified age of marriage is established at 18. However, local authorities may decide to marry a couple at 16 if there are valid reasons. The Committee asks what may constitute a valid reason.

According to the report, paternity is established (when parents are not married) by submitting the joint statement of the child's father and mother. In the absence of such a statement, paternity is established by the courts at the request of a parent, tutor (guardian) of the child.

The Committee recalls that under Article 17 there must be a right for an adopted child to know his or her origins. It asks whether there are restrictions on this right and under what circumstances.

### ***Protection from ill-treatment and abuse***

The Committee recalls that under Article 17 of the Charter, the prohibition of any form of corporal punishment of children is an important measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2). The Committee recalls its interpretation of Article 17 of the Charter as regards the corporal punishment of children laid down most recently in its decision in *World Organisation against Torture (OMCT) v. Portugal* (Complaint No. 34/2006, decision on the merits of 5 December 2006; §§19-21):

“To comply with Article 17, states’ domestic law must prohibit and penalize all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.

The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

Moreover, States must act with due diligence to ensure that such violence is eliminated in practice.”

The Committee has noted that there is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers, in particular, in this respect to the General Comments Nos. 8 and 13 of the Committee on the Rights of the Child (*Complaint No 93/2013 Association for the Protection of All Children (APPROACH) v. Ireland*, decision on the merits of 2 December 2014, §§45-47).



The Committee notes from the another source (Global Initiative to End Corporal Punishment, Russia) that Article 54 of the Family Code of 1995 provides for the protection of children's human dignity by their parents and protection from abuse by parents (Articles 56 and 69). It states that parents have a right and duty to educate their children and must care for their children's "health, physical, mental, spiritual and moral development" (Article 63) and that "methods of parenting should not include neglectful, cruel or degrading treatment, abuse or exploitation of children" (Article 65). The Criminal Code 1996 punishes intentional serious, less serious and minor harm to health (Articles 111 to 115) and beating or other violent acts which cause physical pain.

According to the same source, in 2010, the Ministry of Justice stated that these provisions in the Family and Criminal Codes amount to prohibition of corporal punishment of children. However, in the absence of an explicit prohibition it is not clear that they effectively prohibit all forms of physical punishment in childrearing.

As regards children in institutions, according to the same source there is no explicit prohibition of corporal punishment (foster care, institutions, places of safety, emergency care, etc). Children are legally protected from some but not all physical punishment under the Family Code 1995 and Criminal Code 1996.

As regards schools, section 34 of the Law on Education 2012 states that students have the right to respect for human dignity, protection from all forms of physical or mental violence, injury personality, the protection of life and health. Section 43(3) states that discipline in educational activities is provided on the basis of respect for human dignity of students and teachers and application of physical and mental violence to students is not allowed.

The Committee considers that not all forms of corporal punishment are explicitly prohibited in the home and in institutions. Therefore, the situation is not in conformity with the Charter.

### ***Rights of children in public care***

The Committee recalls that under Article 17 the long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions. Children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well being as well as to special protection and assistance. Such institutions must provide conditions promoting all aspects of children's growth. A unit in a child welfare institution should be of such a size as to resemble the home environment and should not therefore accommodate more than 10 children. Furthermore, a procedure must exist for complaining about the care and treatment in institutions. There must be adequate supervision of the child welfare system and in particular of the institutions involved.

According to the report, Article 54 of the Family Code of the Russian Federation provides that children have the right to live and grow up in a family. Article 69 of the Family Code lists the grounds on which parental rights may be restricted. These include, among others, abuse of parental rights, abuse of children, including physical or mental violence, alcohol or drug addiction.

The Decree of the Government on the activities of establishments for orphans and children deprived of parental care was adopted on May 24 2014. Paragraph 35 of the Decree provides that the number of children in one unit should not exceed 8 persons.

The Committee notes that the decree was adopted outside the reference period. It asks about the implementation of the decree and the average number of children in children institutions in practice.

The Committee notes from the report that in the course of 2009-2012 the number of children deprived of parental care has decreased from 72,012 children in 2009 to 52,206 children in

2012. However, the number of cases where parental rights were restricted was on an upward trend from 7,857 cases in 2009 to 8,827 cases in 2012.

The Committee notes from the report that the share of children placed in family-type settings as opposed to institutions has increased from 71% in 2008 to more than 80% in 2012.

The Committee recalls that any restrictions or limitations of custodial rights of parents' should be based on adequate and reasonable criteria laid down in legislation and should not go beyond what is necessary for the protection and best interest of child and the rehabilitation of the family (Conclusions XV-2, Statement of interpretation on Article 17§1).

The Committee underlines that placement must be an exceptional measure, and is only justified when it is based on the needs of the child, namely if remaining in the family environment represents a danger for the child. On the other hand, it considers that the financial conditions or material circumstances of the family should not be the sole reason for placement. In all circumstances, appropriate alternatives to placement should first be explored, taking into account the views and wishes expressed by the child, his or her parents and other members of the family.

The Committee furthermore holds that when placement is necessary, it should be considered as a temporary solution, during which continuity of the relationship with the family should be maintained. The child's re-integration within the family should be aimed at, and contacts with the family during the placement should be provided for, unless contrary to the best interest of the child. Whenever possible, placement in a foster family or in a family-type environment should have preference over placement in an institution.

According to Article 73 of the Family Code, the court has the right to limit parental rights without deprivation. This happens when leaving a child with parents can be dangerous for the child. Immediate removal of the child is carried out by the guardianship. Child left without parental care will be transferred to foster care, to a foster home or, temporarily, for the period prior to their transfer to a family, to the organisation for orphans and children without parental care.

According to the report, termination of parental rights does not relieve parents from the obligation to maintain the child. When it is impossible to transfer the child to the other parent, or in the case of termination of parental rights of both parents, the child is transferred to the care of the guardianship authority.

According to Article 72 restoration of parental rights is carried out judicially at the request of a parent. They are considered with the participation of the guardianship authority and the public prosecutor.

The Committee notes that the UN-CRC Observations of the UN Committee on the Rights of the Child (UN-CRC, 2011) that the UN-CRC Committee is seriously concerned about the widespread practice of children being forcibly separated from their parents in application of Articles 69 and 73 of the Family Code, and the lack of support and assistance to reunite families. The Committee is also concerned that Roma mothers are often separated from their children immediately upon discharge from the hospital after the birth because they lack the necessary documentation and that the children are returned only for a large sum of money that most Roma cannot afford. Furthermore, children who are forcibly separated from their parents are then placed in care institutions and/or put up for adoption.

The Committee notes that the factual information contained in these observations may be of relevance for the conclusion of the Committee. Therefore, it asks the next report to provide up-to-date information concerning the factual situation indicated in these observations.

It asks whether the financial conditions and material circumstances of the family can become a ground for placement of children in alternative care.

### ***Right to education***

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

### ***Young offenders***

The Committee recalls that under Article 17 the age of criminal responsibility must not be too low. The criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly. Minors should only exceptionally be detained pending trial for serious offences, for short period of time and should in such cases be separated from adults. Young offenders should not serve their sentence together with adult prisoners.

The Committee notes from the report that a minor, for the purposes of criminal prosecution is defined as a person older than 14 and under 18. The age of criminal responsibility is 16. However, in respect of selected offenses, persons who have reached the age of 14 may be held liable. Article 20 of the Criminal Code contains an exhaustive list of such offenses.

According to Article 108 of the Criminal Procedure Code detention in custody may be imposed in the case of a minor suspected or accused of a grave crime. Article 108 however permits detention of a minor pending trial in the case of a crime of medium gravity. Detention in this case may be applied as the only possible measure of restraint. In such cases the courts should take into account the provisions of Article 88 of the Criminal Code which stipulates that the detention as a preventive measures may not be applied in respect of a minor under 16 years of age. The Committee asks what is the maximum length of the pre-trial detention.

The maximum length of a prison sentence is 6 years and 10 years for very serious crimes to be served in juvenile correctional facilities. Imprisonment may not be imposed on a minor who has committed a crime of limited or average gravity under the age of 16 for the first time. In determining the length of a prison sentence, the lower limit of the duration of the sentence is reduced by half in comparisons with the adult offenders.

According to the report in the framework of the National Strategy of Action for Children for 2012-2017 the Ministry of Justice, together with the Ministry of Internal Affairs and a number of other ministries will prepare the concept of codification of the legislation in respect of juvenile justice. In the National Strategy child-friendly justice means a system of civil, administrative and criminal proceedings which guarantees respect of the rights of the child, in response to the Council of Europe recommendations on justice for children. The Committee takes note of the measures envisaged by the National Action Plan in this regard. It wishes to be informed of their implementation.

The Committee notes from the Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to the Russian Federation, from 3 to 13 April 2013 that Chapter 50 of the Criminal Procedure Code of the Russian Federation provides for a special procedure in criminal cases against minors. In 2009, a working group on the development and implementation of the mechanisms for juvenile justice was established under the auspices of the Council of Judges of the Russian Federation. In February 2011, the Supreme Court of the Russian Federation adopted the Decision on the practice of courts in applying legislation in relation to the criminal responsibility and punishment in cases involving minors.

According to the Commissioner, in the criminal justice system, there is a positive tendency towards using alternative sanctions rather than deprivation of liberty in cases involving minors. In 2002, 10,950 minors were serving sentences in penitentiary institutions, whereas the figure for 2012 was 2,289 persons.

The Committee notes that the UN-CRC (2014) that there was a significant drop in the number of children sentenced to deprivation of liberty in the past several years. It urges the authorities to expedite the adoption of the laws establishing a juvenile justice system, including juvenile courts with specialised staff and a restorative justice approach, to follow up on the positive decrease in the number of children sentenced to deprivation of liberty.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

### ***Conclusion***

The Committee concludes that the situation in Russian Federation is not in conformity with Article 17§1 of the Charter on the ground that not all forms of corporal punishment are prohibited in the home and in institutions.

## **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 the Russian Federation.

Article 17 requires States to establish and maintain an education system that is both accessible and effective. The Committee recalls in this respect that under Article 17§2 of the Charter in order for there to be an accessible and effective system of education there must be *inter alia* a functioning system of primary and secondary education provided free of charge.

In accordance with Article 43 of the Russian Constitution everyone has the right to education. Everyone has access to free preschool, basic and secondary vocational education.

Basic general education is compulsory. Parents or guardians must ensure that their children receive basic general education. The requirement of compulsory secondary education remains in force up to the age of 18, unless appropriate education was received before.

Section 3 of the Federal Law on education No 273-FL enshrines the principles of the state policy in the field of education, such as, among others, recognition of the priority of education, ensuring the right of everyone to education and non-discrimination in education, secular education in state and municipal organisations engaged in educational activities.

The National Strategy of education defines the main tasks of the State in the field of education, such as protection of the right to education of children belonging to national and ethnic groups living in extreme conditions of the Far North and similar areas as well as the establishment of a national system for assessing the quality of education. The Committee wishes to be kept informed about the results.

According to the report in the period 2008-2012 the coverage of children by general education has gradually increased and reached 100% in 2012. The Committee wishes to be kept informed of the enrolment and drop-out rates in primary and secondary education as well as the measures taken to reduce absenteeism from school.

Under Article 17§2 all hidden costs such as books or uniforms must be reasonable, and assistance must be available to limit their impact on the most vulnerable population groups so as not to undermine the goal being pursued (European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France Complaint No. 82/2012, decision on the merits of 19 March 2013, §31) .

The Committee asks whether such assistance is provided to vulnerable groups.

The Committee further recalls that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that states parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2 , Conclusions 2011).

In this connection, the Committee notes from the Concluding observations on the combined fourth and fifth periodic reports of the Russian Federation of the UN Committee on the Rights of the Child (UN-CRC, 13–31 January 2014) that the age of compulsory education was raised from 15 to 18 years of age in September 2007. However, the UN-CRC is

concerned that the benefits of free and compulsory education do not extend to all children in the country. In particular, according to the UN-CRC there is a widespread discrimination against migrant children and asylum-seeking children in the process of admission into schools, and regular visits of representatives of school administrations to the homes of migrant pupils in order to report on their migration status. The new draft law presented to the Duma which stipulates non-admission of children of migrant workers who are not registered as taxpayers into schools and preschool establishments.

The Committee asks whether irregularly present children, as well as asylum-seekers and unaccompanied children have an effective right to education. It notes that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity.

In its Concluding Observations of 2014 the UN-CRC also indicates that there is a segregation of Roma children in schools and the low level of primary education among such children, which limits their access to secondary education.

The Committee recalls in this connection that the States have positive obligations to ensure equal access to education for all children. In this respect particular attention should be paid to vulnerable groups, such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, etc.

As regards education of children of Roma origin, even though educational policies for Roma children may be accompanied by flexible structures to meet the diversity of the group and may take into account the fact some groups lead an itinerant or semi-itinerant lifestyle, there should be no separate schools for Roma children. Special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group (Conclusions 2011, Slovak Republic).

The Committee asks what measures are taken to guarantee equal and effective access to education to children of Roma origin as well as children from other vulnerable groups. It asks whether Roma children are segregated into special schools or classes reserved only for them. The Committee holds 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.

As regards the integration of children with disabilities into mainstream education the Committee refers to its conclusion under Article 15§2 (Conclusions 2012).

#### *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 5 - Equality regarding taxes and contributions*

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

The Committee notes that in accordance with Article 3 (2) of the Tax Code of the Russian Federation, taxes and charges cannot be discriminatory and applied differently on the basis of social, racial, national, religious or other similar criteria. Moreover, the same paragraph provides that “it is not allowed to set different tax rates and fees, tax credits, depending on the form of ownership, the nationality of natural persons or origin of capital”.

In accordance with Section 19 (3) of the Federal Law “On the Legal Status of Foreign Citizens in the Russian Federation”, foreign citizens pay a fee for obtaining permission to work in the Russian Federation, this is an administrative fee for the issuing of the relevant papers. Thereafter, the income of foreign employees which they have received in Russia is subject to individual income tax (PIT) in the same manner as Russian employees (Article 207 (1), subpara. 6 of Article 208 (1), Article 209 (2) of the Tax Code).

However, the Committee notes that according to Article 11 of the Tax Code, a natural person acquires the status of tax-resident of the Russian Federation if he/she stays in the territory of the Russian Federation for at least 183 calendar days within 12 consecutive months. The period of 12 months is not limited within the calendar year and is determined for each date of payment of income.

The Committee notes that the PIT rate is 30% for non-residents, and it is 13% for residents (paras. 1, 3 of Article 224 of the Tax Code). Non-residents are also not eligible for standard tax deductions, while residents are eligible for them (paras. 3, 4 of Article 210 of the Tax Code). The Committee notes that migrants must stay for 6 months in the Russian Federation before they may acquire tax-resident status, which constitutes a less favourable situation than Russian nationals who are *de facto* more likely to have lived in the country for that period of time, and therefore the lower rate will apply to most Russian nationals. The Committee considers that taxation on a higher basis (30% as opposed to 13%) for the first 6 months of a migrant’s stay would amount to discriminatory treatment within the meaning of Article 19§5.

The Committee notes that Article 210 (4) of the Tax Code provides: “For incomes concerning which other tax rates are established (...) the tax deductions stipulated by Articles 218-221 of the present Code, shall not apply.” The Committee notes that tax deductions include monthly reductions for each child of a worker (Article 218 (4)), and deductions for charitable donations, educational expenses, medical expenses (Article 219), deductions for the purpose of land transactions (Article 220), and business expenses (Article 221).

The report states that “if during the calendar year the tax status of the foreign employee changed, the amount of the withholding PIT is adjusted.” The Committee wishes to receive clarification of whether tax which has been paid at the rate of 30% during the first 6 months is reimbursed upon acquisition of tax-resident status, to the extent that the tax payable over the entire period of employment is equal to 13%, and whether tax deductions may become applicable to the whole period of employment.

The Committee also notes that in relation to citizens of countries with which the Russian Federation has signed an international agreement on the taxation of income of individuals, the rules for taxation of income are applied in accordance with the rules of this contract (Article 7 of the Tax Code of the Russian Federation). It asks which countries among the States party to the Charter have concluded such agreements with the Russian Federation.

The Committee asks what contributions are payable in relation to employment, and whether migrants are treated equally with nationals.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Russian Federation is in conformity with Article 19§5 of the Charter.



## **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 the Russian Federation.

The Committee notes from the report that no special restrictions on remittances by foreign employees to any country are provided by Russian legislation. Currency transactions are regulated by the Federal Law "On Currency Regulation and Currency Control". For the purposes of this law, only residence status, not nationality, is relevant.

Residents are able to transfer their money abroad without restriction, save for currency transactions, to which the law on purchase and sale of foreign currency applies. The Committee asks for details of this law to be included in the next report.

With reference to its Statement of interpretation on Article 19§9 (Conclusions 2011), the Committee asks whether there are any restrictions on the transfer of the movable property of migrant workers.

### *Conclusion*

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

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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

The Committee recalls that the aim of Article 27 is to promote the reconciliation of professional and family responsibilities by providing people with family responsibilities with equal opportunities in respect of entering, remaining in and re-entering employment. Article 27 requires States Parties to take specific measures in the field of vocational guidance and training, so as to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities and to assist them in advancing in economic activity (Conclusions 2007, Armenia).

To be able to return to professional life, such persons may need special assistance in terms of vocational guidance and training. However, if the standard employment services (those available to everyone) are well developed, the lack of extra services for people with family responsibilities cannot be regarded as a human rights violation (Conclusions 2003, Sweden).

Under Article 27§1 States must develop an overall national policy or strategy to enable persons with family responsibilities to exercise employment in an a non-discriminatory manner.

According to the report, Chapter 41 of the Labour Code covers the labour relations of persons with family obligations. Different categories of workers are concerned, such as those caring for a child under the age of 18 months, those with a child under the age of 3 years, employees who take care of sick family members, mothers and fathers who raise children without a spouse until the child reaches the age of 5.

According to the report, for most women after parental leave with a child under the age of three years the problem arises associated mainly with lower qualifications and partial loss of professional skills to perform the appropriate type of professional activity. Therefore the organisation of vocational training for such women contributes to the creation of the adaptive conditions to facilitate return of this category of women to their former place of work, and opportunities for their further career growth and competitiveness in the labour market.

Section 23 of the Act on Employment provides that the professional training and additional professional education for the women during the parental leave with the child up to three years are conducted by the assignment of the employment services which decide what training needs to be followed.

According to report in 2012 measures were developed (action plans, programmes) in all the federal subjects of the Russian Federation geared towards the creation of the conditions for alignment of parental and family responsibilities with professional activities, including the conclusion of tripartite agreements in the field.

In 2012 95,000 women completed professional training, retraining and advanced training in the Russian Federation as a whole.

### ***Conditions of employment, social security***

The Committee recalls that implementing Article 27§1 may also require the adoption of measures concerning length and organisation of working time. Workers with family responsibilities should be allowed to work part time or to return to full employment

(Conclusions 2005, Estonia). These measures cannot be defined unilaterally by the employer but should be provided by a binding text (legislation or collective agreement).

Workers with family responsibilities should be entitled to social security benefits under different schemes, in particular health care, during the periods of parental/childcare leave. Legislation or practice should provide for arrangements entitling workers to time off from work on grounds of urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable.

The legislation should provide guarantees to grant a parent raising a child or nursing a sick family member part time work when requested and provide for arrangements enabling parents to reduce or cease their professional activity because of serious illness of a child.

The Committee asks whether the legislation complies with these standards.

The Committee further recalls that Article 27§1 requires States Parties to take account of the needs of workers with family responsibilities in terms of social security. The Workers should be entitled to social security benefits under the different schemes, in particular health care, during periods of parental/childcare leave. Periods of leave due to family responsibilities should be taken into account for determining the right to pension and for calculating the amount of pension. Crediting of periods of childcare leave in pension schemes should be secured equally to men and women.

According to the report, as regards the accounting of childcare leave periods into the retirement benefit schemes, the Federal Law of 2001 No 173-F3 on Labour Pensions provides that the period of parental leave up to the age of one and a half years will be taken into account in calculating pension entitlement. Federal Law on contributory pensions adopted in 2013 No 400- F3, which comes into effect in 2015 provides that the period of parental leave will be taken into account up to the age of one and a half years.

The Committee asks whether the crediting of the parental leave periods in the pension entitlement schemes is also guaranteed for fathers.

### ***Child day care services and other childcare arrangements***

The Committee recalls that under Article 27§1 affordable, good quality childcare facilities should be made available. Child day care may be arranged in many ways, for example in crèches, kindergartens, family day care or as a form of pre-school. Moreover, day care may be private or public. In all cases, the Committee examines if there is a sufficient provision of childcare places, and whether services are affordable and of high standard (quality being assessed on the basis of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and the amount of the financial contribution parents are asked to make).

The Committee asks how qualifications of personnel and the quality of child care services in general are monitored. It asks the next report to provide information on each of the points in the preceding paragraph.

The Federal Law of 2012 on education in the Russian Federation provides for accessibility and free-of charge education including pre-school education. According to the report in 2012 there were 45,936 preschool educational organisation with 5,708,400 children. Among these there are daycare groups and family preschool groups.

The draft Concept of the State Family Policy for the period until 2025 underlines that one of the most important factors which affect the economic activity of families with young children is access to preschool educational institutions. To address this issue, active measures are taken to achieve until 2016 100% access to preschool education of children from 3-7. The subjects of the Russian Federation have received 100 billion roubles to develop regional system of preschool education. The number of children on the waiting lists has been

reduced by more than 687,000 thousand children in 2013. Special emphasis is also placed on need for places in preschool educational institutions for children under the age of 3, which is estimated as more relevant and important. To ensure that children in this age group have enough places in nurseries, according to the report, the existing network of preschool institutions should be supported and developed.

The Committee wishes to be kept informed about the implementation of these initiatives.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Russian Federation is in conformity with Article 27§1 of the Charter.

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

### *Paragraph 2 - Parental leave*

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

The Committee recalls that the focus of Article 27§2 are parental leave arrangements which are distinct from maternity leave and come into play after the latter. National regulations related to maternity or paternity leave fall under the scope of Article 8§1 and are examined under that provision. The States Parties should provide the possibility for either parent to obtain parental leave.

Consultations between social partners throughout Europe show that an important element for the reconciliation of professional, private and family life are parental leave arrangements for taking care of a child. Whilst recognising that the duration and conditions of parental leave should be determined by States Parties, the Committee considers important that national regulations should entitle men and women to an *individual right* to parental leave on the grounds of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided to each parent and at least some part of it should be non-transferable.

According to Article 256 of the Labour Code at the request of a woman she should be granted leave to care for a child up to the age of three. Parental leave may be used in whole or in part by child's father, grandmother, grandfather or other relatives or guardians. Leave may be used by the said persons at any time before the child reaches the age of three. During the parental leave the persons entitled can work part-time or at home with the right to state social assistance. The employees have the right to return to the same job.

The Committee asks whether the legislation guarantees the individual right of fathers to a non-transferable parental leave and if so, what is its length.

The Committee recalls that the remuneration of parental leave (be in continuation of pay or via social assistance/social security benefits) plays a vital role in the take up of childcare leave, in particular for fathers or lone parents.

In this regard, it notes from the report that the following benefits are payable during parental leave:

- from the date of granting parental leave until the child reaches the age of one and a half years the Social Insurance Fund will pay a monthly parental leave cash benefit in the amount of 40% of average earnings;
- after the age of one and a half years the monthly child allowance will be paid, the amount of which is established by laws and other regulatory legal acts.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Russian Federation is in conformity with Article 27§2 of the Charter.

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

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

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

### ***Protection against dismissal***

The Committee recalls that under Article 27§3 family responsibilities must not constitute a valid ground for termination of employment.

According to the report, the labour legislation of the Russian Federation sets out an exhaustive list of the grounds for termination of employment. According to Part 4, Article 261 of the Labour Code the termination of employment agreement at the initiative of the employer is not allowed for women with children under three years of age, single mothers, parents who are the sole breadwinners in the family with children under 3 years of age. Dismissal is only allowed on a limited number of grounds, such as misconduct, liquidation of the organisation or termination of activities, a single severe violation of the duties etc.

In this connection, the Committee takes note of the Resolution of the Constitutional Court No 28-P of 15 December 2011, where the Court held that Part 4, Article 261 of the Labour Code also extended the guarantee of protection against dismissal to the father who is the sole breadwinner in a large family with small children.

The Committee asks whether the protection against dismissal on the ground of family responsibilities is also guaranteed to fathers with children under three years of age.

### ***Effective remedies***

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 (Statement of interpretation on Articles 8§2 and 27§3 (Conclusions 2011) .

As regards prohibition of discrimination, Article 3 (4) of the Labour Code provides that persons who consider that they have been discriminated against in employment are entitled to appeal to the court to restore the violated rights and receive compensation for material and moral damage. In practice, it is understood and applied as establishing exclusionary jurisdiction of appeal related to discrimination to the courts of General jurisdiction. The state labour inspectorate does not consider discrimination appeals.

An employee who is faced with discrimination, may file a claim the damages for violation of substantive rights and the compensation for lost earnings and compensation for moral damages. Fundamentally, the compensation for the abuse of the right in this case is the compensation for moral damage.

According to the report, administrative responsibility for the discrimination was brought into force at the end of 2011. Article 5 (62) of the Administrative Offenses Code provides that discrimination is a violation of the rights, freedoms and legitimate interests of the person and is punishable by an administrative fine in the amount of 1,000 to 3,000 roubles (€ 12 to 36). For legal entities the fine ranges between 50,000 to 100,000 roubles (€ 600 to 1200).

The Committee asks whether the legislation sets an upper limit to the amount of compensation that is awarded in case of unlawful dismissal on the ground of family responsibilities.

*Conclusion*

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



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**SERBIA**

*This text may be subject to editorial revision.*





The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Serbia which ratified the Charter on 14 September 2009. The deadline for submitting the 4th report was 31 October 2014 and Serbia submitted it on 26 February 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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§1, 19§12, 27 and 31.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Serbia concern 28 situations and are as follows:

- 8 conclusions of conformity: Articles 7§2, 7§7, 7§8, 8§2, 8§4, 19§1, 19§2 and 19§5
- 6 conclusions of non-conformity: Articles 7§4, 16, 17§1, 19§6, 19§8 and 19§10

In respect of the other 14 situations related to Articles 7§1, 7§3, 7§5, 7§6, 7§9, 7§10, 8§1, 8§3, 8§5, 17§2, 19§3, 19§4, 19§7 and 19§9, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Serbia under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 8§2**

In 2013, the Labour Code was amended with a view to extending the protection to women on a fixed-term employment contract (Law on Amendments to the Labour Code of 8 April 2013).

#### **Article 19§1**

A new Employment of Foreign Nationals Act was adopted in November 2014, enabling free access to the Serbian labour market for EU Member State citizens.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),

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

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 persons above the age of 15 may enter into employment relationships. No other information is provided on this point. The Committee asks whether the prohibition of employment under the age of 15 applies to all economic sectors, including agriculture, and to family businesses and private households.

The Committee notes from another source that the Committee on the Rights of the Child expressed concern at the continued existence of child labour in Serbia, in particular in rural areas and in the informal sector (CRC/C/SRB/CO/1, paragraph 67) (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Minimum Age Convention, 1973 (No. 138), Serbia (Ratification: 2000). The Committee asks what are the measures taken by the authorities (eg 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 (outside the scope of an employment contract).

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).

The Committee asks whether there are exceptions to the rule prohibiting children under the age of 15 to enter into labour relations. It requests that the next report indicates whether, in practice, children under the age of 15 are involved in light work such as artistic performances, sports, advertising and in what conditions.

The Committee refers to its Statement of Interpretation on the permitted duration of light work in the General Introduction and asks what is the daily and weekly duration of light work that children under the age of 15 are allowed to perform.

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 the next report to provide information on the monitoring activities and findings of the Labour Inspectorate or other bodies responsible for monitoring the rights of children in relation to the prohibition of employment under the age of 15. The Committee asks whether the authorities monitor home work and domestic work and which are their findings in this respect.

### *Conclusion*

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

## **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 Committee recalls that in application of Article 7§2, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work (Conclusions 2006, France).

However, if such work proves absolutely necessary for their vocational training, they may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary. The Labour Inspectorate must monitor these arrangements (Conclusions 2006, Norway). The Appendix to Article 7§2 also permits exceptions in cases where young persons under the age of 18 have completed their training for performing dangerous tasks and, thus, received the necessary information. The Labour Inspectorate must monitor these arrangements too (Conclusions 2006, Portugal).

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 foster parents, under the condition that such work does not jeopardize their health, moral or education, and is not prohibited under the law.

Under Article 84 of the Labour Law, employees below 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 Committee asks whether there are exceptions from the prohibition of employment of young persons under the age of 18 for dangerous activities and in which circumstances.

The report adds that a person under the age of 18 may enter into an 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 employment contract and that these tasks are not harmful for his/her health (Article 25 of the Labour Law).

The report provides information on the applicable sanctions in cases of violation of the prohibition of employment under the age of 18 in dangerous or unhealthy activities. Under Article 274 of the Labour Law, an employer legal entity shall be fined with the amount of RSD 600,000 to 1,000,000 (€ 4,972 to € 8,285) if he/she enters into labour relations with a person under the age of 18 contrary to provisions of Article 25 of the Labour Law; or if he/she involves an employee under the age of 18 in dangerous or unhealthy activities (violation of Article 84 of Labour Law mentioned above). For the same breaches, an entrepreneur shall be fined with RSD 300,000 to 500,000 (€ 2,486 to € 4,143), and the responsible person in the legal entity shall be fined with RSD 30,000 to 50,000 (€ 248 to € 414) (Article 274 (2) and (3) of the Labour Law).

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information 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 prohibition of employment of young persons under the age of 18 for dangerous activities or unhealthy activities.

*Conclusion*

Pending receipt of the information requested, 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 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.

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 foster parents, under the condition that such work does not jeopardize their health, moral or education, and is not prohibited under the law.

The Committee asks which is the maximum age of compulsory education in Serbia. It asks what kind of jobs/tasks are performed in practice by children who are still subject to compulsory education. The Committee asks whether the legislation provides for reduced working time and rest periods for children who are still subject to compulsory education.

The Committee recalls that during school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework. Allowing children to work before school begins in the morning is, in principle, contrary to Article 7§3. Allowing children aged 15 years still subject to compulsory education to deliver newspapers from 6 a.m. for up 2 hours per day, 5 days per week before school is not in conformity with the Charter.

The Committee refers to its Statement of interpretation on Article 7§3 (Conclusions 2011) and recalls that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays. Its duration shall not be less than 2 weeks during the summer holidays. The Committee asks if children who are still in compulsory education benefit of two consecutive weeks free from any work during the summer holidays.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28). It notes from another source that there are several bodies responsible for monitoring the rights of children in Serbia, such as: the Committee on the Rights of the Child of the National Assembly, the Deputy Ombudsman for Children’s Rights and the Labour Inspectorate (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Minimum Age Convention, 1973 (No. 138), Serbia (Ratification: 2000). The Committee asks information on the monitoring activities of these bodies in relation to the involvement of children who are still in compulsory school in work which could affect their ability to receive education.

In particular, the Committee asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed with regard to employment of children subject to compulsory education.

### *Conclusion*

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

## **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.

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

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 refers to in its Conclusion on Article 7§1 where it noted that according to Article 24 of the Labour Law the minimum age of admission to employment is 15 years. The Committee notes 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 considers that the situation is not in conformity with Article 7§4 of the Charter on the ground that the duration of daily and weekly working time for young workers under the age of 16 is excessive.

The Committee recalls that the situation in practice should be regularly monitored. It asks that the next report provide 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.

### *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 daily and weekly 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.

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.

### **Young workers**

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

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 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. The Committee asks confirmation that young workers receive the same remuneration as adults.

In order to assess the situation, the Committee needs information on the minimum wage of young workers calculated net. It also requests information on the starting wages or minimum wages of adult workers as well as on the average wage. 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. Pending receipt of the information requested, the Committee reserves its position on this point.

### **Apprentices**

Apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period (Conclusions II (1971), Statement of interpretation on Article 7§5), starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (Conclusions 2006, Portugal).

The report indicates that during a traineeship, any 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.

The report does not provide any information on the allowances paid to apprentices during the reference period. The Committee requests to be provided with the net values of the allowances paid to apprentices (after deduction of social security contributions) at the

beginning and at the end of the apprenticeship. Pending receipt of the information requested, the Committee reserves its position on this point.

*Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

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

The Committee takes note of the information contained in the report submitted by 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, in accordance to the law and company regulations. The Committee asks confirmation that in this case the time spent on vocational training is included in the normal working time and thus remunerated as such.

The report does not provide information on the situation in practice. The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide 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.

### *Conclusion*

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

## **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). The Committee asks confirmation whether young workers are entitled to the same number of days of holidays as adults.

The Committee notes that according to Article 70 of the Labour Law, if an employee is temporarily unable for work during his/her annual holiday, he/she shall be entitled to continuation of his/her annual holiday upon expiry of such inability.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It recalls that the situation in practice should be regularly monitored and asks that the next report provide 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.

### *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 asks what it is understood by "night work" in the national legislation.

The Committee recalls that the situation in practice should be regularly monitored. The report provides the applicable fines in cases of breach of the above mentioned provisions of the Labour Law. The Committee asks that the next report provide 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.

### *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 asks 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 asks how the medical examinations are performed in practice and who bears the responsibility of their costs. Pending receipt of the information requested, the Committee reserves its position on this point.

The report indicates the applicable fines in case of breach by the employers of the above mentioned provisions. However, no information from practice is provided. The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information 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.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

#### ***Protection against sexual exploitation***

The Committee recalls that under Article 7§10 of the Charter, States 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. The following are the minimum obligations:

- as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised. In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts. Furthermore, States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.
- a national action plan combating the sexual exploitation of children should be adopted.

An effective policy against commercial sexual exploitation of children should cover primary and interrelated forms: child prostitution, child pornography and trafficking in children.

- child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration;
- child pornography is given an extensive definition and takes account of the fact that new technology has changed the nature of child pornography. It includes the procurement, production, distribution, making available and possession of material that visually depicts a child engaged in sexually explicit conduct.
- trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.

The Committee takes note of the applicable legislative framework for protection of children against sexual exploitation from the Replies to the General Overview questionnaire of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

The Committee notes that each national report on this provision should contain an update of the application legislation.

According to Article 112 of the Criminal Code (Official Gazette of RS, 85/05, as amended) a child is a person who has not yet reached 14 years of age. A minor is a person who has reached 14 years of age and has not yet reached 18 years of age. A juvenile is a person who has not attained eighteen years of age. The age for legal sexual activities is 14.

- Article 180 of the Criminal Code refers to sexual intercourse with a child and foresees a prison sentence of three to 12 years for a person who has sexual intercourse or a similar act with a child.
- Article 183 regulates prohibited sexual acts. Whoever pimps a minor for sexual intercourse or an equal act or other sexual act, shall be punished with imprisonment of three months to five years. Whoever procures a minor for sexual intercourse or an act of equal magnitude or other sexual act, shall be punished with imprisonment up to three years.
- Showing, procuring and possession of pornographic material and juvenile pornography is subject of Article 185. Whoever sells, shows or publicly displays

or otherwise makes available texts, pictures, audio-visual or other items of pornographic content to a minor or shows to a child a pornographic performance, shall be punished with a fine or imprisonment up to six months. Whoever uses a minor to produce photographs, audio-visual or other items of pornographic content or for a pornographic show, shall be punished with imprisonment from six months to five years. Whoever obtains for himself or another, possesses, sells, shows, publicly exhibits or electronically or otherwise makes available pictures, audio-visual or other items of pornographic content resulting abuse of a juvenile, shall be punished with imprisonment from three months to three years.

- According to Article 184, whoever induces a minor to attend a rape, sexual intercourse, or an act equivalent to it, or some other sexual act, shall be punished with imprisonment one to ten years.
- Abuse of Computer Networks and Other Methods of Electronic Communication to Commit Criminal Offences Against Sexual Freedom of Minors is criminalised under Article 185b. Whoever, with intent to commit an offence referred to in Articles 183, 184 and 185, using computer networks or other method of electronic communication makes an arrangement to meet with a minor and arrives at the prearranged meeting place in order to meet with the minor, shall be punished with imprisonment of six months to five years and a fine.
- Under Article 388, whoever by force or threat or deception, abuse of authority, trust, dependency relationship recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds a minor with intent to exploit such person's labour, forced labour, commission of offences, prostitution, mendacity, pornography, removal of organs or body parts or service in armed conflicts, shall be punished by imprisonment of minimum five years.
- Under Article 389, whoever abducts a child under fourteen years of age for the purpose of adoption contrary to laws in force or whoever adopts such a child or mediates in such adoption or whoever for that purpose buys, sells or hands over another person under 14 years of age or transports such a person, provides accommodation or conceals such a person, shall be punished by imprisonment of one to five years.

The Committee considers that the legislation is in conformity with the Charter.

### ***Protection against the misuse of information technologies***

In light of the fact that new information technologies have made the sexual exploitation of children easier, States parties must adopt measures in law and in practice to protect children from their misuse. As for example the Internet is becoming one of the most frequently used tools for the spread of child pornography, States parties must take measures to combat this, such as by providing that Internet service providers be responsible for controlling the material they host, encouraging the development and use of the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.).

The Committee asks for full information concerning supervisory mechanisms and sanctions for sexual exploitation of children through the information technologies. It further asks whether legislation or codes of conduct for Internet service providers is foreseen in order to protect children.

### ***Protection from other forms of exploitation***

According to the report the Centre for Protection of Human Trafficking Victims, founded as a social protection institution, handles assessment of status, needs, strengths and risks of human trafficking victims, performs identification and provides appropriate help and support



to human trafficking victims aiming at their full recovery and reintegration. The Centre coordinates activities of providing social protection services to human trafficking victims, cooperates with social welfare centres, institutions for accommodation of beneficiaries, other authorities, services and organisations in order to ensure the best interest and safety of human trafficking victims.

According to the report, the General Protocol for protection of children from abuse and neglect provides clear and binding guidance to all the service providers, in both the Government and civil and private sector, for implementation of integrated inter-sectoral cooperation in the process of child protection. The General Protocol contributes to establishing an efficient and coordinated procedure for protection of a child who has actually or potentially been abused and neglected and enables appropriate intervention, recovery and conditions for further safe development of a child.

The Committee notes that there are 140 centres for social work in Serbia, and 173 departments of centres for social work.

As the primary services of social protection in the local community, centres for social work are authorised to provide assistance and support to children and youth in situations when their health and development are threatened. Centres for social work are in charge of providing primary protection of rights and interests of a child by appropriate interventions of social and family-legal protection of the child, particularly through functions of guardianship authority. Services provided by these centres include all children, regardless of the place they live in, and children who are victims of violence are protected regardless of the location on which violence occurs.

According to the report, interdepartmental activities on development of new Strategy of Prevention and Suppression of Human Trafficking and Protection of Victims in the Republic of Serbia, to be in effect until 2017, have already started, and the Ministry of Labour, Employment and Social Policy is participating in those activities.

According to data of Republic Institute for Social Protection, in 2011 centres for social work registered 47 cases in which children were victims of human trafficking (out of which 4 victims of sexual exploitation and 4 of labour exploitation), in 2012 there were 45 (out of which 13 victims of sexual exploitation and 8 labour exploitation.) In 2013, there were 77 cases.

In 2011, 31 children of the street, or homeless children were registered, and in 2012 – 33.

According to data of the Centre for Human Trafficking Victims Protection, 79 victims were registered in 2012 (out of which 33 younger than 18).

The Committee notes from the Report of the Group of Experts on Action against Trafficking in Human Beings (GRETA) concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia (2013) that GRETA recommends that the authorities should also pay increased attention to prevention and protection measures addressing the particular vulnerability of children to trafficking, in particular children from socially vulnerable groups, displaced children and unaccompanied foreign minors, and ensure that the best interest of the child is fully taken into account.

GRETA also invites the Serbian authorities to continue improving the knowledge and sensitivity 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 wishes the next report to indicate the measures taken in this regard.

### *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***

Under Article 94 of the Labour Law, an employed woman is entitled to leave for pregnancy and maternity leave as well as childcare leave for a total of 365 days, which can be doubled for the third and each subsequent child. Upon medical advice, the maternity leave can start between 45 and 28 days before the delivery term and it shall last until three months after the childbirth. The Committee asks the next report to confirm whether this means that a postnatal leave of at least six weeks is mandatory and cannot be shortened by the employee. It furthermore asks whether the same provisions apply to all categories of employed women, in the private as in the public sector.

### ***Right to maternity benefits***

According to the report, under Article 94 of the Labour Law, employees on maternity or childcare leave are entitled to salary compensation in conformity with the law. In particular, the salary compensation is calculated and paid in the amount of the average basic salary of the employee during the 12 months preceding the beginning of the maternity leave, increased for the time spent at work, for every full year of work spent in the employment relationship, pursuant to the Law on Financial Support to Families with Children, but not more than five times the national average monthly salary.

The Committee notes however from the ILO database on Maternity Protection that a salary compensation corresponding to 100% of the previous earnings is paid to employees with at least 6 months of continuous insurance coverage, while only 60% of the salary is paid to employees insured for more than 3 but less than 6 months and 30% of the salary is paid to employees with less than 3 months contributions.

The Committee recalls that, under Article 8§1 of the Charter, maternity benefits must be at least equal to 70% of the previous wage. The right to benefit may be subject to conditions such as a minimum period of contribution and/or employment. However, such conditions shall not be excessive; in particular, if qualifying periods are required, they should allow for some interruptions in the employment record. The Committee asks the next report to clarify what are the criteria for entitlement to maternity benefits and whether interruptions in the employment record are taken into account in the calculation of the qualifying period. It also asks the next report to provide any relevant information, in particular statistical data, on the proportion of women getting, as maternity benefits, less than 70% of their previous salary. With reference to its Statement of interpretation on Article 8§1 (Conclusions 2015), the Committee furthermore asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value. It reserves in the meantime 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 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 indicates that Article 187 of the Labour Law prohibits employers from terminating an employment contract with an employee during pregnancy, maternity leave or childcare leave. In 2013, the Labour Law was amended with a view to extending the protection to women on a fixed-term employment contract (Law on Amendments to the Labour Law of 8 April 2013, Official Gazette No. 32/13). The Committee asks what exceptions, if any, apply to this rule and whether the same regime applies to all employed women, in the private as in the public sector.

### ***Redress in case of unlawful dismissal***

According to the report, the decision to terminate the employment shall be 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 notifies the employer with a medical certificate within thirty days (Article 187(3) of the Labour Law). The Committee takes note of the sanctions provided for by Article 273 of the Labour Law against employers who would unlawfully terminate an employment contract.

The Committee recalls that, in cases of unlawful dismissal of an employee during pregnancy or maternity leave, national legislation must provide for adequate and effective remedies, employees who consider that their rights in this respect have been violated must be able to take their case before the courts. Reinstatement of the women should be the rule. Exceptionally, if this is impossible (e.g. where the enterprise closes down) or the woman concerned does not wish it, adequate compensation must be available. Domestic law must not prevent courts (or any other competent authority) from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal. In the light of this, the Committee asks the next report to explain what remedies are available to women who have been unlawfully dismissed during pregnancy or maternity leave to contest such dismissal, whether the court can order their reinstatement to their post, in addition to compensation and whether, in case such reinstatement should not be possible for objective reasons, the court can order an adequate compensation to be paid to the victim. The Committee asks in particular whether there is a ceiling on compensation for unlawful dismissals. If so, it asks whether this upper limit covers compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation. The Committee asks for some examples that illustrate the level of compensation awarded in cases of unlawful dismissals concerning pregnant employees or employees on maternity leave, and reserves in the meantime its position on the matter.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

The Committee takes note of the information contained in the report submitted by Serbia, which does not contain any element relevant to the scope of Article 8§3 of the Charter.

The Committee recalls that, under Article 8§3 of the Charter, all employed mothers (including domestic employees and women working at home) who breastfeed their babies shall be granted time off for this purpose. Time off for nursing should in principle be granted during working hours should be treated as normal working time and remunerated as such. However provision for part time work may be considered to be sufficient where loss of income is compensated by a parental benefit or other allowance. Time off for nursing must be granted at least until the child reaches the age of nine months. The practical ways of implementing this Article are appreciated on a case-by-case basis: legislation providing for two daily breaks for a period of one year for nursing, two half-hour breaks where the employer provides a nursery or room for nursing, one-hour daily breaks and entitlement to begin work later or leave work earlier have all been found to be in conformity with the Charter.

In light of the above, the Committee asks whether Serbian legislation provides for paid nursing breaks for all employees, in the public as in the private sector. It asks for details of such provisions, including information on how long employed mothers are entitled to time off for nursing their child. Should the next report not provide any information on this issue, there will be nothing to demonstrate that the situation in Serbia is in conformity with Article 8§3 of the Charter.

### *Conclusion*

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

## **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.

Under Article 90 of the Labour Law, an employed woman shall not perform night work during the first 32 weeks of her pregnancy, if a medical certificate establishes that such work would be harmful for her health or the health of the child. Furthermore, night work is prohibited during the last eight weeks of pregnancy. Parents of a child aged below three years, as well as single parents of a child aged below seven years or of a child with severe disabilities may work at night only upon their written consent (Article 91 of the Labour Law). Pursuant to Article 92 of the Labour Law, an employer might re-schedule working hours to an employed woman or an employed parent of a child aged below three years or with severe disabilities only with their written consent. The Committee takes note of the sanctions provided for by Article 274 of the Labour Law against employers who would violate these rules.

The Committee recalls that Article 8§4 does not require states to prohibit night work for pregnant women, women who have recently given birth and women nursing their infants, but to regulate it in order to limit the adverse effects on the health of the woman. The regulations must:

- only authorise night work where necessary, having due regard to working conditions and the organisation of work in the firm concerned;
- lay down conditions for night work of pregnant women, women who have recently given birth and women nursing their infants, e.g. prior authorisation by the Labour Inspectorate (when applicable), prescribed working hours, breaks, rest days following periods of night work, the right to be transferred to daytime work in case of health problems linked to night work, etc.

The Committee asks whether there are any exceptions to the rules on night work in respect of certain categories of employees, in particular whether the same rules apply to women employed in the private as in the public sector. It also asks whether women who perform night work when they are pregnant, have recently given birth or are nursing their infant undergo regular medical checks, whether they are entitled to be transferred to daytime work and what rules apply if such transfer is not possible.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Serbia is in conformity with Article 8§4 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

Pursuant to Article 89 of the Labour Law, pregnant employees shall not work at jobs that, pursuant to advice of the competent health authority, may have harmful effect on their health and that of the child, and particularly not at jobs requiring lifting of weights or associated with exposure to harmful radiation, extreme temperatures and vibrations. The Committee takes note of the sanctions provided for by Article 274 of the Labour Law against employers who would violate these rules.

The Committee recalls that Article 8§5 applies to pregnant women, women who have recently given birth or who are nursing their infants, in paid employment, including civil servants. Only self-employed women are excluded. Under this provision, the law must prohibit the employment of pregnant women, women who have recently given birth and women nursing their infants in underground work in mines. This applies to extraction work proper, but not to women who:

- occupy managerial posts and do not perform manual work;
- work in health and welfare services;
- spend brief training periods in underground sections of mines.

Certain other dangerous activities, such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents, must be prohibited or strictly regulated for the group of women concerned depending on the risks posed by the work. National law must ensure a high level of protection against all known hazards to the health and safety of women who come within the scope of this provision. National law must make provision for the re-assignment of women who are pregnant or nursing their infant if their work is unsuitable to their condition, with no loss of pay, if this is not possible such women should be entitled to paid leave. Such women should retain the right to return to their previous employment.

In the light of this, the Committee asks what rules apply to pregnant women, women who have recently given birth or who are nursing their infants as regards underground mining and other activities involving exposure to known hazards, such as the ones listed above. It also asks whether the women concerned can be temporary transferred to another post or, if no transfer is possible, whether they are entitled to paid leave. In either case, it asks what rules apply as regards their level of pay and whether they maintain the right to be reinstated in their initial position at the end of the protected period. It also asks whether the same rules apply to all employed women, in the private as in the public sector. Should the next report fail to provide information on these aspects, there will be nothing to establish that the situation is in conformity with the Charter.

### *Conclusion*

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

## **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.

### ***Social protection of families***

#### ***Housing for families***

The Committee has constantly interpreted the right to economic, legal and social protection of family life provided for in Article 16 as guaranteeing the right to adequate housing for families, which encompasses secure tenure supported by law (Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint 52/2010, decision on the merits of 22 June 2010, § 54).

Under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment. The Committee recalls that this obligation extends to ensuring protection against unlawful eviction (European Roma Rights Center (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24).

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies. Any appeal procedure must be effective (Conclusions 2003 France, Italy Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction

To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards access to adequate housing for the families, the Committee asks for information in the next report on all the aforementioned points.

The Committee notes the adoption in 2009 of the Law on Social Housing, which created a general legal framework for the development of social housing. Further to this Law, in 2012, the Government adopted the National Strategy for Social Housing, which defines actions to be taken in the housing sector, develops the concept of social housing, increases housing availability for households with low income, etc. In view of the implementation of this Strategy, an Action Plan was adopted. In the same vein, in March 2013, the Government adopted the Decree on Standards and Norms for Planning, Designing and Construction and Terms for Use and Maintenance of Social Housing Apartments.

The report, however, indicates that the existing system of social housing for leasing apartments is still not sufficiently affordable to low income households, which are facing difficulties when paying the rent or utility bills. It also stresses that there are more and more situations where competent authorities initiate eviction proceedings due to unpaid bills or rent. It further points out that in 2011 there were 19,000 homeless people.

The report states that a unified measure according to which vulnerable households may be granted a right to a discount for monthly bills for electricity, natural gas and heat energy has been introduced at the national level. However, it also indicates that subsidies for housing costs provided by certain local government units have not yet been systematised.

While taking note of this measure, the Committee asks the next report to provide information on its implementation and on any other measures taken to ensure adequate housing for the families. In the meantime, it reserves its position on this issue.

As regards access to housing for vulnerable families and Roma in particular, the Committee has held that as a result of their history, the Roma have become a specific group of disadvantaged and vulnerable minority. They therefore require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community (Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40).

The Committee notes from the European Commission against Racism and Intolerance's (ECRI) fourth report, adopted in 2011, that there are poor living conditions of Roma living in settlements and that there have been many forcible evictions of Roma in and around the city of Belgrade.

To remedy this situation, the report indicates that the implementation of the National Strategy for Improvement of the Status of Roma through the adoption of the Action Plan has begun in 2009. This Action Plan aims at improving the housing conditions of Roma families by relocating them and setting the foundation for the sustainable improvement of their status. The Committee takes note of these measures, but asks the next report to continue to provide information on the measures taken to improve the housing conditions of Roma families, including statistics.

Concerning refugees, the Committee notes the adoption of the National Strategy for Resolving the Issues of Refugees and Internally Displaced Persons 2011-2014, which notably deals with housing issues. It also notes from the report that the number of collective centres for accommodation of refugees and IDPs was reduced significantly and numerous housing solutions were provided, but that informal settlements are still present. It further takes note of the Regional Housing Programme (RHP), which aims at providing permanent housing solutions for 400 families living in collective centres and 16,780 refugee families. RHP is to be completed in 2017, the Committee asks the next report to provide information on its outcomes.

### ***Childcare facilities***

The Committee points out that states must ensure that affordable, good quality childcare facilities are available to its citizens (where quality is defined in terms of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and the size of the financial contribution parents are asked to make).

The Committee asks the next report to provide information on childcare facilities in the light of its above-mentioned case law.



### ***Family counselling services***

The Committee recalls that families should have access to appropriate social services, in particular in times of difficulty. States should provide *inter alia* family counselling and psychological guidance advice on childrearing.

The report indicates that support and assistance to families and children are provided by the guardianship authority and the centres for social work. The guardianship authority provides psycho-social counselling services, but it mainly supervises the exercise of parental rights, decides on protective measures and initiates judicial proceedings. The centres for social work are the primary providers of social services in a community. There are currently 140 such centres, which cover the whole territory. Within these centres 17 specialised family counselling services are provided.

### ***Participation of associations representing families***

The Committee recalls that in order to ensure that the views of families are taken into account in the formulation of family policy, all civil organisations representing families should be consulted by the relevant authorities (Conclusions 2006, Statement of Interpretation on Article 16).

The Committee asks the next report to provide information on the participation of associations representing families in the light of its above-mentioned case law.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The Committee recalls that spouses must be equal, particularly in respect of rights and duties within the couple (reciprocal responsibility, ownership, administration and use of property, etc.) (Conclusions XVI-1 (2002), United Kingdom) and children (parental authority, management of children's property). It also states that in cases of family breakdown, Article 16 requires the provision of legal arrangements to settle marital conflicts and, in particular, conflicts relating to children: care and maintenance, custody and access to children.

In light of its above mentioned case-law, the Committee wishes the next report to provide detailed information on the rights and duties within the couple and the legal arrangements to settle marital conflicts.

In respect of children, the report indicates that pursuant to the Family Code spouses are equal. The issues that are of major relevance to the child are decided by both parents, such as upbringing, education, management of child's property, etc. The parents are obliged to support the child financially.

In cases of conflicts relating to children, pursuant to the Family Code it is the guardianship authority that shall make decisions. The Family Code also provides that a child can be separated from the parents, when it is in the best interest of the child and only by a court decision. During a divorce procedure, the guardianship authority proposes solutions as to the manner in which the child will maintain personal relations with the parent he/she is not living with, but the final decision shall be made by the Court. In case of a dispute concerning financial support, the Family Code establishes the criteria for the Court to consider when making a decision.

#### ***Mediation services***

Section 40 of the Law on Social Protection provides for mediation to support 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 considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided.

The Committee asks the next report to provide information on mediation services in the light of these points.

### ***Domestic violence against women***

The Committee recalls that Article 16 requires that protection for women exists both in law (through appropriate measures and punishments for perpetrators, including restraining orders, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (through the collection and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims) (Conclusions 2006, Statement of Interpretation on Article 16).

The report indicates that protective measures against the perpetrator of domestic violence are to be found in the Family Code, such as the eviction order from the household, the prohibition of approaching the victim, the prohibition of approaching or entering the living and working place of the victim, etc. These measures are taken during civil proceedings and may last for one year at the most, with a possibility of extension. During the proceedings, the guardianship authority may either have the status of a legitimised entity or of an expert. The court may require this authority to assist in obtaining evidence as well as to provide its opinion on the requested measure.

The Committee takes note of these protective measures and, in light of its above-mentioned case law, asks the next report to provide information on other measures that exist in law and practice.

### ***Economic protection of families***

#### ***Family benefits***

The Committee considers that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of median equivalised income. The Committee notes from MISSCEO that the monthly amount of child benefit is €21.3 per child (paid for maximum 4 children per family) for a family whose monthly net income per family member (including children) must be lower than €66.5.

The Committee takes note of these statistics but asks that the next report indicate the level of median equivalised income or most similar indicator, such as the national subsistence level, the average income or the national poverty threshold, etc. so that it can determine whether child benefit constitutes an adequate income supplement for a significant number of families. In the meantime, it reserves its position on this point.

### ***Vulnerable families***

States' positive obligations under Article 16 include implementing means to ensure the economic protection of various categories of vulnerable families, such as Roma families and single-parent families.

Concerning single-parent families, the Committee notes they are entitled to an increased financial social assistance, established by increasing the stipulated amount of social assistance for an individual or a family by 20%.

The Committee asks the next report to provide information on the measures taken to ensure the economic protection of Roma families.

### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The Committee recalls that States Parties must ensure equal treatment of foreign nationals of other States Parties who are lawfully resident or regularly working in their territory and stateless persons with respect to family benefits.

The Committee notes from MISSCEO that family benefits are only granted to nationals. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that equal treatment of nationals of other States Parties regarding the payment of family benefits is not ensured.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

### ***Conclusion***

The Committee concludes that the situation in Serbia is not in conformity with Article 16 of the Charter on the ground that equal treatment of nationals of other States Parties regarding the payment of family benefits is not ensured.

## **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.

According to the report, the National Action Plan for Children (NAP) is one of the first strategic documents of the Government and was developed by the Council for Child Rights. It was adopted by the Government in 2004 as an expression of strategic commitment of the country in public policy for children until 2015. The NAP represents a milestone in the relation of society towards children. Its priorities are, inter alia, the reduction of children poverty, protection of rights of children without parental care and protection of children from abuse, neglect, exploitation and violence.

### ***The legal status of the child***

The Committee recalls that under Article 17 of the Charter there should be no discrimination between children born within marriage and outside marriage, for example in matters relating to inheritance rights and maintenance obligations.

It notes from the report that according to the Family Law, relations between parents and children are legally equal, regardless of whether the children were born in wedlock or out of it. The basic principle of relation between parents and children is the parental right of the mother and the father. Parental right is exercised by parents together and by mutual agreement, and in case of their disagreement, the guardianship authority shall make decisions.

The Committee recalls that under Article 17 there must be a right for an adopted child to know his or her origins. It asks whether there are restrictions to this right and under what circumstances.

### ***Protection from ill-treatment and abuse***

The Committee recalls that under Article 17 of the Charter, the prohibition of any form of corporal punishment of children is an important measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2 (2001)). The Committee recalls its interpretation of Article 17 of the Charter as regards the corporal punishment of children laid down most recently in its decision in World Organisation against Torture (OMCT) v. Portugal (Complaint No. 34/2006, decision on the merits of 5 December 2006; §§19-21):

“To comply with Article 17, states’ domestic law must prohibit and penalize all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.

The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.”

The Committee has noted that there is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers, in particular, in this respect to the General Comments Nos. 8 and 13 of the Committee on the Rights of the Child (Complaint No 93/2013 Association for the Protection of All Children (APPROACH) v. Ireland , decision on the merits of 2 December 2014, §§45-47).

The Committee notes from the Global Initiative to End Corporal Punishment of Children that prohibition is still to be achieved in the home and in institutions.

Corporal punishment is lawful in the home. Provisions against violence and abuse in the Criminal Code 2005, the Misdemeanours Act 2007 and the Constitution 2006 are not interpreted as prohibiting all corporal punishment in childrearing. Section 72 of the Family Law 2005 states that parents may not subject the child to humiliating actions and punishments which insult the child's human dignity and have the duty to protect the child from such actions taken by other persons. However, there is no explicit prohibition of all corporal punishment.

There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents.

As regards schools, corporal punishment was first explicitly prohibited in schools in Section 67 of the Law on Public Schools 1929. It is now unlawful under the Law on Secondary Schools 1992 and the Law on the Foundations of Education and Upbringing 2003/2009.

The Committee considers that the situation is not in conformity with the Charter as corporal punishment is not prohibited in the home and in institutions.

### ***Rights of children in public care***

The Committee recalls that under Article 17 the long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions (Conclusions XV-2 (2001), Statement of interpretation on Article 17§1). Children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well being as well as to special protection and assistance. Such institutions must provide conditions promoting all aspects of children's growth. A unit in a child welfare institution should be of such a size as to resemble the home environment and should not therefore accommodate more than 10 children (Conclusions 2005, Moldova). Furthermore, a procedure must exist for complaining about the care and treatment in institutions. There must be adequate supervision of the child welfare system and in particular of the institutions involved (Conclusions 2005, Lithuania).

The Committee furthermore holds that when placement is necessary, it should be considered as a temporary solution, during which continuity of the relationship with the family should be maintained. The child's re-integration within the family should be aimed at, and contacts with the family during the placement should be provided for, unless contrary to the best interest of the child. Whenever possible, placement in a foster family or in a family-type environment should have preference over placement in an institution.

According to the report, over the past several years a great progress in the development of foster care has been made, as the number of children in foster care and foster families has significantly increased, and the number of children without parental care in the social protection institutions has been reduced.

Three centres for family accommodation and adoption were founded in 2011. Their tasks include preparation, evaluation and training of future foster and adoptive parents as well as supporting them.

Individuals are encouraged to become foster parents in various other ways, among others through different types of material compensations. Funds allocated for this purpose are also spent for improvement of living conditions of a child in foster care. Contributions for compulsory health insurance shall be paid to foster parents, based on the agreement on foster care, from the moment the child is placed into their home.

According to the report in 2013 there were 5,125 children in family accommodations. There are about 700 children in homes for children, most of whom are children with developmental

disabilities whom foster families are not ready to accommodate. Increase in the number of families for specialised foster care is one of the priorities for the future.

The Committee recalls that any restrictions or limitations of custodial rights of parents' should be based on adequate and reasonable criteria laid down in legislation and should not go beyond what is necessary for the protection and best interest of child and the rehabilitation of the family (Conclusions XV-2 (2001), Statement of interpretation on Article 17§1).

The Committee underlines that placement must be an exceptional measure, and is only justified when it is based on the needs of the child, namely if remaining in the family environment represents a danger for the child. On the other hand, it considers that the financial conditions or material circumstances of the family should not be the sole reason for placement. In all circumstances, appropriate alternatives to placement should first be explored, taking into account the views and wishes expressed by the child, his or her parents and other members of the family.

Decisions on guardianship, foster care, adoption and placement of a child into the social protection institution are made by the competent guardianship authority, considering the best interest of the child in each specific case. The Committee asks about the criteria for 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

The Committee further notes from the report that the number of families with children using the financial social assistance increased by 12% in 2013 compared to 2012.

According to the report, The Novak Djokovic Foundation, UNICEF and the Ministry of Labour, Employment and Social Policy are developing innovative services to reduce the risk of unnecessary separation of a family and institutionalisation of children in 2013. The Committee wishes to be kept informed.

The Committee asks whether the financial conditions and material circumstances of the family can become a ground for placement of children in alternative care.

### ***Right to education***

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

### ***Young offenders***

The Committee recalls that under Article 17 the age of criminal responsibility must not be too low (Conclusions XIX-4 (2011), United Kingdom). The criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly. Minors should only exceptionally be detained pending trial for serious offences, for short period of time (Conclusions 2005, France) and should in such cases be separated from adults. Young offenders should not serve their sentence together with adult prisoners.

Prisons sentences should only exceptionally be imposed on young offenders and they should only be for a short duration (Conclusions 2011, Norway).

The Committee asks what is the age of criminal responsibility. It also asks what is the maximum length of pre-trial detention and a prison sentence that can be imposed on a juvenile and whether while serving these, juveniles are always separated from adult prisoners.

The Committee also asks whether young offenders in prisons have a statutory right to education.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

### ***Conclusion***

The Committee concludes that the situation in Serbia is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment is not prohibited in the home and in institutions.

## **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.

The Committee recalls that Article 17 requires States to establish and maintain an education system that is both accessible and effective. The Committee recalls in this respect that under Article 17§2 of the Charter in order for there to be an accessible and effective system of education there must be *inter alia* a functioning system of primary and secondary education provided free of charge, including an adequate number of schools fairly distributed over the geographical area. Class sizes and the teacher pupil ratio must be reasonable. Measures must be taken to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.

The Committee takes note of the information provided in the report regarding the number of primary and secondary schools. It notes that in 2013 the pupil-teacher ratio in primary education stood at 11 and at 8,99 in secondary education. According to the UNESCO Institute of Statistics the net enrolment rate in primary school stood at 93,1% in 2012 and 96,6% in 2013, whereas in the secondary school it stood at 96% in 2012 and 99% in 2013.

According to the report, amendments to the Law of the Fundamentals of the Education System of 2011 and 2013 introduced the gradual imposition of measures for unjustified absence, offering students the opportunity to correct their behaviour in time and return to regular attendance of classes, reduction in the dropout rate, particularly for persons from socially vulnerable categories of the population and underdeveloped regions.

The Committee notes that the Strategy of Development of the Education System emphasises the high dropout rate as an obstacle to efficient and effective education. Among measures to reduce the dropout rate the introduction of career guidance and counselling in schools is proposed, along with the development of programmes of assistance for vulnerable groups.

According to the report, the dropout rate is higher among vulnerable groups – national minorities, children with developmental disability and children with disability, children in rural areas. Reasons for dropping out are school network, distance from schools, the level of development of the local Government units, situation with the communal infrastructure.

In order to increase access to primary education, measures of prevention were proposed, 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.

The Committee wishes to be informed of implementation of these measures and their outcome.

The Committee further recalls that under Article 17§2 all hidden costs such as books or uniforms must be reasonable, and assistance must be available to limit their impact on the most vulnerable population groups so as not to undermine the goal being pursued (European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France Complaint No. 82/2012, decision on the merits of 19 March 2013, §31) .

According to the report, amendments are envisaged with a view to facilitating access to education for vulnerable groups of students (general principles). The provisions of LSE (Law on Secondary Education) of 2013 enable equal conditions for all the students wishing to continue schooling after the compulsory primary education, with special emphasis on students with difficulties in learning or belonging to minority groups.



The Committee asks whether vulnerable families are provided with financial assistance to facilitate their access to and completion of compulsory education.

The Committee further recalls that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that states parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2 , Conclusions 2011).

The Committee asks whether unlawfully present children have a right to education.

The Committee recalls that under Article 17§2 States have positive obligations to ensure equal access to education for all children. In this respect particular attention should be paid to vulnerable groups, such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, etc.

Under Article 17§2 as regards education of children of Roma origin, even though educational policies for Roma children may be accompanied by flexible structures to meet the diversity of the group and may take into account the fact some groups lead an itinerant or semi-itinerant lifestyle, there should be no separate schools for Roma children. Special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group (Conclusions 2011, Slovak Republic).

In its 2011 Report on Serbia the European Commission against Racism and Intolerance (ECRI) noted that Roma children continue to lag behind as far as education is concerned. Only about one fourth of Roma children complete elementary education and only 9% complete secondary education and the number of Roma with higher education is 20 times lower than the majority population. Moreover, ECRI was concerned by the fact that Roma are still disproportionately overrepresented in special schools, with up to 80% of children attending schools for children with special needs being Roma.

The Committee asks the next report to describe the measures taken to improve access to mainstream education for Roma children.

#### *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***

According to the 2008 Migration Profile produced by the International Organization for Migration (IOM), migratory movements of the Serbian population have been caused by various historical, social, political, economic, and demographic factors. Serbia has been and continues to be a country of emigration. Inflows, mainly from other countries in the region and also from further East (e.g., China), are moderately increasing in recent years, and during the 2000s Serbia became a country of net immigration. The greatest proportion of the immigrant population are refugees, with almost 100,000 refugees in 2007, accounting for 91% of migrants (excluding transitory migrants). The majority of displaced persons are from neighbouring regions, including Kosovo and Bosnia and Herzegovina.

Political crisis, ethnic conflicts, and disintegration of the country during the 1990s resulted in forced migrations within the former Yugoslav republics, as well as in a new wave of external migrations. In 2006 there were over 170,000 refugees abroad having fled Serbia. Based on Serbian Labour Ministry figures of 2002, there were also over 400,000 Serbians who had emigrated for economic purposes, largely to western European countries such as Germany. Figures from Eurostat estimated the number of Serbians in the EU15 in 2013 to be 750,000. According to the IOM, emigration from the Balkans, including Serbia, has more recently been of an increasingly economic character, though it often occurs through irregular channels.

The main countries of origin in 2007 were Bosnia and Herzegovina, China, Croatia, United States, Greece, Germany, "the former Yugoslav Republic of Macedonia", and Romania.

The report indicates that 2542 work permits were issued to foreign citizens in 2010, 2573 work permits were issued in 2011, 2904 work permits were issued in 2012, and 2856 work permits were issued in 2013.

#### ***Change in policy and the legal framework***

The report states that the employment of migrants is governed by the Requirements for Employing Foreign Nationals Act (Official Journal of FRY 42/92). In accordance with this Law, foreign nationals may enter into an employment relationship if they have approval for permanent residence, or for temporary residence in the Republic of Serbia, and if they obtain approval for entry into employment. Certain exemptions for this approval exist, pertaining to highly-skilled jobs, business and investment.

On 29 April 2008, Serbia signed a Stabilization and Association Agreement (SAA) and Interim Agreement on trade-related measures with the EU, which provide a framework of mutual commitments on a wide range of political, trade and economic issues.

The Committee notes from the official website of the Serbian government that a number of Strategies are in place to combat illegal migration, human trafficking, and to reintegrate or return refugees. The Migration Management Strategy, adopted in 2009, foresees the establishment of mechanisms to monitor migration flows and create the conditions for integration and social inclusion of migrants. In 2012, the Law on Migration Management was adopted, which established a system to coordinate migration policy, including data collection. The Committee asks for further information concerning the substance of these Strategies and Laws, and their concrete implementation.

The report refers to the new Employment of Foreign Nationals Act, which was adopted in November 2014, outside of the reference period. In the context of Serbian candidacy for EU

membership, this law will harmonise with the Directive 2004/38 on the right of EU citizens and their family members to freely move and reside on the territory of the Member State and the Regulation 492/2011 on the freedom of movement for workers, including enabling free access to the Serbian labour market for Member State citizens. The Committee asks for updated information in the next report concerning the substance and implementation of the new Act.

### ***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 report states that pursuant to Article 85 of the Law on Employment and Unemployment Insurance, a foreign national or a stateless person may be registered as an unemployed person if they have an approval for permanent or temporary residence.

The National Employment Service and private employment agencies provide information on options and terms for overseas employment, living and working conditions, rights and duties at work, forms and manner of protection in accordance with the agreement on overseas employment, as well as the rights upon return from working abroad. The services the National Service and the private employment agencies provide to unemployed persons are not charged for.

The Committee notes the statement of the Migration Integration Policy Index in the 2014 report "Regional MIPEX Assessment of FYROM, Croatia, Serbia and Bosnia and Herzegovina", that in Serbia, temporary migrants cannot benefit from public employment services, adult education, or vocational training on an equal footing with nationals and long-term residents. The Committee asks whether the services of employment agencies are available also to immigrants coming to Serbia, on what basis and to what extent.

The report states that under UN Security Council Resolution 1244, Migrant Service Centres started operating in June 2008, supported by the "Capacity Building, Information and Awareness Raising towards Promoting Orderly Migration in the Western Balkans" Project. The Project was implemented by the International Organization for Migration in cooperation with the ministry in charge of employment, National Employment Service, and others, with a view to provide assistance to potential migrants from Albania, Bosnia and Herzegovina, Croatia, FRY Macedonia, Montenegro, Serbia and Kosovo. The project included the expansion of Migrant Service Centre network in the Republic of Serbia between 2011 and 2012. According to the report there are currently 7 centres, located in Belgrade, Novi Sad, Bor, Nis, Kraljevo, Krusevac and Novi Pazar.

Migration Service Centres deal with dissemination of information, counselling and referral of migrants or potential migrants. They offer individualised assistance, counselling on employment and information on illegal migration to emigrants and immigrants, including returnees and asylum-seekers. In 2011, 329 persons used the services of the Migrant Service Centres, the figure rose to 696 in 2012, and 900 in 2013. Beneficiaries of the Migrant Service Centres frequently obtain information on the phone, as well as on the internet ([www.migrantservicecentres.org](http://www.migrantservicecentres.org)). The Committee considers that free information and assistance services for migrants must be accessible in order to be effective. It considers that a range of means of information are necessary, such as websites, helplines and drop-in

centres. With regard to the wide-ranging provision of services in Serbia, it considers that this requirement is met.

The report states that there are also 72 licensed private employment agencies who can assist migrants with finding work. Information on these agencies is published on the website of the ministry in charge of employment (<http://www.minrzs.gov.rs/>) and the National Employment Service (<http://www.nsz.gov.rs/>).

The report states that in accordance with the Employment and Unemployment Insurance Act (Official Gazette of the RS Nos. 36/09 and 88/10), overseas employment requires notification of the need for overseas employment received by the ministry in charge of employment, National Employment Service or an employment agency. Emigrant workers are given protection by the Serbian authorities to ensure their wellbeing and successful emigration. Protection of persons includes the provision of: permits for work and stay abroad; information on conditions of living and working abroad; information on rights and duties at work. The report states that in 2013, the National Employment Service provided support for the overseas employment of 77 persons.

### ***Measures against misleading propaganda relating to emigration and immigration***

The report does not include any information concerning measures to combat misleading propaganda. It does state, however, that a certain number of employees of the Employment Sector, in charge of other affairs, are included in training sessions on the movement of workers. The Committee considers 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 contains no information concerning the training of law enforcement officials or public servants. The Committee asks whether persons regularly likely to be in contact with migrants are given anti-discrimination and anti-propaganda training.

The Committee notes from the fourth report of the European Commission against Racism and Intolerance (ECRI)(adopted 2011) that in 2008, the Ministry of Human and Minority Rights was created from the former Office of Human and Minority Rights. The Ministry carries out the following tasks: 1) keeping the register of national councils of national minorities; 2) election of the national councils of national minorities; 3) protection and promotion of human and minority rights; 4) elaboration of regulations on human and minority rights and 5) maintaining links between national minorities and their kin state. Within the framework of these tasks, the Ministry deals with Human Rights education, Roma education and enrolment in schools, Roma registration, improvement of inter-ethnic relations in Vojvodina, and awareness-raising campaigns. The Committee asks that the next report contain information concerning these measures, in particular the implementation of awareness-raising campaigns.

The Law on the Prohibition of Discrimination which was adopted on 26 March 2009 prohibits hate speech and harassment, victimisation and racist organisations. The Ministry of Human and Minority Rights is charged with its implementation.

The Committee notes from the abovementioned report of ECRI that the Law on the Prohibition of Discrimination provides for a Commissioner for the Protection of Equality, who was elected in 2010 by the Serbian Parliament. The Commissioner's powers include intervention in cases of group or individual discrimination. If the Commissioner finds that discrimination is occurring, she can make a formal recommendation and require that the effects of the discrimination be removed by a certain deadline. The Committee asks for further information, including statistics, concerning the activities of the Commissioner.

The Committee considers that in order to be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as

women trafficking. Such measures, which should be aimed at the whole population, are necessary *inter alia* to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease (Conclusion XV-1 (2000), Austria).

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information, and of deterring the promulgation of discriminatory views. It considers that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.

The Republican Broadcasting Agency (RBA), which is the state body regulating mass media, has among its main tasks the prevention of the dissemination of information that could be discriminatory, as well as monitoring the work of broadcasters in this respect.

The Committee recalls that authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia). It asks for complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings.

The Committee requests that the next report provide complete and up-to-date information concerning the legal framework and practical policies undertaken to combat misleading propaganda concerning immigration and emigration. Should the next report fail to provide the information requested, the Committee considers that there will be nothing to establish that the situation is in conformity with the Charter.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Serbia is in conformity with Article 19§1 of the Charter.

## **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.

### ***Departure, journey and reception of migrant workers***

The Committee recalls that reception 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). Reception means the period of weeks which follows immediately from their 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).

The report states that the Law on Social Protection stipulates that beneficiaries are entitled to availability of services, thus Section 56 indicates that the 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.

Section 6 of the Law on Social Protection defines that the primary beneficiaries of social protection are Republic of Serbia citizens, but that beneficiaries may also be foreign nationals and stateless persons, in accordance with legislation and international agreements. However, the report states that where the wellbeing of persons is threatened, in particular if they are foreign citizens or stateless persons in need, they shall qualify as beneficiaries. The Committee notes from 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. The Committee asks what healthcare assistance is available to all migrants upon arrival.

The Committee notes that Section 28 of the Law on Foreigners makes provision for the supply of accommodation and food to those who do not have sufficient means to support themselves. The Committee asks for clarification of what provision is made, whether financial or otherwise, for the assistance of migrant workers in need with basic needs such as food, shelter and healthcare. It asks also for statistics concerning the number of beneficiaries of such assistance.

The report also states that the government provides services to emigrants preparing to leave Serbia, which include the cost of general, sanitary and specialist medical examinations and issuance of certificates on medical capability and transportation costs.

### ***Services for health, medical attention and hygienic conditions during 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. However, in that case, the need for reception facilities is all the greater (Conclusions IV (1975), Statement of interpretation on Article 19§2). The Committee requests details of any measures taken in regard of collective recruitment, should it take place.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Serbia is in conformity with Article 19§2 of the Charter.

**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 report provides no information concerning the co-operation of social services at an international level.

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). 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.

Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (Conclusions XV-1 (2000), Finland).

The Committee requests that the next report provide information regarding co-operation between social services of emigration and immigration states. Should the next report fail to furnish the requested information, the Committee considers that there will be nothing to demonstrate that the situation is in conformity with Article 19§3 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 4 - Equality regarding employment, right to organise and accommodation*

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

The report states that measures harmonized with the Directive 2004/38 and Regulation 492/2011 through the new Law on Employment of Foreign Nationals, and other relevant European Union provisions, will apply only to citizens of the EU Member States when the Republic of Serbia becomes a full member of the European Union. The Committee recalls that states are required to secure for such workers of nationality of any State party to the Charter, lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals under the paragraphs of Article 19§4. It therefore requests further details concerning the provisions of the Law on Employment of Foreign Nationals.

The report also states that Serbia intends to perform harmonization with Internal Labour Organization Convention No. 97 on Migration for Employment (Ratification – Official Gazette of SFRY – International Treaties and Other Agreements number 5/68), and Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, adopted at the 60th session of the General Conference of the International Labour Organisation (Ratification – Official Gazette of SFRY – International Treaties number 12/80), as well as with the requirements of World Trade Organization on freedom of movement of workers in the field of employment.

### ***Remuneration and other employment and working conditions***

The field of employment of foreign nationals is governed by the Law on Requirements for Employing Foreign Nationals (Official Journal of SFRY 11/78 and 64/89, Official Journal of FRY 42/92);

In accordance with this Law, foreign nationals may enter into employment if they have an approval for permanent residence, or for temporary residence in the Republic of Serbia, and if they obtain approval for entry into employment relationship. Exemptions apply for highly-skilled positions.

The Committee recalls from its previous conclusion in respect of Article 1§2 (Conclusions 2012) that the Constitution of the Republic of Serbia prohibits all discrimination on any grounds and in particular on grounds of race, sex, nationality, social background, birth, religion, political or any other belief, financial standing, culture, language, age and psychological or physical disability. It further states that any special measures, that might be introduced in order to establish full equality of persons or groups which do not share equal position with other citizens, will not be considered discrimination.

Further there is the Prohibition of Discrimination Act (The Official Gazette No. 22/09) and the Law on Prevention of Discrimination of Persons with Disabilities (The Official Gazette No. 33/06). The Employment and Unemployment Insurance Act also prohibits discrimination in employment.

Article 18 of the Labour Law (The Official Gazette, Nos. 24/05, 61/05 and 54/09) prohibits direct and indirect discrimination of persons seeking employment and employed persons on grounds of gender, birth, language, race, skin colour, age, pregnancy, health condition that is invalidity, nationality, religion, marital status, familial obligations, sexual orientation, political or some other belief, social background, financial standing, membership in political organizations, trade unions or some other personal characteristic.

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 and promotion. The provision applies also to vocational training (Conclusions VII (1981), United Kingdom). The Committee asks whether vocational training with a view to improving the skills and opportunities of workers is available in Serbia on the same basis for migrants and nationals.

The Committee asks what institutions are responsible for the monitoring of anti-discrimination legislation in relation to labour and employment. It requests that the next report detail any relevant statistics concerning the activity of such institutions. It asks for information concerning the measures undertaken to secure equality of treatment in practice. Furthermore it asks whether complainants have access to a court system to enforce their rights.

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

The report provides no information concerning the rights of foreign nationals to participate in trade unions and other organisations. 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, including the right to be founding member and access to administrative and managerial posts in trade unions (Conclusions XIII-3 (1996), Turkey; Conclusions 2011, Statement of interpretation on Article 19§4(b)).

Applying the principle of non-discrimination, as set out in Article 19§4(b) of the Charter, to the context of collective bargaining, requires that States Parties have to take action to ensure that migrant workers enjoy equal treatment when it comes to benefiting from collective agreements aimed at implementing the principle of equal pay for equal work for all workers in the workplace, or from legitimate collective action in support of such an agreement, in accordance with national laws or practice.

The Committee refers to its Statement of Interpretation in the General Introduction and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

The Committee requests that the next report provide a full and up-to-date description of the situation regarding the rights of migrant workers to found, join and participate in the activities of trade unions. 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 view of the lack of information, the Committee asks the next report to indicate how the right to accommodation of migrant workers and their families is ensured both in law and practice.

Should the next report fail to provide the information requested under paragraph (c), 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.

*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 5 - Equality regarding taxes and contributions*

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

The report does not directly address the obligation under Article 19§5 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons.

The Committee recalls that this provision recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions (Conclusions II (1971), Norway).

The Law on Employment and Unemployment Insurance also provides that the National Employment Service shall be in charge of the exercise of rights to unemployment insurance. A foreign national who is insured for unemployment on the territory of the Republic of Serbia and who is registered in the National Employment Service records upon expiration of the insurance, is entitled to financial compensation in the same manner and under the same terms and conditions as the domestic national.

The Committee notes that the Law on Personal Income Tax (as amended) does not discriminate between Serbians and nationals of any other country with regard to tax rates. Any person resident in the country for 183 days of any year will be subject to the same rates of graduated income tax. The Committee asks what other contributions or taxes apply, and whether nationals of other countries are subject to any differing obligations.

The Committee stresses that the next report must contain complete and up-to-date information concerning the regime of employment taxes, dues and contributions applicable in Serbia.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Serbia is in conformity with Article 19§5 of the Charter.

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

### *Paragraph 6 - Family reunion*

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

### **Scope**

The Law on Movement and Stay of Foreigners governs the conditions of entry and stay in Serbia.

The Committee notes from the official Serbian government website (<http://www.mup.gov.rs>) that family members of foreigners entitled to temporary residence may join them in Serbia, pursuant to Section 26(3) of the Law on Foreigners. Family members include children and spouses, and parents in certain circumstances. The Committee asks whether there are age, dependency or other requirements for eligibility of children, and what these are.

Freedom of movement and settlement and the right to leave the territory of Serbia, for either domestic nationals, refugees, stateless persons or foreigners, is subject to statutory limitations only (Article 31 paragraph 2 of the Chapter on Human and Minority Rights and Civil Freedoms and Article 17 of Constitution of the Republic of Serbia.) These rights may be limited only if it is necessary: for conduct of criminal proceedings, protection of public order and peace, prevention of spreading of diseases or for protection of the country.

The Committee notes from the Migration Integration Policy Index report “Regional MIPEx Assessment of FYROM, Croatia, Serbia and Bosnia and Herzegovina” that “immigrants in these countries have limited access to autonomous residence permits in case of widowhood, divorce or violence, and in Serbia they are not even entitled to an independent status.” Permanent stay may be granted to someone having lived in Serbia for 5 years on the basis of a temporary stay permit; someone having been married for 3 years to a Serbian citizen or a foreigner having the right to permanent stay in Serbia; or to a juvenile child of a Serbian citizen or a foreigner having the right to permanent stay in Serbia. The Committee recalls that once a migrant worker’s family members have exercised the right to family reunion and have joined him or her in the territory of a State, they should have an independent right to stay in that territory (Conclusions XVI-1 (2002), Article 19§8, Netherlands). The Committee understands that this is not the situation in Serbia, as family members’ permits remain contingent upon the right to stay of the migrant worker, and therefore it considers that the situation in Serbia is not in conformity with the Charter.

### **Conditions governing family reunion**

The Committee notes from the government’s abovementioned website that applicants for a temporary residence permit (including on grounds of family reunification) must prove that they have health insurance, and that they have sufficient means to support themselves (pursuant to Section 28 of the Law on Foreigners).

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). These are the diseases requiring quarantine which are stipulated in the World Health Organisation’s International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis. The Committee notes that Section 11(5) of the Law on Foreigners authorises the refusal of entry or cancellation of a visa where the entrant does not have a certificate of vaccination or other proof of good health, when arriving from areas affected by an epidemic of infectious diseases. The Committee asks for confirmation of which diseases might lead to refusal of entry for a family member pursuant to Section 11(5).

The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of interpretation on Article 19§6). The Committee asks what threshold is required to demonstrate that the applicant for a temporary residence can support themselves. It asks whether the income of family members can be considered, and if so, whether the income of a family member which derives from social benefits is excluded.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee considers 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.

The Committee requests that the next report contain a full and up-to-date description of the legal framework for family reunion, including any requirements, and a description of the administrative process of consideration and appeal, insofar as such procedures exist.

#### *Conclusion*

The Committee concludes that the situation in Serbia is not in conformity with Article 19§6 of 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.

## **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 report does not provide any information concerning equal treatment of migrant workers in legal proceedings.

The Committee recalls that under this provision States must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals (Conclusions I (1969), Italy, Norway, United Kingdom). This obligation applies to all legal proceedings concerning the rights guaranteed by Article 19 (namely pay, working conditions, housing, trade union rights, taxes, etc.) (Conclusions I (1969), Germany).

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

The Committee requests that the next report provide complete and up to date 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. Should the next report fail to provide such information, the Committee considers that there will be nothing to demonstrate that the situation is in conformity with Article 19§7 of the Charter.

The Committee refers to its Statement of interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid assistance.

### *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 8 - Guarantees concerning deportation*

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

The Committee notes that Section 35 of the Law on Foreigners stipulates that “the competent authority shall cancel the permissions issued to a foreigner in the Republic of Serbia who has been granted the permission for a short stay of up to 90 days and a foreigner who has been granted the permission for temporary residence in the Republic of Serbia if any of the obstacles referred to in Section 11 of this Law occur, or are detected at a later stage.”

Section 11(6) provides for refusal of a permit for reasons related to protection of the public order or the safety of the Republic of Serbia and its citizens.

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’ behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual’s connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of interpretation on Article 19§8, Conclusions 2015).

The Committee asks whether Serbian law is applied in compliance with the requirements of the Charter in this regard. In particular, it asks whether all aspects of the non-nationals’ behaviour as well as the circumstances and the length of time of his/her presence in the territory of the state will be taken into account in determining whether a migrant should be expelled.

Section 11(2) of the Law on Foreigners provides for refusal or rescission of a permit where the foreigner does not have sufficient financial means to sustain him/her during the stay in the Republic of Serbia, to return to his/her country of origin or transit into the third country, and if he/she is not provided with means of livelihood in any other way during his/her stay in the Republic of Serbia. The Committee recalls that the fact that a migrant worker is dependent on social assistance can not be regarded as a threat against public order and cannot constitute a ground for expulsion (Conclusions V (1977), Italy). The Committee asks whether recourse to social assistance may form a ground of expulsion under Serbian law or practice.

Section 11(5) provides for refusal or rescission of a permit where the foreigner does not have the certificate of vaccination or other proof of good health, when arriving from areas affected by an epidemic of infectious diseases. The Committee recalls that risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment (Conclusions V (1977), Germany). The Committee asks whether this requirement of the Charter is complied with in practice.

Section 11(8) provides for refusal or rescission of a permit where there is reasonable doubt that the migrant will take advantage of the stay for purposes other than those declared. The



Committee considers that reasonable doubt does not constitute a sufficient legal basis for expulsion, and that taking advantage of the stay for other purposes is not a ground for expulsion which is in conformity with the requirements of the Charter.

The Committee recalls that States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake (Conclusions V (1977), United Kingdom). The Committee asks for a full and up-to-date description of the procedures for determining whether to expel a migrant worker, and of avenues available to the migrant to subsequently appeal this decision.

#### *Conclusion*

The Committee concludes that the situation in Serbia is not in conformity with Article 19§8 of the Charter on the ground that a migrant worker may be expelled where there exists reasonable doubt that he/she will take advantage of the stay for purposes other than those declared.

**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 report provides no information concerning the transfer of money by migrant workers to or from Serbia.

The Committee notes from a report produced by the World Bank (De Luna Martinez et al., Paper No. 80 'The Germany-Serbia Remittance Corridor', 2006) that remittances form a significant source of revenue in Serbia, totalling more than \$2.4 billion in 2004 (€1.75 billion). The Committee notes that there were no restrictions on the amount of money which could be brought into Serbia. It asks whether restrictions exist on transfers of money or possessions of migrant workers from Serbia to other countries. It also asks for updated information on the legal and practical framework applying to the transfer of earnings and savings by migrants in other States parties into Serbia.

With reference to its Statement of interpretation on Article 19§9 (Conclusions 2011), the Committee asks whether there are any restrictions on the transfer of the movable property of migrant workers.

*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.

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

The Committee has found the situation in Serbia not to be in conformity with Articles 19§6 and 19§8. Accordingly, 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§6 and 19§8 apply also to self-employed migrants.



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**SLOVAK REPUBLIC**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns the Slovak Republic which ratified the Charter on 23 April 2009. The deadline for submitting the 5th report was 31 October 2014 and the Slovak Republic submitted it on 2 December 2014.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report contains also information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information:

the right to safe and healthy working conditions – safety and health regulations (Article 3§2)

the right to social security – social security of persons moving between States (Article 12§4)

the right to social and medical assistance – prevention, abolition or alleviation of need (Article 13§3)

The Slovak Republic has accepted all provisions from the above-mentioned group except Articles 19§2, 19§3, 19§8, 19§10, 19§12, 31§1, 31§2 and 31§3.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to the Slovak Republic concern 31 situations and are as follows:

– 22 conclusions of conformity: Articles 3§2, 7§1, 7§2, 7§3, 7§4, 7§6, 7§7, 7§8, 7§9, 7§10, 8§3, 8§4, 8§5, 13§3, 19§1, 19§4, 19§5, 19§7, 19§9, 19§11, 27§1 and 27§2;

– 7 conclusions of non-conformity: Articles 7§5, 8§1, 8§2, 12§4, 16, 17§1 and 17§2.

In respect of the other 2 situations related to Articles 19§6 and 27§3, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by the Slovak Republic under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),

- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 2 - Safety and health regulations*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by the Slovak Republic in response to the conclusion that it had not been established that agency and temporary workers and workers on fixed-term contracts enjoy the same standard as workers in permanent employment (Conclusions 2013, Slovak Republic).

The Committee recalls that under Article 3§2 of the Charter all workers, all workplaces and all sectors of activity must be covered by occupational health and safety regulations (Statement of interpretation on Article 3§2 (Article 3§1 of the 1961 Charter, Conclusions II)).

The report confirms that under Article 3 of the Labour Code (Act No. 311/2001 Coll.), the Fundamental Principles, all employees have the right to the occupational safety and protection of health at work. Moreover, pursuant to Article 48§7 of the Labour Code employees who are not employed for indefinite period of time shall not be discriminated in matters related to occupational safety and protection of health at work and are granted the same rights and obligations in these matters as employees working for indefinite period of time. The same applies for regular medical health examinations.

In addition, Section 2 of Act No. 124/2006 Coll. on Occupational Safety and Protection of Health at work stipulates that all categories of workers and employers fall under the scope of this act, therefore all workers and employers are granted the same standards.

Finally, the report states that training on issues related to occupational safety and health is provided to all employees irrespective of the type of contract upon their recruitment, as foreseen by Section 7§3 of Act No. 124/2006 Coll. on Occupational Safety and Protection of Health at Work.

The Committee asks whether any specific measures are taken to ensure protection of temporary workers against risks resulting from a succession of accumulated periods working for a variety of employers. It also wishes to receive up-dated information on work accident rates for the categories of workers concerned. Meanwhile, the Committee considers that the situation is in conformity with the Charter.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 3§2 of the Charter as regards the equal treatment of agency and temporary workers and workers on fixed-term contracts.



## **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 the Slovak Republic.

The Committee previously concluded (Conclusions XIX-4(2011)) that the situation in the Slovak Republic was not in conformity with Article 7§1 of the Charter on the ground that it had not been established that the definition of light work and its duration were sufficiently precise.

The report indicates that according to the Labour Code, children under 15 years of age or persons aged over 15 years who are subject to compulsory education are prohibited from working. Exceptionally, they may perform light work which does not threaten their health, safety, further development and school attendance. Such light work includes participation in cultural events or performances, sports events, advertising activities.

According to Article 11§5 of the Labour Code, light work is permitted by the Labour Inspectorate based on an application of the employer in consultation with the relevant public health authority. The permit must specify the number of hours and conditions applying to such light work. The Labour Inspectorate shall issue the permit allowing young persons under 15 to carry out light work provided that such work:

- does not exceed physical or mental abilities of the person concerned;
- does not pose danger to the person concerned, or if it does not expose the individual to harmful physical, biological or chemical factors;
- does not threaten the person concerned with pollutants that are toxic, carcinogenic, cause genetic damage or permanently damage health;
- does not expose the person concerned to dangerous radiation;
- does not expose the person concerned to heat, cold, noise or vibrations;
- is free of risks, which the person concerned is unable to recognize, or which they would be unable to avoid due to the one's insufficient attention or experience;
- does not require that the persons concerned manipulates heavy objects or load disproportionate to their physical abilities;
- is suitable for the persons concerned on the basis of their medical examination for the purpose of carrying out the work concerned.

The employer has the obligation to provide the Labour Inspectorate with the required documents proving that the above mentioned conditions are met. The documents may contain photographs of the place of work showing that the respective place is safe and that minors are not at risk in that environment.

The report illustrates the maximum daily and weekly duration of working time for children performing light work as well as the rest periods:

- The maximum daily work time may not exceed 6 hours;
- The maximum weekly work time may not exceed 30 hours;
- The maximum daily work time may not exceed 2 hours during a school day;
- The minimum daily rest period must be at least 14 consecutive hours and the minimum weekly rest period must be at least 2 consecutive days;
- The minimum break during the work time is at least 30 minutes after 3 hours of work.

The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those

who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015). It therefore concludes that the situation in the Slovak Republic is in conformity with Article 7§1 of the Charter.

The report indicates that the Labour Inspectorate carries out regular inspections to monitor if the rules applicable to work time and rest periods are fulfilled in practice. In case of failure to observe one of the above mentioned conditions the relevant Labour Inspectorate shall revoke the permit issued to the given employer.

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 for information on the activities and findings of the Labour Inspectorate of monitoring the prohibition of employment under the age of 15, including the number of violations detected and sanctions applied.

The Committee recalls that States are required to monitor the conditions under which home work is performed in practice (Conclusions 2006, General Introduction on Article 7§1). The Committee asks how work done at home by children is monitored.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 7§1 of the Charter.

## **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 the Slovak Republic.

In its previous conclusion (Conclusions XIX-4(2011)), the Committee noted that the list of jobs and worksites restricted to young workers is specified by the Government Regulation No. 286/2004 (amended by the Government Regulation No. 309/2010). The report states that the same Government Regulation stipulates that the list of jobs and worksites restricted to young workers is identical to the list included in the Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work, which has been transposed into national legislation.

The report indicates that the National Labour Inspectorate monitors the working conditions of young workers. However, the report does not provide information on the findings of the Labour Inspectorate. The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activities and findings of the Labour Inspectorate in relation to the prohibition of employment under the age of 18 for dangerous or unhealthy activities, including the number of violations detected and sanctions applied.

### *Conclusion*

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

The Committee notes that children under 15 years of age or persons aged over 15 years who are subject to compulsory education are prohibited from working. Exceptionally, they may perform light work which does not threaten their health, safety, further development and school attendance. Such light work includes participation in cultural events or performances, sports events, advertising activities.

The Committee refers to its conclusion on Article 7§1 for a description of the conditions of performing light work, its maximum duration and rest periods. It noted that the maximum daily work time may not exceed 2 hours on a school day and 6 hours on non-school days. The Committee recalls that during school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework (Conclusions 2006, Albania).

As regards work during school holidays, the Committee referred previously to its Statement of Interpretation on Article 7§3 (Conclusions XIX-4(2011)). In particular, it asked whether the rest period free of work had a duration of at least two consecutive weeks during the summer holiday and what were the rest periods during the other school holidays. The report indicates that the light work carried out by children who are still subject to compulsory education in cultural performances, sports events and advertising activities may be performed for few days during the duration of such events. The report does not indicate if the right of children subject to compulsory education to benefit of at least two consecutive weeks of rest during the summer holiday is guaranteed

The Committee asks confirmation that children performing light work who are still subject to compulsory education benefit of at least two consecutive weeks of rest during the summer holiday. The Committee recalls that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays, which shall under no circumstances be less than two weeks during the summer holiday (Statement of Interpretation on Article 7§3, Conclusions (2011)). It points out that if the next report fails to provide all the necessary information, there will be nothing to show that the situation in the Slovak Republic is in conformity with the Charter on this point.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 7§3 of the Charter.

## **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 the Slovak Republic.

In its previous conclusion (Conclusions XIX-4(2011)), the Committee asked information on the working time of young workers older than 16 years of age. The report indicates that the maximum weekly working time of young workers over 16 years (but under 18) of age shall be 37 and ½ hours even when working for several employers. The working time of a young worker may not exceed 8 hours in the course of 24 hours. Employers may not employ young workers for overtime work. The Committee noted in its previous conclusion that the maximum weekly working time of a young worker under 16 years of age shall be 30 hours per week, even when working for several employers.

The Committee recalls that under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to this provision. However, for persons over 16 years of age, the same limits are in conformity with the Charter. The Committee considers therefore that the situation is in conformity with Article 7§4 on this point.

The report indicates that the Labour Inspectorate carries out regular inspections to monitor the applicable regulations with regard to working time and rest periods. The report does not provide information on the findings of the Labour Inspectorate. The Committee recalls that the situation in practice should be regularly monitored, and asks that the next report provide information on the monitoring activity of the Labour Inspectorate, the violations identified and sanctions applied in cases of breach of the regulations concerning reduced working time of young workers who are no longer subject to compulsory schooling.

### *Conclusion*

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

## **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 the Slovak Republic.

### **Young workers**

The report indicates that the legislation provides the same level of remuneration for young workers as for adults. The Committee notes from another source that the Minimum Wage Act no longer provides for lower pay rates for young workers and workers with disabilities (ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) (Convention No. 26 on Minimum Wage-Fixing Machinery (1928): Direct request, adopted in 2012, published at the 102<sup>nd</sup> ILC Session (2013).

The Committee has repeatedly asked information on the amount of the minimum net wage of young workers under 18. The report does not provide the requested information.

In its Conclusions XX-3(2014), the Committee found the situation to be not in conformity with Article 4§1 of the Charter since the net statutory minimum wage was 45.53% of the net average wage, a level which remains too low to ensure a decent standard of living within the meaning of Article 4§1 of the Charter.

Under Article 7§5 the Committee examines if young workers are paid the equivalent of 80% of a minimum wage in line with the Article 4§1 fairness threshold (60% of the net average wage). Thus, if young workers' wage amounts to 80% of the minimum threshold required for adult workers (60% of the net average wage), the situation would be in conformity with Article 7§5 (Conclusions XVII-2 (2005), Spain). In the present case, the young workers' wage is at the same level as the adult workers' wage. The Committee notes that in 2012 the net minimum wage represented 45.53% of the net average wage. It also notes from another source that in 2013, the net minimum wage represented 46% of the net average wage (OECD Database), which does not meet the requirements of Article 7§5 of the Charter. It therefore considers that the situation is not in conformity with the Charter on the ground that the young workers' wages are not fair.

The Committee asks that the next report provide information on net values of both minimum and average wages 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**

Under 7§5 of the Charter, apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period (Conclusions II (1971), Statement of Interpretation on Article 7§5), starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (Conclusions 2006, Portugal).

The report indicates that according to Act No. 184/2009 on Professional Training and Education, a student performing productive work under the practical training pursuant to the school education program is entitled to a remuneration. The allowance is paid by the individual or corporate body for which this productive work is carried out. The report clarifies that "productive work" means the production of products or provision of services corresponding to the activities of the individual or company where the work is performed.

The report indicates that apprentices are paid for each finished hour of productive work an allowance amounting to 50% – 100% of the minimum wage per hour of an adult performing similar work. The exact amount to be paid is established based on the overall performance of the apprentice and the quality of the work carried out.

The Committee asks how the Labour Inspectorate monitors the actual allowances paid to apprentices in practice. Pending receipt of the information requested, the Committee reserves its position on this point.

*Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

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

The Committee notes from the information contained in the report submitted by the Slovak Republic that there have been no changes to the situation which the Committee previously found to be in conformity with Article 7§6 of the Charter (Conclusions XIX-4(2011)).

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide up-to-date information on the activities of the Labour Inspectorate of monitoring the inclusion of time spent on vocational training in the normal working time, including the number of violations identified and sanctions applied.

### *Conclusion*

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

The Committee asked in its previous conclusion (Conclusions XIX-4(2011)) whether workers may waive their right to annual holiday and whether annual holidays of young workers are suspended in the event of illness or accident during the holidays. The report indicates that workers may not waive their right to annual holiday as guaranteed by the Labour Code.

In response to the Committee's question, the report clarifies that, in case of all workers, if the holiday has not been taken because of temporary incapacity due to sickness or accident, the holiday is postponed until the end of the employee's temporary incapacity for work (Article 113 of the Labour Code). If sickness or accident occur during the holiday and result in the employee's temporary incapacity, the period of paid holiday is also interrupted (Article 114 of the Labour Code).

The Committee recalls that the situation in practice should be regularly monitored and it therefore asks for information on the number and nature of violations detected as well as on sanctions imposed by the Labour Inspectorate for breach of the regulations regarding paid annual holidays for young workers under 18.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Slovak Republic 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 notes from the information contained in the report submitted by the Slovak Republic that there have been no changes to the situation which the Committee previously found to be in conformity with Article 7§8 of the Charter (Conclusions XIX-4(2011)).

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide up-to-date information on the activities of the Labour Inspectorate of monitoring the prohibition of night work for young persons under 18, including the number of violations identified and sanctions applied.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Slovak Republic 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 notes from the information contained in the report submitted by the Slovak Republic that there have been no changes to the situation which the Committee previously found to be in conformity with Article 7§9 of the Charter (Conclusions XIX-4(2011)).

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide up-to-date information on the activities of the Labour Inspectorate of monitoring the applicable rules to regular medical examination of young workers, including the number of violations identified and sanctions applied.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

### ***Protection against sexual exploitation***

The Committee takes note of the amendments to the Criminal Code of May 22, 2013 which led to the transposition of the relevant EU directives on combating the sexual abuse and sexual exploitation of children and child pornography (2011/93/EU). The definition of 'child' was introduced in the Criminal Code (Article 127) as a human being under 18 years of age unless under the law applicable to the child, majority is attained earlier.

In reply to the Committee's question, the report states that the possession of child pornography is a criminal offense (Article 370§1 of the Criminal Code).

The Committee further notes from the report that the staff of the selected ministries and administrative bodies have participated in numerous trainings and seminars aimed at prevention of sexual exploitation of children. The Ministry of Education, Science, Research and Sport prepared several information materials for teachers to better identify child victims of sexual abuse at home and to provide them with adequate assistance.

The Committee notes from the Concluding observations of the UN Committee on the Rights of the Child (UN-CRC) on the initial report of the Slovak Republic submitted under article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, adopted by the Committee at its sixty-second session (14 January–1 February 2013) that insufficient preventive measures were taken against the exploitation of children, including their engagement in forced labour, prostitution and pornography, and measures to identify and address the root causes of the offences and extent thereof remain limited. Therefore, the UN-CRC urges the State to undertake research on the extent and root causes of the exploitation of children, including prostitution and pornography, in order to identify children at risk and assess the extent of the problem.

The Committee wishes to be informed of the statistical information regarding the cases of sexual exploitation of children. It wishes to know whether children victims of sexual exploitation can be prosecuted.

### ***Protection against the misuse of information technologies***

The Committee recalls that in light of the fact that new information technologies have made the sexual exploitation of children easier, States Parties must adopt measures in law and in practice to protect children from their misuse. As for example the Internet is becoming one of the most frequently used tools for the spread of child pornography, States parties must take measures to combat this, such as by providing that Internet service providers be responsible for controlling the material they host, encouraging the development and use of the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.).

The Committee asks for full information concerning supervisory mechanisms and sanctions for sexual exploitation of children through the information technologies. It further asks whether legislation or codes of conduct for Internet service providers are foreseen in order to protect children.

### ***Protection from other forms of exploitation***

The Committee notes that 'begging' and 'forced marriages' were introduced as separate crimes relating to human trafficking.

As regards street children, according to the report, they are being assisted by the offices of labour, social affairs and family in accordance with the Act on Social and Legal Protection of Children and Social Guardianship. The officers take the children to their home and prepare individual plans of assistance for each family.

In this respect, the Committee notes from the Concluding observations of the UN Committee on the Rights of the Child (UN-CRC) on the initial report of the Slovak Republic submitted under Article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, adopted by the Committee at its sixty-second session (14 January–1 February 2013) that various measures have been taken by the State Party to pay particular attention to children who are especially vulnerable, in particular children in situations of poverty, Roma children and unaccompanied children. However, the UN-CRC Committee regrets the absence of measures and programmes targeting more particularly girls, children in street situations, children in residential care, and children of refugees and asylum seekers and unaccompanied and separated children.

The Committee takes note of the report submitted by the Slovak authorities on measures taken to comply with the Recommendation CP(2011) 3 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings. It notes in particular that as regards identification of child victims of trafficking, methodological guidance was issued for ensuring identification of potential victims of trafficking in human beings. Subsequently employees (Migration Office of the Ministry of the Interior) were trained during June 2012.

In 2011, the Ministry of the Interior issued Methodological aid guidelines focused on the procedure of all interested entities in cases of providing assistance to victims of trafficking in human beings, with special focus on specifics of the procedure in case of victims of trafficking in human beings – foreigners as well as in case of minor victims of trafficking in human beings.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 7§10 of the Charter.

## **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 the Slovak Republic.

### ***Right to maternity leave***

The Labour Code (Articles 166, 167, 168) provides for 34 weeks maternity leave (37 weeks in the case of a single mother, 43 weeks in the case of multiple births), of which 14 weeks are compulsory, including 6 weeks after birth. The report indicates that the same regime applies to the private and public sectors.

### ***Right to maternity benefits***

According to Act No. 461/2003 Coll. on Social Insurance, maternity benefits are available to employees covered by health insurance for at least 270 days in the two years preceding birth. In response to the Committee's question, the report clarifies that periods of unemployment are taken into account when calculating the qualifying period of insurance, provided that the person concerned had voluntary social insurance.

As regards the amount of maternity benefits, the Committee previously held that their level was not adequate (Conclusions 2011). It notes from the report that during the reference period the period of time during which maternity benefits are provided was increased from 28 to 34 weeks (37 weeks in the case of a single mother, 43 weeks in the case of multiple births) and that the level of maternity benefits was increased from 55% to 65% of the worker's salary. The same regime applies both to the private and public sectors. While taking note of the progress made, the Committee recalls that Article 8§1 of the Charter requires maternity benefits to be equal to the salary or close to its value, i.e. at least equal to 70% of the employee's previous salary. Therefore, despite the progress made, the Committee cannot consider the situation to be in conformity in this respect.

The Committee refers to its Statement of Interpretation on Article 8§1 (Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

### *Conclusion*

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 8§1 of the Charter on the ground that the level of maternity benefits is inadequate.

## **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 the Slovak Republic.

### ***Prohibition of dismissal***

The Committee previously found that the situation was not in conformity with Article 8, paragraph 2 of the Charter on account of the fact that the Labour Code, as an exception to the general prohibition to serve a notice of dismissal on an employee during her pregnancy or maternity leave (Article 64.1.c) allowed employers to do so in case of relocation of the activities (Article 63.1).

The report clarifies in this respect that, in case of relocation, each employee is given an opportunity to continue working in the new location or start carrying out other suitable work in the original workplace (when only part of the activities are relocated) and dismissal is accordingly only authorised when the concerned worker refuses either solution. The report indicates that a draft amendment is under consideration, which would be aimed at making more explicit that dismissal in case of relocation can be applied only when the employee does not agree with the changes to the employment contract resulting from the relocation.

The Committee recalls that it had already examined such explanation in its previous Conclusions (Conclusions XVI-2 (2004)) and considered that the situation was not compatible with the Charter's aims under Article 8, paragraph 2, to protect women during pregnancy and maternity leave against the economical and psychological effects of dismissal and safeguard their financial security and security of employment. Insofar as the situation has not changed and the exception laid down in the Slovak law goes beyond the strict criteria allowing dismissal set out by the Charter, as interpreted by the Committee, the situation remains not in conformity with Article 8, paragraph 2 of the Charter.

As regards civil servants, the Committee refers to its previous Conclusion (Conclusions 2011), where it noted that pursuant to section 49 of the Civil Service Act, notice of dismissals are prohibited during pregnancy or maternity leave and that, according to section 51 of the same Act, termination of employment could only be carried out during pregnancy or maternity leave following a serious disciplinary violation.

### ***Redress in case of unlawful dismissal***

The Committee asks the next report to provide updated information concerning the means of redress in case of unlawful dismissal, whether reinstatement of the employee to her post is provided for in such case and what other types and levels of compensation are provided for, in case reinstatement should not be possible. It reserves in the meantime its position in this issue.

### ***Conclusion***

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 8§2 of the Charter on the ground that a worker can be dismissed during her pregnancy or maternity leave if she does not accept changes in her employment contract resulting from the relocation of all or part of the employer's activities.

## **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 the Slovak Republic.

The report states that there have been no changes to the situation which the Committee previously found to be in conformity with Article 8, paragraph 3 of the Charter: in addition to the normal daily breaks, Article 170 of the Labour Code provides for two half-hours nursing breaks per shift (for each child) until the child reaches six months of age and, in the succeeding six months, one half-hour break per shift (for each child). The nursing breaks may be combined and provided at the beginning or at the end of the shift. If the concerned employee works part-time, but not less than half the normal weekly working time, she shall be entitled to only one half-hour nursing break until the child is six months old. The Committee previously noted that the number of nursing breaks is set on the basis of length of the working day and that, accordingly, women working less than half of the statutory working time, for instance two full working days twice a week, would be entitled to two breaks for each day. It furthermore notes that nursing breaks are considered as working time and are remunerated according to the employee's average earnings. The Committee asks whether the same rules apply to employees in the public sector.

### *Conclusion*

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

The report states that there have been no changes to the situation which the Committee previously found to be in conformity with Article 8§4 of the Charter: while in principle the same rules apply to all employees as regards nightwork, as defined by Article 98 of the Labour Code, a pregnant woman, a mother who has given birth within the last nine months or a nursing woman can request at any time a medical check (Article 98§3d), a modification of their working time (Article 164§2) or a transferral to daytime work to a suitable equivalent post (Article 55§2f). If such transferral is not possible, the concerned woman is entitled to a "balancing allowance" aimed at covering the difference between her previous and present earnings (Article 162§3) or to time off and wage compensation (Article 162§4).

The Committee asks whether the same rules apply to employees in the public sector.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 8§4 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

The report states that there have been no changes to the situation which the Committee previously found to be in conformity with Article 8§5 of the Charter: a pregnant woman, a mother who has given birth within the last nine months or a nursing woman cannot be assigned to work that is physically inappropriate for them or might harm their organism, as defined by the Regulation of the Government of the Slovak Republic or by medical advice (Article 161 of the Labour Code). In such cases, the concerned woman shall be transferred to another suitable equivalent post (Article 55§2f and 162). If such transferral is not possible, the concerned woman is entitled to a "balancing allowance" aimed at covering the difference between her previous and present earnings (Article 162§3) or to time off and wage compensation (Article 162§4). The Committee previously noted that similar conditions apply to civil servants, under the Civil Servants Act (Sections 32 and 76), except as regards the "balancing allowance" in case of reassignment to a post with less favourable salary conditions and had asked for clarifications in this respect. As the report does not reply to this question, the Committee reiterates its request for the next report to clarify whether the women concerned are exposed to a loss of pay during their period of reassignment to a suitable post. It reserves in the meantime its position on this issue.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 8§5 of the Charter.

## **Article 12 - Right to social security**

### *Paragraph 4 - Social security of persons moving between States*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by the Slovak Republic in response to the conclusion that it had not been established that the retention of accrued benefits and the maintenance of accruing rights were guaranteed to nationals of all other States Parties (Conclusions 2013, Slovak Republic).

The Committee recalls that in order to ensure the exportability of benefits, States may choose between bilateral agreements or any other means such as unilateral, legislative or administrative measures (Statement of interpretation on Article 12, Conclusions XIII-4 (1996)).

The report confirms that exportability of benefits is ensured on the basis of Section 116§3 of Act No. 461/2003 Coll. on Social Insurance which provides that pensions benefits, occupational accident benefits and survivors' benefits are exportable, including to countries which are not members of the EU or the EEA or the Swiss Confederation, upon confirmation that the beneficiary is alive, unless an international treaty by which the Slovak Republic is bound, states otherwise.

In view of this information, the Committee considers that the situation is in conformity with the Charter on this point.

With respect to maintenance of accruing rights, the Committee recalls that there should be no disadvantage for a person who changes their country of employment where they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. This requires, where necessary, the aggregation of employment or insurance periods completed in another territory and, in the case of long-term benefits, a *pro-rata* approach to the conferral of entitlement, the calculation and payment of benefit (Conclusions XIV-1 (1998), Portugal). States may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures (Conclusions 2006, Italy). States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.

The Government reiterates in the report that the principle of accumulation and maintenance of periods and benefits is ensured for nationals of other EU member states through EU legislation. For countries which are not EU member states, these principles are covered by bilateral agreements. The Slovak Republic currently has bilateral agreements with the following Council of Europe member states which are not EU members or are not members of the European Economic Area: the Russian Federation, Serbia, Ukraine, Turkey, Bosnia and Herzegovina, Montenegro and "the Former Yugoslav Republic of Macedonia" (signed in November 2014).

The Government further declares its readiness to negotiate with any other country wishing to conclude a bilateral agreement on social security with the Slovak Republic. However, there has to be will of the other states to conclude such agreements.

The Committee acknowledges that the conclusion of bilateral agreements presupposes an interest from both sides and that where migratory movements are negligible such interest may be limited or absent. However, as noted above maintenance of accruing rights may also be achieved on the basis of unilateral measures, legislative or administrative. Nevertheless,

as there is no indication in the report that such measures have been taken or are planned, the Committee holds that the situation is not in conformity with the Charter in this respect.

*Conclusion*

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 12§4 of the Charter on the ground that the maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

## **Article 13 - Right to social and medical assistance**

### *Paragraph 3 - Prevention, abolition or alleviation of need*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by the Slovak Republic in response to the conclusion that it had not been established that everyone may receive by the competent services such advice and personal help as may be required to prevent, to remove or to alleviate personal or family want (Conclusions 2013, Slovak Republic).

The Committee recalls that Article 13§3 concerns specifically services offering advice and personal assistance to persons without adequate resources or at risk of becoming so (Conclusions XVI-2 (2003), Hungary). In its previous conclusion the Committee in particular pointed to the lack of information on the amount of total spending on social services covered by Article 13§3, on whether services and institutions are adequately distributed on a geographical basis and whether they are provided with sufficient means to provide assistance as necessary.

The report first of all confirms that under Act No. 448/2008 Coll. social advice and personal assistance are provided free of charge to ensure that persons without resources have access to these services. Social services are services in the public interest and are provided without profit.

Secondly, the report states that as of 31 December 2012 38,263 persons (0.74% of the population) were provided with social services delivered by a total of 1,090 social services facilities established by a municipality, higher territorial units or by non-public providers. Long-term-care social services were provided to 35,293 persons in 915 facilities (facilities for the elderly, social services homes, specialised facilities, day-care centres, assisted living facilities, rehabilitation centres, care service facilities). The Committee asks that the next report contain information on the number and the qualifications of the staff working in these facilities as well as information on the various categories of beneficiaries served.

Out of the 1,090 social services facilities 401 facilities (37%) had been established by the self-governing regions, 263 facilities (24%) had been established by municipalities while non-public providers accounted for 426 facilities (39%). The Government is of the view these figures show that the geographical distribution of social services facilities is adequate. The Committee nevertheless asks how the facilities are distributed between the different regions and municipalities. It also wishes to know how the non-public providers are distributed in the territory.

Thirdly, the report states that the Government continuously attempts to increase the amount of resources that are used on social services. Thus, in 2013 the Ministry of Labour, Social Affairs and Family granted self-governing regions and municipalities a total of € 51,818,754 for co-financing social services, which marked a significant increase compared to 2012 where the amount granted was € 38,164,516. The Committee asks that the next report contain up-dated information in this respect.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 13§3 of the Charter as regards advice and personal help.

## **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 the Slovak Republic.

### ***Social protection of families***

#### ***Housing for families***

The Committee has constantly interpreted the right to economic, legal and social protection of family life provided for in Article 16 as guaranteeing the right to adequate housing for families, which encompasses secure tenure supported by law (Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint 52/2010, decision on the merits of 22 June 2010, § 54).

Under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment. The Committee recalls that this obligation extends to ensuring protection against unlawful eviction (European Roma Rights Center (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24).

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies. Any appeal procedure must be effective (Conclusions 2003 France, Italy, Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction

To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards access to adequate housing for the families, the Committee asks for information in the next report on all the aforementioned points.

With regard to Roma families, the report indicates that on 11 January 2012 the Government approved the Strategy for the integration of Roma up to 2020 aiming at improving access to housing with special emphasis on social housing and the need to support abolishing segregation in housing. In addition, the report states that funds are being used in the context of the European Regional Development Fund to bridge the gap between the majority of the population and the Roma minority in access to housing and utilities (such as water, electricity and gas). The problem of inadequate housing for Roma families has also been partially addressed by the Program for Housing Development adopted by the Government.

In the frame of this program the Ministry of Transport, Construction and Regional Development subsidizes the construction of rental housing, infrastructure as well as the elimination of system failures in residential homes. This program is governed by Act No. 443/2010 on Subsidies for Housing Development and on Social Housing. Based on this program there were 2,900 apartments built and made available for members of the Roma minority to ensure that they are living in much better conditions and among the rest of the population.

According to the European Commission against Racism and Intolerance (ECRI), (5th report on Slovakia, 16 September 2014, §§ 98-101), housing situation of Roma has worsened with the erection of some 14 walls segregating predominantly Roma neighbourhoods; the latest was erected in Kosice, the second largest city, in June 2013. The walls resulted in deepening the segregation between the poorer Roma communities from better-off neighbours. In addition, a number of anti-Roma protest marches (11 between 2010 and 2012) were organised to oppose the inclusion of Roma settlements in "urban areas" populated by non-Roma. ECRI also witnessed *in situ* the Roma very poor housing and health conditions of a Roma settlement near the village of Moldova nad Bodvou. Moreover, according to the report of the Commissioner for Human Rights on his visit to the Slovak Republic (CommDH(2011)42, §§ 57-67) approximately half of the Roma population live in marginalised communities, including segregated settlements, majority conditions in most of these settlements are seriously sub-standard, segregation is enhanced by the building of walls to separate Roma from non-Roma areas and the lack of secure tenure of land, housing and property increases their vulnerability to forced evictions.

While taking note of the measures taken, the Committee considers in view of the foregoing that the situation is not in conformity with the Charter on the ground that the right to housing of Roma families is not effectively guaranteed. It asks for information in the next report on the outcomes of the measures taken to improve the housing situation of Roma families.

### ***Childcare facilities***

The Committee notes that as Slovak Republic has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

### ***Family counselling services***

The Committee refers to its previous conclusion (Conclusions 2011) where it found the situation to be in conformity with the Charter.

### ***Participation of associations representing families***

The Committee already asked twice (Conclusions 2006 and 2011) if associations representing families were consulted when family policies were drawn up. In view of the lack of information, the Committee considers that the situation is not in conformity with the Charter on the ground that it has not been established that associations representing families are consulted when family policies are drawn up.

### ***Legal protection of families***

### ***Rights and obligations of spouses***

The Committee asks for the second time for up-to-date information in the next report on the system governing the rights and obligations of spouses in respect of one another and their children. It also wishes to be informed about the legal means of settling disputes between spouses and disputes concerning children. Should the next report not provide the necessary

information, there will be nothing to show that the situation is in conformity with Article 16 of the Charter on this ground.

### ***Mediation services***

The report provides no information on mediation services despite the fact that the Committee already asked twice to be informed on such services. The Committee reiterates its request concerning the functioning of mediation services, particularly whether they are free of charge, how they are distributed across the country and how effective they are. The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the provision of mediation services whose object should be to avoid the further deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from seeking such services for financial reasons. Providing these services free of charge constitutes an adequate measure to this end. Otherwise, in case of need, a possibility of access for families should be provided.

In the meantime, it finds that the situation is not in conformity with the Charter on the ground that it has not been established that mediation services exist.

### ***Domestic violence against women***

In its previous conclusion (Conclusions 2011) the Committee asked information on the implementation of the legislation on domestic violence. The report provides no information in this respect therefore the Committee reiterates its question. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter in this respect.

### ***Economic protection of families***

#### ***Family benefits***

According to Eurostat data, the monthly median equivalised income in 2013 was €561. According to MISSOC, the monthly amounts of child benefit was €23.52, that is 4.1% of the monthly median equivalised income.

The Committee considers that, in order to comply with Article 16, child benefit must constitute an adequate income supplement, which is the case when they represent a significant percentage of the monthly median equivalised income. On the basis of the figures indicated, the Committee considers that the situation is not in conformity with the Charter on the ground that the level of child benefit does not constitute an adequate income supplement.

#### ***Vulnerable families***

The Committee reiterates its question concerning the measures taken to ensure the economic protection of Roma families. Should the next report not provide the requested information, there will be nothing to show that the situation is in conformity on this ground.

#### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with the Charter on the ground that entitlement to childbirth allowance and childminding allowance was subject to an excessive length of residence requirement.



As regards childminding allowance, the report indicates that the situation has changed, in that permanent residence permit is no longer required to apply for the allowance. The applicant to this allowance may reside in the country on the basis of a temporary residence permit. The situation has therefore been brought into conformity in this respect.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to childminding allowance.

However, concerning childbirth allowance, the report states that to be able to apply for it without a permanent residence permit the applicant must fulfil one of these conditions:

- be a citizen of a state that is member of the European Union, European Economic Area or the Swiss Confederation; or
- be a citizen of a state which has a bilateral agreement on social security with the Slovak Republic; or
- be granted refugee status.

In view of these specific conditions, the Committee considers that not all foreign nationals of States Parties are treated equally with regard to childbirth allowance. It therefore finds that the situation is not in conformity with the Charter.

The Committee asks the next report to indicate whether stateless persons are treated equally with regard to childbirth allowance.

#### *Conclusion*

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

- the right to housing of Roma families is not effectively guaranteed;
- it has not been established that associations representing families are consulted when family policies are drawn up;
- it has not been established that mediation services exist;
- the level of child benefits does not constitute an adequate income supplement;
- equal treatment of nationals of States Parties regarding the payment of childbirth allowance is not ensured.

## **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 the Slovak Republic.

### ***The legal status of the child***

The Committee notes that there have been no changes to the situation. It wishes to be informed of any developments in the legislation and the case law regarding the establishment of paternity as well as the right of an adopted child to know his/her origin.

### ***Protection from ill-treatment and abuse***

In its previous conclusion (Conclusions 2011) the Committee held that the situation was not in conformity with the Charter as all forms of corporal punishment were not explicitly prohibited in the home.

The Committee notes from the report that the Ministerial Committee for Children stated that a cooperation between the Ministry of Labour, Social Affairs and Family and the Ministry of Justice was established to prepare an amendment of the Civil Code and the Penal Code to explicitly prohibit all forms of corporal punishment of children in the home.

The Re-codification Commission has been invited by the Minister of Labour, Social Affairs and Family to prepare a draft amendment of the Civil Code and the Penal Code in this respect.

The Committee further notes from the Global Initiative to End Corporal Punishment that the Family Act 1963 (amended 2002) does not explicitly prohibit corporal punishment. Rather, it authorises the use of “adequate” childrearing methods, stating in Article 31(2) that in exercising their parental rights and duties, parents “must rigorously protect the child’s interests, manage his or her behaviour and exercise a surveillance over him or her in accordance with the level of his or her development” and that they “may use adequate upbringing measures so that the child’s dignity is not violated and his or her health, emotional, intellectual and moral development are not endangered”.

The Committee also notes from the National report submitted to the UN Human Rights Council Working Group on the Universal Periodic Review (Eighteenth session 27 January – 7 February 2014) that since 2009, the so-called zero tolerance of physical punishment of children has been introduced into legislation. It means that according to the Act on Social and Legal Protection of Children and on Social Care, it is prohibited to use any forms of physical punishment against children and other gross or degrading forms of treatment or punishment which cause or may cause physical or mental injury. Everybody has the obligation to report violations of children’s rights to the socio-legal protection authority. The ban of physical punishment in exercising parental rights and obligations is proposed to be included in the new Civil Code, which is under preparation.

The Committee wishes to be informed of the follow up given to this legislative initiative.

In the meantime, it considers that the situation which it has previously found not to be in conformity with the Charter has not changed. Therefore, it reiterates its previous finding of non-conformity on the ground that not all forms of corporal punishment are prohibited in the home.

### ***Rights of children in public care***

In its previous conclusion the Committee noted that the number of children in institutional care remained high and asked what measures were taken to reduce that number. The Committee also asked what were the criteria for the restriction of custody or parental rights and what procedural safeguards existed to ensure that children were removed from their families only in exceptional circumstances.

The Committee notes that the report does not provide this information. It holds that if this information is not provided in the next report, including the number children in institutions (and the maximum number in a single institution) and in foster care, there will be nothing to establish that the situation is in conformity with the Charter.

### ***Right to education***

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

### ***Young offenders***

In its previous conclusion the Committee held that the situation was not in conformity with the Charter as the maximum length of pre-trial detention of minors could go up to two years, which was excessive.

The Committee notes from the report that juveniles may be held on remand only for as long as it is absolutely necessary. The court may extend the custody of juveniles who have committed a particularly serious crime beyond one year, but the total length of custody may not exceed two years.

According to the report, the Ministry of Justice does not plan to lower the maximum length of pre-trial detention of minors due to the very low number of juveniles who have committed a serious crime and were actually held on remand in the previous years. In 2009 only four young persons were accused of having committed a particularly serious crime, in 2010 only two persons and then only one person in 2011, 2012 and 2013.

The Committee recalls that under Article 17§1 of the Charter juveniles should be remanded in custody only in exceptional circumstances and for a short period of time. It considers that the fact that there are very few cases in practice of juveniles held on remand pending trial does not exempt the State Party from this obligation. Therefore, the situation is not in conformity with the Charter.

In reply to the Committee's question, the report states that young offenders have a statutory right to education. This is governed by Act 245/2008 (School Act), §24, 2 (c) which states that when a pupil has been taken into custody or is serving a sentence, an individual education will be granted to him/her to ensure that the education is not interrupted.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such

as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

#### *Conclusion*

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 17§1 of the Charter on the grounds that:

- all forms of corporal punishment are not prohibited in the home;
- juveniles may be held in pre-trial detention for up to two years.

## **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 the Slovak Republic.

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with the Charter on the ground that Roma children were disproportionately represented in special classes.

The Committee notes from the Concluding observations of the UN Committee on the Elimination of Racial Discrimination on the ninth to the tenth periodic reports of Slovak Republic, (11 February–1 March 2013) that de facto segregation in the education system has continued, with the practice of 'Roma-only' schools or classes. Despite some measures taken, including the 2008 Schools Act and the December 2011 ruling of the District Court in Prešov, there is information that Roma children are dramatically overrepresented in special classes and special schools for children with intellectual disabilities.

The Committee notes from the report that in the case of children from socially disadvantaged and vulnerable groups, access to education is secured systematically. Children belonging to vulnerable and socially disadvantaged groups are not enrolled in special schools, based on their social background. All children are enrolled in ordinary schools and follow approved school curriculum, even though there are a lot of cases when parents of children from the disadvantaged groups want their children to be specifically placed in special schools.

According to the report, another important institution is the so called "zero year". The minimum number of students per class in a zero year is 8, while maximum is 16. For each child enrolled in the zero year the school will receive 200% of the regular allowance. For many teachers this is an important and meaningful tool when working with children from disadvantaged groups to help them catch up socially and cognitively with children who are raised in a normal environment so that they could eventually move into the education mainstream.

The Strategy of the Slovak Republic for the integration of Roma up to 2020 aims to improve the situation of Roma children by:

- increasing the participation of Roma children in pre-primary education from approximately 18% (in 2010) to 50% by 2020;
- creating diverse educational programs focused on supporting the individualised needs of the student; increasing the inclusiveness of the educational system, increase the effectiveness of the system of social support of education, reevaluation of the system of funding the students from socially disadvantaged groups, establishing a permanent funding mechanism for supporting all-day educational and caretaking system in elementary schools with the proportion of socially disadvantaged students of more than 20%;
- improving the care of pedagogical staff and specialists and increase the proportion of teachers and specialists fluent in Romani;
- exercising the right to education in a Romani language or to learning the Romani language, and supporting further development of identity using support for the use of Romani language at all levels of education;

The Committee notes from the European Commission against Racism and Intolerance (ECRI) report on Slovak Republic (adopted on 19 June 2014) that despite the ban on ethnic segregation guaranteed by the Anti-Discrimination Act and the School Act, de facto segregation still exists. For example, in August 2013 the Ombudsman expressed concerns over the on-going existence of Roma-only classes in Slovak schools. Moreover, according to

ECRI, the authorities have admitted that 30% of Roma pupils attend special schools for children with mental disabilities.

Roma pupils are also overrepresented in special schools for pupils with physical disabilities (between 60% and 85%). This is often due to an incorrect diagnosis as well as state subsidies which create incentives for school managers and Roma parents to enrol children in special schools. To counter this situation, Roma pupils are often placed in "zero-year classes" in primary schools to support their educational needs before being enrolled in regular classes. However, in most cases the class composition remains the same until the end of the education cycle, resulting in segregation.

ECRI considers that given the differences in quality between mainstream education and education provided in special schools or classrooms, unjustified placement in such schools seriously affects Roma children's future education and employment opportunities. It considers that one of the best ways to counter segregation of Roma in primary education and avoid their placement in special schools is to ensure that pre-school education is readily available to Roma children aged between three and six.

The Committee considers that despite the measures taken, the situation which it has previously found not to be in conformity has not changed. Roma children are still disproportionately represented in special classes. Therefore, the situation is not in conformity with the Charter.

The Committee further recalls that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that States Parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2 , Conclusions 2011).

The Committee asks whether unlawfully present children have a right to education.

#### *Conclusion*

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 17§2 of the Charter on the ground that Roma children are disproportionately represented in special classes.

## **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 the Slovak Republic.

### ***Migration trends***

The overall inflow of immigrants to Slovak had been constantly rising from 2004, when the country entered into the EU, and reached its peak in 2008 when the number of incoming immigrants registered for permanent residence reached 8,765 persons. In 2009, the number of new immigrants fell by some 2,500 on yearly basis mainly due to the effects of economic crisis. According to most recent data, in 2011 authorities registered 4,829 new immigrants for permanent residence. The emigration flows from Slovak Republic have been relatively steady in recent years. In 2011 over 85% of all migrant Slovak citizens emigrated to other EU countries.

Out of the total number of immigrants residing in Slovak Republic, in 2011 only about 23% came from countries outside of the EU, mainly from Ukraine, Serbia, Russia, Vietnam and China.

### ***Change in policy and the legal framework***

In 2011 the government adopted new strategic document "The Migration policy of the Slovak Republic – Perspective until the year 2020", prepared by the Ministry of Interior. The document prioritizes immigration of high-skilled workers with an emphasis on culturally related countries.

In terms of integration of migrants, the Strategy on Integration of Foreigners in the Slovak Republic was adopted in 2009. In 2011, the government adopted its first summary report about the implementation of integration strategy in 2010. The NGOs working with migrants pointed out, *inter alia*, that the implementation reports are rather vague, and failed to tackle the problem with the lack of proper statistical data and indicators in evaluation of integration.

In 2014, a new Integration Policy was adopted. It does not define the current state of affairs but proposes new directions for the integration of foreigners. The Committee asks for information on the concrete measures taken to implement this policy to be provided in the next report.

### ***Free services and information for migrant workers***

The report states that there is no discrimination between migrant workers and nationals in the provision of employment services, social assistance, legal advisory services, healthcare, etc.

The Central Office of Labour, Social Affairs and Family and its local units provide employment services and social services to both nationals and migrants from all countries, in connection with EURES units.

Information for foreign nationals is available in English on the website of the Ministry of Foreign Affairs. The different types of residency and application procedures are explained. EURES also provides information on living and working conditions in the Slovak Republic.

The Migration Information Centre (MIC) continued to provide information and advice on the rights of migrant workers who have settled or wish to settle in the Slovak Republic in order to facilitate their integration. The Committee notes, however, that the activities of the MIC will be significantly reduced from 1 June 2015 due to the termination of project funding.

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. The Committee requests that the next report provided updated information on information programmes and funding for organisations and departments providing advice to foreigners.

### ***Measures against misleading propaganda relating to emigration and immigration***

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 states that Alien and Border Police officers undergo extensive training on fighting racial discrimination, and such training is also provided to ordinary police departments and social workers.

In response to the Committee's question regarding measures taken to counter misleading propaganda relating to immigration and emigration (Conclusions 2011), the report states that the new Integration Policy aims to create, implement and promote communication strategies; support cultural activities aimed at developing multicultural dialogue; to create and adopt ethical rules of presenting information on the topics of migration and integration, etc. All ministries are involved, as well as the Council of the Slovak Government for Human Rights, National Minorities and Gender Equality, and the Council for the Prevention and Elimination of Racism, Xenophobia, Anti-semitism and other forms of Intolerance. The implementation measures will be continually evaluated. The Committee asks that the next report provide information on the measures taken to implement these elements of the Integration Policy, and the results of the evaluations.

The Ministry of Education co-ordinates the Council of Europe's No-Hate Speech Movement campaign in the Slovak Republic and has organised a number of awareness-raising activities in 2013.

The Committee notes from the report of the European Commission against Racism and Intolerance (ECRI) (Adopted 2014), that a Public Defender of Rights acts as Ombudsman, and may receive complaints of act on his/her own initiative. The first annual report was presented in June 2013. However, the Committee notes that the Parliament failed to discuss a special report addressed to it in August 2013. The Committee asks that the next report include details of the activities of the Ombudsman and other monitoring bodies operating in the Slovak Republic.

The Committee notes from the abovementioned ECRI report that "anti-minorities" rhetoric, in particular aimed at stirring anti-Roma sentiment to make electoral gains, has been common among politicians from the entire political spectrum. In particular, a defamatory campaign against Roma was conducted by the Slovak National Party (SNS) in 2010. The Committee also notes that the leader of the party Our Slovakia (SLNS), which has been criticised for its nationalist ideology and links to extremism, was elected in November 2013 as governor of the Banska Bystrica region, one of the three regions with the highest Roma Population. It asks what action has been taken to combat discrimination in political discourse.

The 2011 Code of Ethics provides that a journalist shall not incite hatred or discrimination based on race, system of beliefs, religion, ethnic origin, age, social status, gender or sexual orientation, and that information about a person's belonging to a "minority" shall be provided only where it is relevant to the news. The Committee notes from the abovementioned report of ECRI that the Press Council of the Slovak Republic is responsible for ensuring respect for the code, however it is reported to be little known among the general public and not popular among journalists. The Committee asks whether any other monitoring bodies exist with responsibility for other forms of media.



The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information, and of deterring the promulgation of discriminatory views. It considers 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 asks that the next report provide up to date information concerning measures taken to combat misleading propaganda relating to immigration and emigration.

The Committee recalls that States have an obligation to take measures or undertake programmes to prevent the dissemination of false information to departing nationals, as well as to prevent the misinformation of foreigners wishing to enter the country. Authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia). It asks for complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 19§1 of the Charter.

## **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 the Slovak Republic.

### ***Remuneration and other employment and working conditions***

The issues related to employment of foreigners in the Slovak Republic are governed by the Act No.5/2004 on 'Employment Services and on Changes and Amendments of some Acts as Amended'. This act stipulates that aliens have the same legal status as Slovak citizens, if they are issued a work permit and temporary stay permit for the purpose of employment. The Labour Code (Act N. 311/2001 Coll.) also stipulates that employers are obliged to treat with employees in accordance with principle of equal treatment.

Sections 5 and 6 of the Anti-discrimination Act govern non-discrimination in employment and state that discrimination of person on the basis of their race, ethnicity, gender, religious beliefs, nationality, health disability, age, sexual orientation, marital status, family status, language, political or other opinions, social background, etc. is strictly prohibited. The Committee notes that the Anti-discrimination Act was amended in February 2013 to allow for the adoption of positive discrimination measures in favour of migrants.

The report states that persons who feel that they are being discriminated against may file a complaint to the local labour inspection body, and if discrimination is discovered in the inspection process, the employer shall be penalised by fines in accordance with the Act No. 125/2006 on Labour Inspection. The Committee asks for further details on the work of the Labour Inspection, and any data concerning the number and amount of fines imposed.

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 and promotion. The provision applies also to vocational training (Conclusions VII (1981), United-Kingdom). The Committee asks whether vocational training with a view to improving the skills of workers and their opportunities is available in the Slovak Republic on the same basis for migrants and nationals.

The Committee repeats its request in the previous conclusion (Conclusions 2011) for information regarding the measures taken to implement the relevant legal and policy framework; this includes practical measures such as awareness raising, training for employers, monitoring and civil engagement.

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

The Slovak Republic has ratified ILO Convention 87 on Freedom of Association and Protection of the Right to Organise.

According to the report, migrant workers are free to join or form trade unions and benefit from collective bargaining if they so wish. The report states that the rights are contained in Acts No. 83/990 and No. 2/1991. However, the Committee understands that Act No. 83/1990 on the Associations of Persons refers only to citizens of the Slovak Republic. The Committee asks what legally binding provision or decision ensures that this right applies also to migrant workers being resident in the Slovak Republic without citizenship.

Furthermore, Section 20 of Act No. 83/1990 provides that "Terms governing the activities of associations with foreign participation shall be governed by specific legislation." It asks for further information on the application of this provision, and whether trade unions are restricted in their activities when their membership includes those from other countries.

When a migrant starts working for an employer situated in the territory of the Slovak Republic, the employer is obliged to provide information on trade unions active in the undertaking. The Committee also notes that asylum seekers are informed about trade unions and collective bargaining during employment information sessions while they are still in asylum camps.

The Committee refers to the Statement of Interpretation in the General Introduction and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

*Conclusion*

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

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

*Paragraph 5 - Equality regarding taxes and contributions*

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

The primary legislation governing taxation of workers is Act No. 595/2003 on 'Income Tax'. This act contains provisions guaranteeing equal treatment for migrant workers.

The Committee notes that a number of new bilateral agreements regarding taxation have been agreed between the Slovak Republic and other States Parties, namely Georgia, the Netherlands, "The Former Yugoslav Republic of Macedonia" and Poland.

The Committee asks what contributions are payable in relation to employment, and whether migrants are treated equally with nationals.

The Committee previously asked (Conclusions 2011) for information on possible measures taken to implement the legal framework. Given the lack of information provided in this regard in the report, it reiterates its question.

*Conclusion*

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

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

### *Paragraph 6 - Family reunion*

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

### **Scope**

As a member of the European Union, the Slovak Republic has transposed the EU Directives 2003/86/EC on the right to family reunification and 2004/38/EC on the right of citizens of the EU and their family members to move and reside freely within the territory of the EU. The provisions are largely contained in the Act No. 404/2011 on 'Residence of Aliens'.

Section 21 of the Act No. 404/2011 on 'Residence of Aliens' provides for family reunion as a ground for granting a temporary residence permit. Under Article 27, family members are defined as spouses of those holding any form of residence permit (except temporary study permits), provided both partners are over 18; minor children of either spouse and dependent parents of either spouse. The permit may be granted no earlier than one year after the entry of the sponsor family member, if his or her residence will last at least two years. The Committee recalls that states may require a certain length of residence of migrant workers before their family can join them. A period of one year is acceptable under the Charter, but a longer period is considered excessive (Conclusion 2011, Statement of interpretation on Article 19§6).

Persons admitted under temporary residence permits for the purpose of family reunion may not enter the labour market.

The residence permit can be renewed at most for five years for the purpose of the family reunion to the foreigner's spouse, a minor child whose uninterrupted temporary residence permit for the purpose of the family reunion lasts more than ten years with a foreigner holding a temporary residence permit, or to a foreigner who has reached maturity and is dependent on parental care. After four years the spouse can apply for permanent residence. The Committee notes that the possibility of cancelling a permanent residence permit of the spouse of a Slovak national on the grounds that they no longer live together as a family has been removed. However, it also notes the criticism of the Migration Integration Policy Index 2015 (MIPEX 2015), the "spouses and parents have little chance of an autonomous status in the 5 years before long-term residence, even in many cases of death, divorce and physical/emotional abuse". The Committee asks the Government to comment on these observations.

The Committee notes that under Section 30 of the abovementioned act, the spouses or minor children of European Union citizens are expressly given the right to a temporary residence permit for the purpose of family reunion, for an equal period of time as the citizen of the union. This is in contrast to non-European Union citizens, whose family do not have the right automatically to be granted residence (Section 26(5)), and who are subject to the discretion of the police department.

The report states that Asylum seekers have the right to family reunion pursuant to Act No. 480/2002 on Asylum.

### **Conditions governing family reunion**

The Committee notes from MIPEX 2015 that "most non-EU sponsors can apply through a typically discretionary procedure with more demanding conditions than in most countries. However the Slovak Republic limits the opportunities for the social and economic integration of these family members, treating them as temporary dependents of their sponsor."

Section 33 of the Act No. 404/2011 on 'Residence of Aliens' provides that during the application for a residence permit, the official shall consider, *inter alia*, interests of a minor child of a third country national, personal and family conditions of a third country national, his/her financial situation and length of residence up to now and assumed residence.

It further states that an application shall be rejected if:

- there is a justified suspicion that a third country national would threaten the state safety, public order or public health during his/her residence;
- a third country national fails to fulfil the conditions for the granting of temporary residence

Furthermore, it is stated in the report that "as each application is evaluated individually, a possible rejection can occur due to the applicant carrying a specific disease or if the applicant would pose a threat to public health or security." 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. These are the diseases requiring quarantine which are stipulated in the World Health Organisation's International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis (Conclusions XVI-1 (2002), Greece). Very serious drug addiction or mental illness may justify refusal of family reunion, but only where the authorities establish, on a case-by-case basis, that the illness or condition constitutes a threat to public order or security (Conclusions XV-1 (2000), Finland).

The Committee asks what diseases or other qualities of an applicant may be taken, in practice, to constitute a jeopardy to the health of others. In the meantime, it defers its position on this matter.

With regard to means requirements, the Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). It notes that MIPEX 2015 concluded that fees and housing test (revised in 2014) are comparatively high by Slovak standards. Section 32 of the Act No. 404/2011 requires the applicant to demonstrate they have sufficient means, set at the subsistence minimum (halved for children under 16), and accommodation.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee asks for information on what methods and calculations are used in determining whether it is possible to anticipate that the family member will be a burden on the social care system or the health insurance system.

It notes that Section 32(5)(g) requires the applicant to provide a solemn statement of a sponsoring family member along with proof of that family member's income. In particular, the Committee asks what income is taken into account, and whether income derived lawfully from the social welfare system by a family member already established in the Slovak Republic can be considered. In the meantime, it considers that there is not sufficient information provided by the report for it to examine the situation.

The Committee previously asked (Conclusions 2011) for specific information, including figures, on any rejections of applications for family reunion based on criteria relating to available means, housing, and state of health. The report states that at the time of reporting, 1,378 permits for the reunification of family had been issued in 2013; 1,162 permits were issued in 2010 and 1,223 permits were issued in 2012. It does not provide figures on rejections.

The Committee considers 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.

The Committee notes that pursuant to Section 54 of the Act No. 404/2011 on 'Residence of Aliens', the decision concerning the grant of long term residence cannot be appealed. It asks whether review or appeal before a judicial body is possible. It also asks what forms of appeal or review are available to applicants whose requests for temporary residence have been refused, and for information on their use in practice.

The Committee asks that the next report provide a full and up-to-date description of the legal framework and details of its application in practice.

#### *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 7 - Equality regarding legal proceedings*

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

Section 30 of the Act No. 99/1963 on Civil Procedure provides for the recommendation of a party who does not have sufficient funds to appoint counsel to the Legal Aid Centre. This Centre was established in accordance with Act No. 327/2005 on Legal Aid to Persons in Material Need. The legal assistance provided by this institution ranges from legal advisory services to being granted representation in court. Legal Aid Centre offices are geographically distributed across the country to improve access.

On top of this, for almost 5 years, the Human Rights League organization has been providing legal assistance and counselling to third-country nationals through its Legal Counselling for residence and citizenship.

The Committee asks that the next report provide statistical data on the number of cases in which representation has been provided under the relevant legal aid schemes.

In response to the Committee's question (Conclusions 2011), the report states that every person (including migrants) has the right to participate in legal proceedings using their mother language or a language they understand. It is the court's responsibility to ensure that this right is complied with, in accordance with Section 18 of the Civil Procedure Act. Therefore, it is the court's responsibility to have all the documents translated to the language of the migrant, to provide interpretation, etc. The cost is then covered by the state budget. This concerns all stages of the legal proceeding in question.

The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid assistance.

### *Conclusion*

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



**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 the Slovak Republic.

The Committee notes that there has been no change to the situation, which it previously considered to be in conformity with the Charter (Conclusions 2011). Accordingly, it reiterates its conclusion.

The Committee recalls that migrants must be allowed to transfer money to their own country or any other country. With reference to its Statement of Interpretation on Article 19§9 (Conclusions 2011), the Committee asks whether there are any restrictions on the transfer of the movable property of migrant workers.

*Conclusion*

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

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

### *Paragraph 11 - Teaching language of host state*

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

The new Integration Policy, adopted in 2014, includes measures to improve access of children resident in the Slovak Republic to compulsory education, to which they have the right. The Committee recalls that the language of the host country is automatically taught to primary and secondary school students throughout the school curriculum but this is not enough to satisfy the obligations laid down by Article 19§11. States must make special effort to set up additional assistance for children of immigrants who have not attended primary school right from the beginning and who therefore lag behind their fellow students who are nationals of the country (Conclusions 2002, France).

The Committee notes the concerns in the Migration Policy Index 2015 (MIPEX 2015) that, inter alia, not all newcomer pupils may be able to keep up with their peers, since only those in the asylum system have guaranteed state support to learn Slovak; no additional financial and professional support provided systematically for schools with newcomer pupils; and 50% of foreign-born pupils arrive after age 12 and therefore do not benefit from the relatively short period of compulsory education. In this respect, the Committee notes that the new Integration Policy includes measures such as designing and incorporating a programme for teaching Slovak as a foreign language. The Committee notes that the Integration Policy came into force outside the reference period.

During the reference period, the Act No. 245/2008 on Training and Development contained provisions on the education of children of migrant workers, which included Slovak as a foreign language in the state schooling system. The Committee requests that updated information on the implementation and results of the Integration Policy be included in the next report.

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

In this respect, the new Integration Policy of the Slovak Republic includes measures such as offering standardised courses in the official language, and creating a working group to provide regionally accessible courses.

The Committee recalls that a requirement to pay substantial fees is not in conformity with the Charter. States are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible (Conclusions 2011, Norway).

Between 2011 and 2013, 1062 migrants attended free public language courses in Bratislava and Košice, and social and cultural integration courses have been attended by 337 migrants. Courses last approximately 3-4 months and two lessons per week are provided. The MIC (IOM) also offers some financial grants for educational and vocational courses, which can assist with travel costs. The amount may be up to €450. The Slovak Republic funds 25%, with the other money coming from the MIC, financed by the European integration fund.

The Comenius University in Bratislava, and the Studia Academia Slovaca provide language courses which are open to the public, which include intensive courses and evening classes. The Committee asks whether they are free to the public.

Free language courses and resources up to level A2 on the Common European Framework are available through the Ministry of Foreign Affairs' website at [www.slovake.eu/en](http://www.slovake.eu/en).

Through the European Refugee Fund, the Migration Office provides funding for courses in the Slovak language at reception facilities for asylum seekers. These courses are either run by NGOs or municipalities.

*Conclusion*

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

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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

The Committee recalls that the aim of Article 27 is to promote the reconciliation of professional and family responsibilities by providing people with family responsibilities with equal opportunities in respect of entering, remaining in and re-entering employment. Article 27 requires States Parties to take specific measures in the field of vocational guidance and training, so as to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities and to assist them in advancing in economic activity (Conclusions 2007, Armenia).

In its previous conclusion (Conclusions 2011) the Committee asked whether there were any placement, counselling or training programmes for workers with family responsibilities. It notes from the report that counselling services regarding employment activities are provided by offices of labour, social affairs and family as part of work rehabilitation, retraining or skills acquisition. These are however, tailored to the individual needs of the persons in question.

The Committee has held that if the standard employment services (those available to everyone) are well developed, the lack of extra services for people with family responsibilities cannot be regarded as a human rights violation (Conclusions 2003, Sweden).

The Committee notes in this respect that in its conclusion on Article 10§3 (Vocational training and retraining of adult workers, Conclusions 2012) it did not find it established that the right to vocational training of both employed and unemployed persons was adequately guaranteed. Therefore, the Committee requests more detailed information regarding counselling and vocational training services available for persons wishing to re-enter employment, such as persons returning from parental leave.

### ***Conditions of employment, social security***

In reply to the Committee's question, the report states that according to Article 164§ 2 of the Labour Code if either parent, continuously caring for a child younger than 15 years of age requests a reduction in working time or other arrangements to the fixed weekly working time, the employer shall be obliged to accommodate their request, unless there are substantive operational reasons not to do so.

In its previous conclusion the Committee asked to what extent periods of leave due to family responsibilities were taken into account in determining the right to pension and for calculating the amount of pension, both for women and men. It notes from the report in this respect that workers with family responsibilities are entitled to social security benefits under different schemes, in particular health care, during periods of parental leave. They are also covered by pension insurance. Both maternity and parental leaves are taken into account for determining the right to pension, equally for women and men. The parent concerned should submit a registration form to have the pension contribution paid by the state to the Social Insurance company before going on leave.

In reply to the Committee's question, the report states that according to Article 141§1 of the Labour Code an employer shall excuse the absence from work of an employee for periods of the employee's temporary incapacity to work due to disease or accident, periods of maternity leave and parental leave, quarantine, attending to a sick family member, during periods of

caring for a child younger than ten years of age who for substantive reasons may not be in the care of a children's educational facility or school which the child is otherwise in the care of, or if the person who otherwise cares for the child fell ill or was ordered to submit to quarantine (quarantine measures), or who underwent examination or treatment in a medical facility.

According to Section 36§1a of the Act 461/2003 Coll. on Social Insurance an employee is entitled to wage compensation from the system of social insurance if he/she is looking after a sick child, spouse, parent or spouse's parent. An employee is also entitled to wage compensation from the system of social insurance if they are looking after a child younger than ten years of age who for substantive reasons may not be in the care of a children's educational facility or school which the child is otherwise in the care of (if the facility is closed down e.g. due to quarantine, etc.).

### ***Child day care services and other childcare arrangements***

In its previous conclusion the Committee asked about the qualification of staff in childcare facilities. It notes that all kindergartens are established by municipalities and they act as individual institutions and decide on acceptance or rejection of each individual application. As for the staff, their training is regulated by the Decree of the Ministry of Education No 437/2009, laying down the qualification requirements for different categories of teaching staff and specialists.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the Slovak Republic is in conformity with Article 27§1 of the Charter.

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

### *Paragraph 2 - Parental leave*

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

In reply to the Committee's question in the previous conclusion (Conclusions 2011) as to whether the request concerning the length of leave made by a parent is generally granted, or whether the employer has some discretion in this respect and if there is an obligation to take the leave immediately after maternity, the report states that it is entirely up to the parent to decide when and for how long they wish to take the parent leave. However, they have to do it before the child reaches the age of three years of age (or six, in case of a child who requires specific care due to health reasons). There is no obligation to take up parental leave right after the maternity leave ends.

As regards financial compensation of parental leave, according to the report under Article 166§2 of the Labour Code, the parent is entitled to parent benefit amounting to € 203.20 per month and child benefit amounting to € 23.52 per month. If a parent decides to continue to work, they are entitled to a child-minding benefit amounting to € 230 per month that is meant to be used to cover the expenses of child-minding and related services.

The Committee further notes from the report that according to Article 157§2 of the Labour Code, at the end of maternity or parent leave, the employer is obliged to enable the worker to return to the same job.

### *Conclusion*

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

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

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

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

### ***Protection against dismissal***

The Committee recalls that under Article 27§3 family responsibilities must not constitute a valid ground for termination of employment.

According to the report, family responsibilities do not constitute neither a legal, nor a valid reason for termination of employment by the employer. This ground for termination of employment of an employee by an employer is not listed in the Act 311/2001 Coll of the Labour Code and therefore such a reason cannot be used by an employer to terminate employment of an employee. Termination of employment by the employer can be given only according to Article 63§1 of the Labour Code for economic reasons (such as, redundancy or liquidation of an enterprise), the failure of the employee to fulfil his/her obligations or misconduct.

The Committee further notes that according to Article 61§2 of the Labour Code an employer may only give notice (of termination) to an employee for reasons expressly stipulated in this Act. The reason for giving notice may not be subsequently amended.

According to the report, one of the fundamental roles of the Labour Code is to protect employees with family responsibilities, which is also confirmed by Article 64.1c) according to which within the period of pregnancy, maternity leave, or parental leave, or when a single employee takes care of a child under the age of three, the employer may not give notice of termination (prohibition of notice).

### ***Effective remedies***

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 (Statement of Interpretation on Articles 8§2 and 27§3 (Conclusions 2011) .

The Committee asks whether the legislation complies with these standards.

### *Conclusion*

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



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**SLOVENIA**

*This text may be subject to editorial revision.*





The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Slovenia which ratified the Charter on 7 May 1999. The deadline for submitting the 14th report was 31 October 2014 and Slovenia submitted it on 9 March 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report contains also information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to social security – social security of persons moving between States (Article 12§4)

Slovenia has accepted all provisions from the above-mentioned group .

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Slovenia concern 37 situations and are as follows:

– 25 conclusions of conformity: Articles 7§1, 7§2, 7§6, 7§7, 7§8, 7§9, 7§10, 8§1, 8§2, 8§4, 8§5, 16, 17§2, 19§1, 19§3, 19§5, 19§6, 19§7, 19§9, 19§11, 19§12, 27§1, 27§2 and 27§3

– 11 conclusions of non-conformity: Articles 7§3, 7§4, 8§3, 12§4, 17§1, 19§4, 19§8, 19§10, 31§1 and 31§2

In respect of the other situation related to Article 7§5 the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Slovenia under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

### **Article 8§2**

The Employment Relationships Act (ZDR-1), as amended in 2013, prohibits the employer from terminating the worker's employment contract during her pregnancy or when she is breastfeeding a child of up to one year of age, nor may the employer terminate the employment contract of a worker who is on an uninterrupted parental leave, taken in the form of full-time absence from work, and for one month after the end of such leave.

### **Article 8§3**

Paid nursing breaks have been introduced by the new Parental Protection and Family Benefits Act (ZSDP-1), that entered into force in April 2014 and has been applicable since 1 September 2014.

The next report to be submitted by Slovenia will be a simplified report dealing with the follow up given to decisions on the merits of the following collective complaints in which the Committee found a violation:

- Association for the Protection of all Children (APPROACH) Ltd v. Slovenia, Complaint No. 95/2013, decision on the merits of 05/12/2014, violation of Article 17§1
- European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia, Complaint No 53/2008, decision on the merits of 08/09/2009, violation of Article 31

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 Slovenia.

The report indicates that the new Employment Relationships Act adopted in 2013 does not change the system which was previously found by the Committee to be in conformity with Article 7§1 of the Charter. Section 21 of the new Act establishes the minimum age of employment at 15 and provides that an employment contract concluded with a person under the age of 15 is considered null and void. The report adds that Sections 218 and 219 of the ZDR-1 govern the applicable sanctions in cases of breach.

With regard to the monitoring activities of the Labour Inspectorate, the report indicates that during the reference period, the labour inspectors did not identify any violations of the provisions stipulating that an employment contract may only be concluded with persons older than 15 years or else such a contract is considered null and void.

The Committee recalls that the situation in practice should be regularly monitored and invites the Government to continue to provide information in its next report on the monitoring activities and findings of the State Labour Inspectorate in relation to illegal employment of children under the age of 15.

### *Conclusion*

The Committee concludes that the situation in Slovenia is in conformity with Article 7§1 of the Charter.

## **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 Slovenia.

The report indicates that the new Employment Relationship Act adopted in 2013 (ZDR-1, Official Gazette of Republic of Slovenia No. 21/2013) has not brought any changes to the legal framework which the Committee found to be in conformity with Article 7§2 of the Charter. Section 191 of the new Act of 2013 contains the prohibition of employment under the age of 18 for dangerous and unhealthy activities which are enumerated in the same Section. Sections 218 and 219 of the new Act provide the sanctions to be imposed on employers in cases of violations.

The Committee notes the information on the findings of Labour Inspectorate during the reference period. The report indicates that only 2 violations of the provisions of Employment Relationships Act prohibiting the employment of young persons under 18 for dangerous and unhealthy activities were established during the reference period.

The report indicates that according to the data provided by the Labour Inspectorate, in 2012 two violations of the Rules on the Protection of the Health of Children, Adolescents and Young Persons at Work (Official Gazette of Republic of Slovenia No. 82/2003) were established: one regarding the suitability of measures adopted in relation to the work of young persons, and one in connection with information provided by an employer to young persons on potential risks and occupational health and safety measures.

The report does not provide any information on the measures and sanctions effectively imposed on employers in practice for breach of the legislation related to prohibition of employment under the age of 18 for dangerous and unhealthy activities.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information 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 prohibition of employment of young persons under the age of 18 for dangerous or unhealthy activities.

### *Conclusion*

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

In its previous conclusion (Conclusions 2011), the Committee asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. The report indicates that a child who has reached the age of 13 may also perform light work during school holidays but for a maximum of 30 days and in a manner, to the extent, and on condition that the work to be performed does not pose a risk to the child's safety, health, morals, education or development. The Committee asks confirmation that children are guaranteed the benefit of an uninterrupted rest period of at least two weeks during summer holiday.

Further, the report states that the working time of children under the age of 15 who perform light work during school holidays must not exceed seven hours per day or 35 hours per week. During each 24-hour period, children must be granted a daily rest period of at least 14 consecutive hours. The Committee refers to its Statement of Interpretation on the duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than six hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015).

It therefore concludes that the situation in Slovenia is not in conformity with Article 7§3 of the Charter on the ground that the duration of light work for children subject to compulsory education during school holidays is excessive.

According to the data provided by the Labour Inspectorate, no violations of the Rules on the Protection of the Health of Children, Adolescents and Young Persons at Work were detected in 2010, 2011 and 2013, but two violations were established in 2012. The Committee asks if these violations regarded the employment of children subject to compulsory education.

The Committee asks the next report to continue to provide information in its next report on the monitoring activities and findings of the State Labour Inspectorate, including the number and nature of violations detected and sanctions imposed with regard to the prohibition of employment of children subject to compulsory education.

### *Conclusion*

The Committee concludes that the situation in Slovenia is not in conformity with Article 7§3 of the Charter on the ground that the duration of light work for children subject to compulsory education during school holidays is excessive.

## **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 Slovenia.

The report indicates that Section 192 of the Employment Relationships Act as amended in 2013 (Official Gazette of Republic of Slovenia No. 21/20013, ZDR-1) provides that young workers under the age of 18 should not work for more than eight hours per day and 40 hours per week.

The Committee recalls that under Article 7§4, domestic law must limit the working hours of young persons under 18 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice (Conclusions 2006, Albania). For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to the article (Conclusions XI-1 (1991) the Netherlands). However, for persons over 16 years of age, the same limits are in conformity with the article (Conclusions 2002, Italy). The Committee considers that the situation in Slovenia is not in conformity with Article 7§4 of the Charter on the ground that the daily and weekly working time for young workers under the age of 16 is excessive.

With regard to the supervision, according to the data of the Labour Inspectorate for the reference period, six violations of the provisions on the working time, breaks and rest periods of workers under the age of 18 were established. The Committee recalls that the situation in practice should be regularly monitored and asks the next report to provide information on the monitoring activities and findings of the Labour Inspectorate (violations detected and sanctions imposed on employers) in relation to working time of young workers under 18.

### *Conclusion*

The Committee concludes that the situation in Slovenia is not in conformity with Article 7§4 of the Charter on the ground that the daily and weekly 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 Slovenia.

#### **Young workers**

The report indicates that according to the Employment Relationships Act, employers must pay the minimum wage defined by law or a collective agreement. Under Section 6 of the same Act, employers shall ensure equal treatment for workers irrespective of their age, especially with respect to wages and other incomes related/deriving from an employment relationship. The report indicates that the minimum wage is defined by the Minimum Wage Act (Official Gazette of Republic of Slovenia No. 13/2010).

The report indicates that the minimum wage established by law was of € 763 in 2012 and of € 784 in 2013. The Committee requests that the next report state whether the minimum wage in force is gross or net of social contributions and tax deductions.

The Committee noted in its conclusion on Article 4§1 with regard to the decent remuneration of adults that according to EUROSTAT figures for 2012, the average annual wage (table "earn\_nt\_net") of single workers without children (100% of an average worker) was €17 538 (or €1 461.50 per month) gross and €11 707.47 (or €975.62 per month) net. The gross monthly minimum wage (table "earn\_mw\_cur-1") was €763.06. That wage as a proportion of average monthly earnings was 50.00% (table "earn\_mw\_avgr2") (Conclusions 2014, Article 4§1 ).

The Committee recalls that under Article 7§5 of the Charter, wages paid to young workers under 18 years of age can be reduced by as much as 20% compared to a fair adults' starting or minimum wage. Therefore, if young workers were paid 80% of a minimum wage in line with the Article 4§1 fairness threshold (60% of the net average wage), the situation would be in conformity with Article 7§5 (Conclusions XVII-2 Vol. 2 (2005) Spain). In the present case, as the young workers' wage is at the same level as the adult workers' wage, the Committee examines whether the net minimum wage of young workers represents 80% of the minimum threshold required for adult workers (60% of the net average wage). Noting that according to the data provided in the report and the information available in 2012 the monthly minimum wage amounted to 50% of the gross average monthly wage, the Committee considers that the situation is in conformity with the Charter as regards the wages paid to young workers.

However, the Committee asks that the next report provide information on the minimum wage and average wage of young workers calculated net. 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.

The Committee noted that pay levels vary considerably from region to region and that they are very low or even lower than the minimum wage in some sectors (textile, leather and furniture industries; construction; catering; security and investigation services; building and garden maintenance services; and personal services) (Conclusions on Article 4§1, 2014). It therefore requests that the next report provide information on the wages paid to young persons working in the above mentioned sectors. Pending receipt of the information requested, the Committee reserves its position on this point.

#### **Apprentices**

The report indicates that according to Section 141 of the Employment Relationships Act, a trainee or *a worker undergoing training* or *a worker undergoing job coaching* is entitled to a basic wage in the amount of at least 70% of the basic wage a worker would receive in the workplace for the type of work that he is being trained for. The report emphasises that the trainee's wage may not be lower than the minimum wage established by law.



The report adds that the duration of work-based training with employers depends on the programme: a minimum of 24 weeks of work-based training is required in the secondary vocational programme and a minimum of four weeks in the secondary technical programme. Work-based training with employers is conducted on the basis of a collective agreement between a school and an employer or an individual agreement between a student and an employer for 55 weeks of work-based training in a three-year vocational education programme. The Vocational Education Act envisages the payment of remuneration to students (Section 37); the amount of remuneration paid to pupils and students for compulsory work-based training is defined in collective agreements for individual sectors.

The Committee recalls that the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period, starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (Conclusions 2006, Portugal). The Committee asks information on the net amounts of the allowances paid to apprentices at the beginning and at the end of the apprenticeship as provided by the collective agreements.

Pending receipt of the information requested, the Committee reserves its position on this point.

#### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

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

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

In its previous conclusion (Conclusions 2011), the Committee deferred its conclusion and recalled that the States Parties have to report periodically and asked whether the situation has changed during the reference period. The report indicates that the system previously found in conformity with Article 7§6 of the Charter by the Committee (Conclusions 2002, 2004, 2006) has not changed during the reference period.

The Committee noted previously that specific rules stipulating the inclusion of time spent on training in the normal working time were contained by the General Collective Agreement for Economic Activities (GCAEA) and the Collective Agreement for Non-Economic Activities (CANEA) (Conclusions 2002). It noted that under the GCAEA, workers had the right to training which was in the employer's interest, while employers had the right to refer workers to training. Pursuant to Section 31 GCAEA, time spent on training during normal working hours was considered as working time and the worker enjoyed the same rights as if he had worked. During the training the worker was thus entitled to a salary compensation of 100% of the salary base (the worker's salary for the previous month assuming full working hours – Section 48 GCAEA). Similar rules were provided for by the CANEA.

The Committee asks whether the above mentioned rules are still valid and how many young workers are covered by the general collective agreements. Otherwise, it asks up-to-date information on the applicable rules with regard to the inclusion of time spent on vocational training in the normal working time for young workers. The Committee points out that should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 7§6 of the Charter.

The report indicates that the Vocational Education Act (Section 39) envisages that the practical and theoretical education of students cannot exceed eight hours per day and the maximum number of hours per week defined by law or collective agreements minus two hours (which amounts to 38 hours per week under the regulations in force). In the case of five hours of theoretical education per day, practical education with an employer is not allowed on the same day. In the case of four or more hours of interrupted practical education, a secondary school student must be provided with a break of at least 30 minutes.

The Committee previously asked for updated information on the activity of the Labour Inspectorate. The report indicates that the Labour Inspectorate did not establish any violations of the Vocational Education Act during the reference period. The Committee recalls that the situation in practice should be regularly monitored and asks the next report to provide information on the number and nature of violations detected by the Labour Inspectorate as well as on sanctions imposed for breach of the regulations regarding the inclusion of time spent on vocational training by young workers in the normal working time.

### *Conclusion*

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

The report indicates that the amendments brought to the Employment Relationships Act (Official Gazette of the Republic of Slovenia No. 21/2013, ZDR-1) during the previous and current reference periods did not change the provisions regulating the system of paid annual holidays for young workers under 18. The report adds that only the sections of the Employment Relationships Act have been renumbered. Thus, Section 159 of the new Act contains the general rule that all employees are entitled to four weeks of paid annual leave, whereas Section 194 of the Act provides that young workers under 18 benefit of an extra seven working days of paid annual leave.

The report indicates that during the reference period, the Labour Inspectorate recorded a decrease in the number of violations of the provision on the minimum number of days of paid annual holidays for workers under the age of 18, namely: 46 in 2010, 33 in 2011, 34 in 2012 and 22 in 2013. The Labour Inspectorate did not detect any violations of the provision on extended annual leave for workers under the age of 18 during the reference period.

The Committee recalls that the situation in practice should be regularly monitored and asks the next report to provide information on the monitoring activities and findings of the Labour Inspectorate (violations detected and sanctions applied) in relation to paid annual holiday for young persons under 18.

### *Conclusion*

The Committee concludes that the situation in Slovenia 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 Slovenia.

The report indicates that the new Employment Relationships Act (Official Gazette of Republic of Slovenia No. 21/20013, ZDR-1, Section 193) adopted in 2013 did not change the legal framework regarding the prohibition of night work which the Committee had previously found to be in conformity with Article 7§8 of the Charter.

As regards supervision, the report indicates that according to the data provided by the Labour Inspectorate for the reference period, 14 violations of the prohibition of night work for workers under the age of 18 were identified.

The Committee notes that the exception according to which young workers under 18 may perform night work in cases of *force majeure*, for a limited period, under the supervision of an adult and only where there are not enough adult workers available was maintained in Section 193 (2) of the new Act. The report indicates that up to and including 2011, the Labour Inspectorate did not keep separate statistics for violations involving workers under the age of 18 who in the event of *force majeure* must perform night work. The report adds that a new information system was set up in 2012 which provides separate statistics for violations of this provision, but the Labour Inspectorate did not establish any violations in 2012 and 2013.

The Committee recalls that the situation in practice should be regularly monitored and asks the next report to provide information on the monitoring activity of the Labour Inspectorate, its findings and applicable sanctions in relation to possible illegal involvement of young workers under 18 in night work. It also asks information on the activity of the Labour Inspectorate of monitoring the cases of *force majeure* as exceptions from the prohibition of night work by young workers under 18 years of age.

### *Conclusion*

The Committee concludes that the situation in Slovenia 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 Slovenia.

The report indicates that there have been no changes to the legal framework which was previously examined by the Committee and found to be in conformity with Article 7§9 of the Charter (Conclusions 2011).

The Rules on the Protection of the Health of Children, Adolescents and Young Persons at Work (Official Gazette of the Republic of Slovenia, No. 82/2003) establish that an employer must arrange for regular health controls, and preliminary and periodical medical examinations for young workers. Periodical medical examinations must be carried out within the period defined in the risk assessment, but no later than within a year.

In its previous conclusion, the Committee asked information on the application of the legislation in practice and the findings of the Labour Inspectorate (Conclusions 2011). The report indicates that during the reference period, the inspectors did not identify any violations in this area.

The report adds that the Health and Safety at Work Act (Official Gazette of the Republic of Slovenia, No. 43/2011) provides sanctions for the employers who do not arrange for medical examinations of their employees corresponding to occupational health and safety risks – a fine between 2,000 € and 40,000 €. A fine of 500 € to 4,000 € is imposed on the employer's responsible person who commits such an offence.

The Committee recalls that the situation in practice should be regularly monitored and asks how the authorities monitor the observance of the applicable rules in practice. It asks that the next report provide information on the number and nature of violations detected by the monitoring bodies (eg the Labour Inspectorate, health services) as well as on sanctions imposed on employers in practice for breach of the rules concerning the medical examination of young persons under 18 years of age.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

### ***Protection against sexual exploitation***

In its previous conclusion (Conclusions 2011) the Committee wished to know whether under the new Criminal Code all minors under 18 years of age were equally protected against child pornography.

It notes that according to Article 176 (3) of the Criminal Code whoever produces, distributes, sells, imports or exports pornographic or other sexual material depicting minors or their realistic images, supplies it in any other way, or possesses such material, or discloses the identity of a minor in such material shall be subject to prison sentence of between 6 months and five years.

In response to the Committee's question about trafficking in children, the report states that this issue is integrated into the overall activities aimed against trafficking in human beings as defined in the two-yearly action plans approved by the Government. Since 2010, preventive activities have been carried out at primary and secondary schools raising awareness among young people about the risks of trafficking in human beings. These programmes are part of the action plans funded by the government and carried out by the non-governmental organisations selected through calls for applications.

According to the report, the Committee that there were two cases of trafficking in children registered in the reference period: a case of a minor girl (arranged marriage in the Roma community) in 2010 and one case in 2011.

### ***Protection against the misuse of information technologies***

The Committee takes note of the activities of the Safer Internet Centre of Slovenia, which was established in 2005. It is the national project promoting and ensuring a better internet for children. This is an EU initiated and co-financed project. In Slovenia financial support also comes from the Ministry of Education, Science and Sport. The project is run by a consortium of partners coordinated by Faculty of Social Sciences at the University of Ljubljana.

The Committee wishes to be kept informed about the activities of this centre.

### ***Protection from other forms of exploitation***

According to the report, trafficking in human beings is defined as a separate criminal offence in Article 113 of the Criminal Code. The Act Amending the Criminal Code, which was passed in November 2011 (and became applicable on 15 May 2012), instituted a new form of criminal offence under Article 113, which defines criminal offences of trafficking in human beings. In addition to sexual exploitation, forced labour, enslavement and servitude, the purposes for trafficking in human beings have been extended so as to also include the use of persons traded for the purpose of committing criminal offences (such as recruitment for street theft).

Assistance to and protection of victims of trafficking in human beings are provided by assistance and prevention programmes selected through statutory public calls issued by the competent ministries.

Assistance is guaranteed to all children and to all other victims of trafficking and includes the provision of suitable accommodation, food and care, psychological assistance, assistance in ensuring basic health-care services in accordance with the law governing health care and health insurance.

In reply to its question concerning the assistance provided to children living or working in the street, the Committee notes from the report that crisis centres are a form of short temporary placement of children or adolescents in distress. Their stay in crisis centres can last up to 21 days but may be extended. After a child or an adolescent is treated and his or her situation evaluated he or she is returned to his original family, or, in agreement with the parents, referred for further treatment to another institution.

The Committee notes from the Report of the Group of Experts on Action against Trafficking in Human Beings (GRETA) concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia (2013) that the Slovenian authorities should conduct and support research on trafficking-related issues as an important source of information for future policy measures. Areas where research is particularly needed at present to shed more light on the extent and nature of the problem include trafficking for labour exploitation, trafficking in children and trafficking within Slovenia.

The Committee asks the next report to provide up-to-date information concerning the situation indicated in these recommendations.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Slovenia is in conformity with Article 7§10 of the Charter.

## **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 Slovenia.

### ***Right to maternity leave***

The Committee notes from the report that the same regime applies to women employed in the private as in the public sector. In particular, the Parental Protection and Family Benefits Act, as amended in 2006 and 2008, provides for a total of 105 consecutive days of maternity leave, starting 28 days before the expected date of birth. Unused days of prenatal maternity leave may not be used after the child's birth, unless the birth was premature.

The Committee previously asked (Conclusions 2011) whether the postnatal leave was compulsory or not, for at least six weeks. The report insists on the obligation for employers to enable their employees to take maternity leave, but does not confirm that there is an unrelinquishable period of compulsory postnatal leave. On the contrary, the Committee notes from the official website of the Ministry of Labour, Family, Social Affairs and Equal Opportunities that the law allows an underage mother with the status of apprentice, pupil or student to renounce to part of her maternity leave, in favour of another person taking care of the child. The mother's maternity leave can furthermore be forfeited to another person if she abandons the child or if she is deemed by a competent physician to be permanently or temporarily incapable of independent life and work. The Committee asks the next report to clarify whether there are other cases where the mother can renounce to part of her postnatal maternity leave.

The Committee recalls its caselaw, according to which national law may permit women to opt for a maternity leave shorter than 14 weeks but in all cases there must be a compulsory period of postnatal leave of no less than six weeks which may not be waived by the woman concerned. Where compulsory leave is less than six weeks, there must be adequate legal safeguards fully protecting the right of employed women to choose freely when to return to work after childbirth – in particular, an adequate level of protection for women having recently given birth who wish to take the full maternity leave period. In the light thereof, the Committee asked what legal safeguards exist to avoid any undue pressure on employees to shorten their maternity leave: for example, whether there is legislation against discrimination at work based on gender and family responsibilities; whether there is an agreement with social partners on the question of postnatal leave that protects the free choice of women, and whether collective agreements offer additional protection. In addition, it asked for information on the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave).

In response to these questions, the report points out that the Employment Relationships Act adopted in 2013 (*Uradni list RS*, no. 21/13; ZDR-1) prohibits discrimination of workers on grounds of pregnancy, maternity and parental leave and provides for sanctions against employers who would commit such discrimination. Furthermore, in addition to maternity leave, the Parental Protection and Family Benefits Act provides for paternity leave (90 days, of which 15 days are paid) and childcare leave of 260 days, which can be taken by either parent after the maternity leave. In exceptional cases (multiple births, premature babies, children in need of special care) the length of the leave can be extended. A part of the leave, not exceeding 75 days, can be postponed but must be taken before the child is eight years old. Childcare benefits are paid for the whole duration of the leave, at 90% of the average basis calculated during the past 12 months (until 30 May 2012, it used to be 100%), with a maximum of two monthly average wages and a minimum corresponding to 55% of the minimum wage.

In the light of this information, the Committee considers that the guarantees offered are of an adequate level to avoid pressure on women to waive their rights connected to maternity



leave. It asks nevertheless the next report to provide any relevant statistical data on the average length of maternity leave and the proportion of women taking less than 6 weeks postnatal leave.

### ***Right to maternity benefits***

In order to be entitled to maternity or paternity benefit, the worker must have been insured prior to the commencement of leave, or at least 12 months in the preceding three years. The Committee previously noted that Maternity benefits are based on the average income basis on which the contributions for parental protection have been calculated in the past twelve months before submitting the application for maternity leave (Section 41 of the Parental Protection and Family Benefits Act). Maternity benefits for full absence from work amount to 100% of that income basis, with a maximum of two monthly average wages and a minimum corresponding to 55% of the minimum wage. The same framework applies to women employed in the public as in the private sector.

The Committee refers to its Statement of Interpretation on Article 8§1 (Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

### *Conclusion*

**Pending receipt of the requested information**, the Committee concludes that the situation in Slovenia is in conformity with Article 8§1 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

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

#### ***Prohibition of dismissal***

Section 115(1) of the Employment Relationships Act (ZDR-1), as amended in 2013, prohibits the employer from terminating the worker's employment contract during her pregnancy or when she's breastfeeding a child of up to one year of age, nor may the employer terminate the employment contract of a worker who is on an uninterrupted parental leave, taken in the form of full-time absence from work, and for one month after the end of such leave. In the abovementioned cases (pregnancy, breastfeeding up to one year and parental leave) the law provides that the employer may not undertake any action which would be otherwise be required for the cancellation of the employment contract or for the employment of a new worker.

The Committee notes that Section 115(3) of the abovementioned Act provides that the termination of the employment remains possible, as an exception, upon consent of the labour inspector, "if there are reasons for extraordinary termination" of the employment relationship. It asks the next report to clarify, in the light of any relevant case-law, how this clause is interpreted and applied. It furthermore asks whether the same rules concerning termination of the employment contract during pregnancy and maternity leave apply also to women employed in the public sector.

#### ***Redress in case of unlawful dismissal***

Under Section 118 of the Employment Relationships Act, as amended in 2013, if the court finds that the termination of the employment contract was illegal but that, with regard to the circumstances and the interests of both parties the continuation of the employment relationship would no longer be possible, the court shall recognise the worker's period of service and other rights arising from the employment relationship, as well as the worker's right to compensation pursuant to the rules of civil law.

According to the report, the maximum compensation amounts to 18 monthly wages, as paid in the last three months prior to the cancellation of the employment contract. The report clarifies that the amount of pecuniary compensation is determined by the court taking into account the duration of the worker's employment, the worker's chances for new employment and the circumstances that led to the illegal termination of the contract, as well as the rights enforced by the worker until the termination of the employment relationship. In 2012, the Supreme Court (Higher Labour and Social Court Pdp 234/12) explained that "compensation" under Section 118 of the Employment Relationships Act should be interpreted to cover the estimated future damage in the amount of one to 18 wages, and that the compensation amount should be determined in accordance with the criteria set by the case-law, taking into account the worker's length of service in total and with the employer at issue, the worker's chances of finding new employment, in light of the worker's age, education or profession, health, the situation on the labour market, the worker's efforts to find new employment etc. In another judgment of 2012 (VIII Ips 114/2012) the Supreme Court explained that such compensation does not cover the damage suffered by a worker at work or in relation to work, that is the loss of income or any other pecuniary damage caused by the illegal termination of the employment contract (until this contract is terminated by a court ruling), or for non-pecuniary damage due to potential unlawful action by the employer upon cancellation of the employment contract, but it is paid for the estimated future damage due to the failure to reintegrate the worker.

On a more general level, the Employment Relationships Act provides for the employer's liability to compensate the employee in case of damage at work or in relation to work, according to the general rules of civil law, as well as in case of damage caused by the

employer to the worker by violating the rights arising from the employment relationship (Section 179). The employer's liability also applies to non-pecuniary damage, as established by a Supreme Court Judgment in 2011 (VII Ips 97/2011). The report specifies that there is no limitation on the liability for damages under this provision.

Furthermore, if the dismissal amounts to discrimination under the Employment Relationships Act (Sections 6 and 8), the employer is liable to provide compensation under the general rules of civil law. In this context, the court will assess the amount to be awarded to the victim for non-pecuniary damage, taking into account the need to ensure that remedies are effective, proportionate and dissuasive. The Committee takes note of the ranges of the fines imposed in this respect. The report confirms that this scheme also applies to the public sector.

The Committee understands this information as indicating that, while the compensation awarded under Section 118 of the Employment Relationships Act is subject to a ceiling, an employee illegally dismissed during pregnancy or maternity leave can also claim unlimited compensation for non-pecuniary damages under other provisions of the same Act. It asks the next report to confirm that this understanding is correct, and to provide any relevant example of case-law in this respect.

#### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

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

It previously found that the situation was not in conformity with Article 8§3 of the Charter because nursing breaks (as provided by Section 193 of the Employment Relationships Act) were not remunerated.

According to the report, paid nursing breaks have been introduced by the new Parental Protection and Family Benefits Act (ZSDP-1), that entered into force in April 2014 and has been applicable since 1 September 2014 (outside the reference period). Under the new legislation, mothers in full-time employment are, on the basis of a paediatrician's note, entitled to remuneration for nursing breaks (one hour daily) until the child is nine months old; the amount of remuneration is proportionate to the indexed minimum wage under Section 2 of the Act regulating Adjustments of Transfers to Individuals and Households in the Republic of Slovenia (*Uradni list RS*, nos. 114/06, 59/07 – ZŠtip, 10/08 – ZVarDod, 71/08, 98/09 – ZIUZGK, 62/10 – ZUPJS, 85/10, 94/10 – ZIU, 110/11 – ZDIU12, 40/12 – ZUJF and 96/12 – ZPIZ-2).

The Committee notes that during the reference period (1 January 2010 – 31 December 2013) the situation was not in conformity with Article 8§3 of the Charter; it will examine the new legislation during its next assessment of the conformity of the situation with Article 8§3 of the Charter. In this connection, it asks the next report to clarify whether the same regime applies to women employed in the public as in the private sector and whether women working full days but on a part-time basis – for instance two full working days twice a week – are entitled to paid nursing breaks.

### *Conclusion*

The Committee concludes that the situation in Slovenia was not in conformity with Article 8§3 of the Charter during the reference period, on the ground that nursing breaks were not remunerated.

## **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 Slovenia.

It previously noted (Conclusions 2005 and 2011) that, under the Employment Relationships Act, night work is prohibited during pregnancy, during one year after having given birth, and during the entire nursing period, if the risk assessment shows that that work entails a risk for the worker and/or her child's health. Moreover, a worker taking care of a child between one and three years of age may only work at night if she consents to do so. The Committee asks the next report to clarify whether the employed women concerned are transferred to daytime work and what rules apply if such transfer is not possible.

In response to the Committee request for further clarifications on the steps that a worker must take to make a claim before the medical commission, with a view to assessing the existence of risks related to night work for the women concerned, the report refers to the Rules on the protection of health and safety at work of pregnant workers and workers who have recently given birth and are nursing their infant (*Uradni list RS*, nos. 82/03 and 21/13-ZDR-1) and the Rules on Preventive Medical Examinations of Workers (*Uradni list RS*, nos. 87/02,29/03 – corrigendum,124/06 and 43/11–ZVZD-1). In particular, the latter rules provide (Article 17) that a worker or his/her employer may request a review of the assessment of the fulfilment of special medical requirements for specific work in the working environment following a preventive health examination before a special medical commission. The Committee takes note of the details provided in this respect, and of the fact that the same scheme applies to the public as to the private sector.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

It notes that, according to the report, there have been no changes to the situation which was previously found to be in conformity with Article 8§5 of the Charter (Conclusions 2005 and 2011) and that the same scheme applies to women employed in the public as in the private sector.

In particular, Section 189 of the Employment Relations Act provides that a worker during pregnancy and throughout the breast-feeding period may not carry out work which might present a risk to her or her child's health due to the exposure to risk factors and working conditions, to be defined in an executive regulation. The Committee had noted that Regulations of 9 July 2003 impose a general obligation on all employers to carry out a risk assessment of the working environment and set out a list of physical, biological and chemical factors as well as a list of working conditions (including underground mining work) to which pregnant women may not be exposed (Articles 3 and 5 of the Regulations). A similar list exists in respect of women who have recently given birth or are nursing their infant. The Committee had furthermore noted that Article 6 of these regulations contained a further list of physical, chemical, and biological agents as well as working conditions to which pregnant women, women who have recently given birth or are nursing their infant may not be exposed, if an assessment of the risks reveals that there may be a risk to the health of the worker or child. The Committee reiterates its request for a comprehensive update as regards the applicable Regulations defining the risk factors, procedures and working conditions which are subject to restrictions in respect of women who are pregnant, who have recently given birth or are nursing their infant.

The Committee had also noted that the Employment Relationships Act provides that where the worker is unable to continue her previous employment due to a risk to her health or that of her child, she must be transferred to another appropriate work, without loss of pay. Under Section 189(4), if no transfer is possible, the employee must be suspended from work and is entitled to a wage compensation. The Committee asks the next report to confirm that the women concerned remain entitled to return to their previous work, at the end of the protected period.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in Slovenia is in conformity with Article 8§5 of the Charter.

## **Article 12 - Right to social security**

### *Paragraph 4 - Social security of persons moving between States*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Slovenia in response to the conclusion that it had not been established that the retention of accrued benefits and the maintenance of accruing rights were guaranteed to nationals of all other States Parties (Conclusions 2013, Slovenia).

With respect to retention of accrued benefits the Committee recalls that in order to ensure the exportability of benefits, States may choose between bilateral agreements or any other means such as unilateral, legislative or administrative measures (Statement of interpretation on Article 12, Conclusions XIII-4).

The report does not provide specific information on retention of accrued benefits. However, from another source (European Migrant Network Focused Study – Slovenia, January 2014) examining migrant access to social security and healthcare, the Committee notes that old-age pensions are exportable for EU citizens as well as non-EU citizens on the basis of the applicable social security legislation. The Committee asks that the next report confirm that pensions are exportable in the absence of bilateral agreements and without any requirements of reciprocity and indicate whether any other long-term benefits (for example occupational accident benefits, survivors' benefits, etc.) are also exportable. Meanwhile, the Committee reserves its position on this point.

As regards maintenance of accruing rights, the Committee recalls that there should be no disadvantage for a person who changes their country of employment where they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. This requires, where necessary, the aggregation of employment or insurance periods completed in another territory and, in the case of long-term benefits, a *pro-rata* approach to the conferral of entitlement, the calculation and payment of benefit (Conclusions XIV-1, Portugal). States may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures (Conclusions 2006, Italy). States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.

The Government does not explicitly address the issue of maintenance of accruing rights but explains generally that equal treatment in respect of social security rights is ensured to all migrants from the EU Member States and to the nationals of countries with which Slovenia has concluded bilateral agreements on social insurance.

Bilateral agreements on social insurance are concluded with all former republics of the Socialist Federal Republic of Yugoslavia from which the majority of migrant workers come. Moreover, in 2013 the Government took the initiative to start negotiations with Turkey and the Russian Federation to conclude agreements. Negotiations are expected to begin in 2015. The Government adds that bilateral agreements with Albania, Andorra, Armenia, Azerbaijan, Georgia and Moldova are currently not planned as the migration from these countries is very limited or does not exist. In case of increased migration flows from these countries the Government would consider concluding new bilateral agreements on social security.

The Committee acknowledges that the conclusion of bilateral agreements presupposes an interest from both sides and that where migratory movements are negligible such interest may be limited or absent. In this context the Committee takes note of the statistics provided

on the number of work permits issued to nationals of certain non-EU countries in the period 2008-2014. However, as noted above maintenance of accruing rights may also be achieved on the basis of unilateral measures, legislative or administrative. Nevertheless, as the Government does not give any indication that such measures have been taken or are planned, the Committee holds that the situation is not in conformity with the Charter as the maintenance of accruing rights is not guaranteed to nationals of all States Parties.

*Conclusion*

The Committee concludes that the situation in Slovenia is not in conformity with Article 12§4 of the Charter on the ground that the maintenance of accruing rights is not guaranteed to nationals of all other States Parties.



## **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 Slovenia.

### ***Social protection of families***

#### ***Housing for families***

Slovenia has accepted Article 31 of the Charter on the right to housing. As all aspects of housing of families covered by Article 16 are also covered by Article 31, for states that have accepted both articles, the Committee refers to Article 31 on matters relating to the housing of families.

#### ***Childcare facilities***

The Committee recalls that as Slovenia has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

#### ***Family counselling services***

The report states that under the Social Assistance Act, family counselling services are provided within the public network of social work centres that cover the entire territory. The social work centres carry out counselling on divorce, termination of cohabitation, custody of minor children, on relationship difficulties, marriage and family.

#### ***Participation of associations representing families***

The Committee notes that associations representing families participate in policymaking at two levels: as members of the Expert Council for Family and as stakeholders in public debates on legislative proposals.

The Expert Council for Family is an advisory body that, on behalf of the minister responsible for family legislation and policy, performs the following tasks: discusses the adoption of legislation and system-wide measures in the area of family policy; discusses the proposed legal acts in the area of family; issues expert opinions on the proposed legal acts; prepares initiatives for the coordinated work of sectoral bodies in the area of family; monitors the implementation of family policy measures and prepares proposals for the adoption of strategic documents and legislation in the area of the family. In addition, family associations participate in the preparation of regulations.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The rights and obligations of spouses are regulated by the Marriage and Family Relations Act, the "ZZZDR". Pursuant to this Act, spouses are equal in respect of rights and duties within the couple and towards the children. Concerning assets, spouses manage and dispose of their joint assets together and by agreement. As to children, parents are obliged to support them and take care of their life, health and upbringing.

In cases of marital disputes, and disputes concerning relations between parents and children, the court may, at the request of a party or *ex officio*, issue an interim order on the custody and maintenance of common children. In the event of a divorce, a decision on maintenance is issued by a court. When divorce is reached by mutual agreement, a maintenance agreement is an integral part of the divorce agreement. When the court grants a divorce on the basis of an action, it also decides on maintenance but it is not bound by the claim.

### ***Mediation services***

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 considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided.

The Committee takes note that pursuant to the Social Assistance Act, social assistance services to families are provided within the public network of social centres that cover the entire territory. It, however, wishes to receive the confirmation that these services cover mediation services. If mediation services are covered it asks for information in the next report on the points mentioned above. Should the next report fail to provide the requested information, there will be nothing to show that the situation is in conformity with the Charter.

### ***Domestic violence against women***

In its previous conclusion (Conclusions 2011) the Committee asked information on the implementation of the Domestic Violence Prevention Act and the National Programme for the Prevention of Domestic Violence for the period 2009-2014. The report mentions several rules implementing the Act that specify the conduct of institutions in dealing with domestic violence with a view to linking measures adopted by different ministries and providing effective measures in terms of identification and prevention to reduce domestic violence. In addition, the Committee notes that various instructions and guidelines were prepared for the work of institutions in the fight against domestic violence.

The Committee recalls that States are required to ensure an adequate protection with respect to women, both in law and in practice (recording and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims) (Conclusions 2006, Statement of Interpretation on Article 16). It therefore asks the next report to indicate how the law is implemented in practice by providing relevant data.

### ***Economic protection of families***

#### ***Family benefits***

According to Eurostat data, the monthly median equivalised income in 2013 was €988.

According to MISSOC, the amount of benefit varies according to the income in percentage of the net national average wage of the previous year and is paid up to the age of 18. In January 2015, the monthly amount of family benefit was on average €69 for the first child, €78 for the second child and €87 for the third child. If the child lives in a single-parent family then the Child Benefit (*otročki dodatek*) is increased by 30%.

Thus, child benefit represents a percentage of that income as follows: 7% for the first child; 7.8% for the second child; 8.8% for the third and each subsequent child. The Committee considers that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of the monthly median equivalised income. On the basis of the figures indicated, the Committee considers that the amount of benefits is compatible with the Charter.

### ***Vulnerable families***

In response to the Committee's question on the economic protection of Roma families, the report indicates that Roma families are protected through schemes for parental protection, family benefits and social assistance for the most vulnerable groups.

The report indicates that subject to certain conditions, the social assistance scheme provides a social assistance benefit in cash and a supplementary allowance to persons and families in social distress. The social assistance benefit in cash is to cover the minimum needs for survival.

### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

In its previous conclusion (Conclusions 2011) the Committee concluded that the situation was not in conformity with the Charter on the ground that equal treatment of nationals of other States Parties to the 1961 Charter or the Charter in the payment of family benefits was not ensured because the length of residence requirement was excessive.

The Committee notes that according to the Aliens Act adopted in 2011 the qualifying criteria for permanent residence is of five years of continuous legal residence. It however notes that certain rights to benefits from public funds such as child benefit are not subject to a permanent residence permit. On the basis of this information, the Committee asks the next report to confirm that foreign nationals are treated equally, without any length of residence requirement, with regard to child benefit.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to child benefit.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Slovenia is in conformity with Article 16 of the Charter.

## **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 Slovenia.

### ***The legal status of the child***

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.

### ***Protection from ill-treatment and abuse***

In its decision on the merits of 5 December 2014 of the Complaint No. 95/2013 Association for the Protection of All Children (APPROACH) Ltd v. Slovenia, §51, the Committee noted that the provisions of the Family Violence Prevention Act and the Criminal Code prohibited serious acts of violence against children, and that national courts sanctioned corporal punishment provided it reaches a specific threshold of gravity. However, none of the legislation referred to by the Government set out an express and comprehensive prohibition on all forms of corporal punishment of children that is likely to affect their physical integrity, dignity, development or psychological well-being. Furthermore, there was nothing to establish that a clear prohibition of all corporal punishment of children had been set out in the case-law of national courts.

The Committee notes in this regard from the report that the Slovenian Government is convinced that the national legislation in force protects children against violence, negligence or exploitation, as stipulated by Article 17 of the Charter. Corporal punishment of children is, according to the case law, one of the modes of committing the criminal offence of domestic violence.

According to the report, the Government also believes that the explicit prohibition of corporal punishment in the national legislation alone does not and cannot provide children with adequate protection against violence. The system-wide regulation of the prevention of violence against children in Slovenia represents a much broader spectrum of the prohibition of violence against children, including a ban on corporal punishment, irrespective of the motive.

The Committee further notes that at the request of international organisations (the United Nations, the Council of Europe), the Slovenian Government inserted an explicit ban on the corporal punishment of children in the proposed Family Code, which was adopted by the National Assembly on 16 June 2011. However, the Family Code was rejected at a referendum on 25 March 2012.

The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not changed. Therefore, the Committee reiterates the previous finding of non-conformity on the ground that not all forms of corporal punishment are prohibited in the home.

### ***Rights of children in public care***

According to the report, the number of children in public care decreased until 2012 and then slightly increased in 2013. The number of children with special needs who live in centres for training, work and care has been slowly but continuously decreasing. The number of children living in residential facilities of institutions or primary schools with adapted programmes had decreased until 2012 and then slightly increased in 2013. The number of children in institutions for children with emotional and behavioural disorders has remained more or less stable.

As regards placement of children, according to the report, parents participate in the placement procedure, which is based on the findings of an expert commission for the placement according to the child's individual needs. Parents can also appeal against the first-instance decision. This appeal is decided on by a second-instance commission for the placement of children with special needs established within the ministry responsible for education. The first and second instance commissions draw up an expert opinion with a proposal for the placement of the child in a suitable education programme.

The Committee asks whether poor financial situation of the family can become the sole ground of placement of children.

The Committee recalls that children in institutions should be entitled to the best quality of care. The Committee reiterates its question about the average size of an institution. It wishes to be informed of the number of children in institutions as opposed to foster families and other types of family-type care. It holds 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.

### ***Right to education***

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

### ***Young offenders***

According to the report, adolescents of both genders are sent to the juvenile correction facility by the court as an educational measure imposed in the criminal procedure against juveniles. The difference between educational measures of committal to an educational institution and committal to a juvenile correctional facility is such that the latter is imposed on juveniles in need of more efficient correctional measures. Juveniles aged between 14 and 21 years are sent to correctional facilities and can stay until their 23rd birthday. They have the right to education. Education of juveniles within correctional facility is taking place in the correctional facility (Radeče). Primary and vocational education is organised in accordance with rules on primary education and rules on education and schooling.

Juveniles committed to juvenile prison (the only one in Celje) are enrolled in educational courses. The prison organises educational courses for completing primary school and acquiring profession. When choosing educational courses for juveniles, prison is taking into account their personal characteristics and abilities, interests for certain profession and possibilities for organising education.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

*Conclusion*

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

## **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 Slovenia.

According to the report, the Primary School Act was amended during the reference period. Among the amendments was the introduction of an obligation to organise supplementary lessons in the Slovenian language and culture for children residing in Slovenia whose native language is not Slovenian. All children whose parents are not Slovenians (regardless of citizenship) are entitled to attend supplementary lessons in the Slovenian language and culture. The obligation to organise supplementary lessons is explicitly defined.

The primary and secondary education programmes for children and adolescents are free of charge. According to the report, the Government intensified its efforts to maintain equal access to education, especially regarding the access of vulnerable groups (the Roma, socially and economically disadvantaged groups, groups with special needs, immigrants, etc.).

The following three dimensions (school meals, textbooks and transport) improve the quality of education:

- School meals are regulated by the School Meals Act, i.e. the organisation, food quality, the duty of schools to educate pupils and students about a healthy diet, and school meals subsidised in accordance with legislation.
- The Ministry of Education, Science, and Sport provides free textbooks from textbook funds for all children enrolled in primary schools (with a single structure of primary and lower-secondary education). Textbook funds in primary schools are obligatory, while upper-secondary schools are free to establish textbook funds.
- By law, local communities provide free transportation for children whose residence is located more than four kilometres from a primary school. First-grade children have the right to free transport irrespective of the distance from their residence to primary school. Funds for the transport of primary school children are provided from the national budget.

According to the report, Slovenian educational institutions implement the principle of inclusion. There is no segregation between Roma and non-Roma children. Individualised teaching and differentiation methods prescribed by law are applied. Different measures have been drafted in Slovenia since the adoption of the *Strategy for the Education of the Roma in the Republic of Slovenia* in 2004. The revised strategy of 2011 emphasised the necessity of integration, but also pointed to the utmost importance of developing, at the initial stage, different forms of preschool education also in Roma settlements with a view to increasing their social and cultural capital, which is extremely important for success at school.

In recent years, considerable financial resources have been devoted to Roma education (both national and ESF), resulting in significant progress. Based on the evaluation of individual projects, the contents relevant to the education of Roma have been included in all Roma-related public calls for applications.

The Committee recalls that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that States Parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2, Conclusions 2011).

The Committee asks whether unlawfully present children have a right to education.

*Conclusion*

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



## **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 Slovenia.

### ***Migration trends***

The main countries of origin for immigrants arriving in Slovenia are Bosnia and Herzegovina, Croatia, Macedonia, Serbia and Ukraine. The majority of permit holders are from outside the EU (80% in 2013).

Largely due to the economic crisis and weakened opportunities in Slovenia, there has been a downward trend in immigration, including a number of previously settled migrants leaving the country. The majority of temporary residence permits issued are currently extensions, showing low numbers of new arrivals.

There was a decrease in the number of temporary permits issued during the reference period, from 53,806 in 2010 to 46,808 in 2013. However, there has been a significant increase in the number of permanent residents since the introduction of the new Aliens Act in 2011, from 43,704 in 2010 to 57,263 in 2012.

### ***Change in policy and the legal framework***

The EU Blue Card scheme was introduced in Slovenia during the reference period, providing conditions for skilled workers' immigration, and introducing a single work and residence permit.

The Aliens Act 2011 also updated and consolidated some of the legislation concerning immigration. Slovenia ratified Protocol No. 12 to the European Convention on Human Rights (concerning non-discrimination) on 7 July 2010. According to the report, no other relevant amendments occurred to the law.

### ***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).

The Committee notes that the Ministry of the Interior maintains a website ([www.infotujci.si](http://www.infotujci.si) or [www.infoforeigners.si](http://www.infoforeigners.si)) containing important information concerning entry and residence in Slovenia, including living conditions, schooling and social and health insurance. It also provides resources for language learning, historical and cultural information, as well as information on organisations offering integration programmes. The website is available in seven languages (Slovenian, English, French, Spanish, Albanian, Bosnian and Russian).

According to the report, in the period from 1 January to 31 December 2013, the abovementioned website recorded almost 50,000 visits, of which 70% (36,400) were first visits. It was accessed most often from within Slovenia, followed by Croatia and Bosnia and Herzegovina, and was most commonly read in Slovenian, followed by English, Bosnian and Russian.

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.

The report states that in addition to information online, the Ministry of Interior also issues brochures and leaflets in several languages providing similar information regarding residence and integration programmes, which are available at diplomatic and consular

representations in the most common countries of origin, to provide them with the necessary information before their arrival.

According to the report, in 2010 a first analysis of the impact of integration measures was carried out. It showed that there was a need to improve the direct communication of information, as well as issues of motivating migrants to participate in the free integration programmes available. The Committee notes that in January 2011 the Ministry of the Interior promoted and carried out an information drive concerning integration programmes.

The report states that during the reference period the European Fund for the Integration of non-EU immigrants and the Ministry of the Interior co-funded the project "Raising employers' awareness of the importance of the integration of third country nationals into Slovenian society". This aimed to engage employers of foreign nationals in their integration, and find more effective methods of including third country nationals in integration programmes.

### ***Measures against misleading propaganda relating to emigration and immigration***

The Committee recalls 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 report states that the Ministry of the Interior has been providing funds for awareness-raising campaigns for the general public on topics related to immigration and integration and intercultural dialogue programmes.

According to the report, the programme "I am learning Slovenian, so I can say who I am" was aimed at improving participation in integration programmes. It also included public-focussed measures to encourage the acceptance of difference and diversity, and to emphasise the importance of cultural identity.

The report also mentions intercultural dialogue programmes, co-funded by the Ministry of the Interior and the European Fund for the Integration of Non-EU Immigrants, which are implemented locally and are an important part of encouraging integration and combatting misleading propaganda against migrants.

In 2010 the Ministry of the Interior also co-funded a training programme intended for employees engaged at different levels and services in the provision of information to migrants. The programme was aimed at improving the abilities of the personnel required for the provision of information to third country nationals, enhancing their skills in the area of intercultural dialogue and improving understanding of integration policy.

The Committee notes from the fourth report (2014) of the European Commission against Racism and Intolerance (ECRI) that the Advocate of the Principle of Equality is Slovenia's body for the prevention and elimination of discrimination on all grounds. The office was set up under the Law Implementing the Principle of Equal Treatment (IPETA). Further to the 2007 amendments to the IPETA, the Advocate's mandate has been expanded to providing general information on equality, recommendations and advice, in addition to examining discrimination complaints on grounds of gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or other personal circumstance, in both the public and private spheres, and providing assistance to victims, including legal counselling in discrimination proceedings. The Advocate has also disseminated information on discrimination and legal remedies through a website in numerous languages, and with a leaflet.

The Committee notes that in December 2010, the Advocate submitted a special report to the Government in which he described the system as critically ineffective and incompatible with various international obligations, due to its small budget, the fact that only one staff member

worked for the Advocate's office, and other institutional failings. The Committee asks what steps have been taken to improve the situation.

From the same ECRI report, the Committee notes that the Human Rights Ombudsman also receives a small number of discrimination complaints each year. According to her 2011 Annual Report, out of a total of 2512 complaints submitted in that year, 49 concerned discrimination (compared to 59 in 2010).

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. ECRI reports that training for police on stereotype and prejudice awareness and discrimination prevention in a multicultural community has been initiated. The Committee notes from the abovementioned report that training programme entitled "Stereotype and prejudice awareness and discrimination prevention in a multicultural community" has been carried out since 2009.

The Judicial Training Centre also trains judges and lawyers in anti-discrimination law; sessions were carried out in 2010 and 2011 and have been continued on a voluntary basis since then.

The Committee notes the concerns of ECRI in its abovementioned fourth report that hate speech on the Internet has increased, often targeting Roma and Muslims. Racist and xenophobic rhetoric used by political figures often goes unchecked. The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information. It considers that in order to combat misleading propaganda, there must be effective organs to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere. It asks what steps have been taken in this regard to monitor and tackle racist and misleading propaganda.

The Committee notes that a new Law on Audiovisual Media Services entered into force in November 2011. It transposed the Audiovisual Media Services Directive into Slovenian legislation, and includes a section proscribing incitement to discrimination and intolerance.

The report also highlights that brochures containing all relevant information about entry, residence, work and life in the Republic of Slovenia are also available at diplomatic and consular representations, thus, immigrants can have access to all relevant information available prior to leaving their country. The Committee notes these measures to combat the spread of misinformation regarding immigration to Slovenia.

The Committee recalls that States have an obligation to take measures or undertake programmes to prevent the dissemination of false information to departing nationals, as well as to prevent the misinformation of foreigners wishing to enter the country. Authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia). The Committee asks what other specific steps are being taken to combat human trafficking and other abuses of potentially vulnerable migrants.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Slovenia is in conformity with Article 19§1 of the Charter.

**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 Slovenia.

***Departure, journey and reception of migrant workers***

According to the report, a new Aliens Act (Uradni list RS, nos. 50/11 and 57/11-popr., Ztuj-2) was adopted in 2011. The Aliens Act regulates the entry of aliens into and their departure from the Republic of Slovenia, lays down visa and resident permit requirements, governs the voluntary repatriation and removal of aliens, and specifies particular features of the procedure and the authorities responsible for the implementation of the Act.

The chapter on the integration of aliens lays down that the Republic of Slovenia must ensure conditions for the inclusion of aliens holding a residence permit or residence registration certificate in the cultural, economic and social life of the Republic of Slovenia. It also provides for “programmes for mutual acquaintance and promotion of understanding with Slovenian citizens, and programmes for providing information to aliens regarding their integration into Slovenian society”. The Committee requests information on the implementation of these programmes concerning inception into Slovenian society.

It notes that in 2012, the Government of the Republic of Slovenia adopted a Decree on the means and scope of providing programmes of support for the integration of third country nationals (Uradni list RS, no. 70/12), which determines the conditions for entry into such programmes. The Committee asks whether there are conditions attached, and whether there are costs for any of the programmes offered. It notes that this Decree provides for entry into these programmes before or immediately upon arrival in Slovenia, and asks in what ways the access to these courses of all migrant workers and their families is ensured.

It notes from the report that the Ministry of the Interior has been analysing the implementation of these measures since 2010, and that work and family obligations have been identified as obstacles to attending the programmes on history and culture; it notes however that this criticism is not directed at the language courses. In response to problems of accessibility, the Ministry of the Interior launched the programme “Initial Integration of Immigrants”, which combines history, cultural and language classes, in 2012. In 2013 2,022 persons participated in the combined education programme, and 589 passed the examination.

The report does not make specific mention of the provision of healthcare and other services for migrants. The Committee notes from the Migration and Integration Policy Index (MIPEX) 2015 that equal healthcare coverage is provided for permanent residents and for temporary residents under certain conditions. However, it is reported that “Slovenia does almost nothing to integrate and orient newcomer patients into the health system and to address any of their specific health needs.”

From the 2014 Report of the European Commission Against Racism and Intolerance (ECRI) on Slovenia, the Committee notes that most asylum seekers are accommodated in the Asylum Home in Ljubljana which has a capacity for 203 persons; in April 2013, 84 Asylum seekers were lodged there. The UNHCR has stated that the reception conditions are adequate.

Asylum seekers are provided with basic clothing, footwear and hygienic materials and have access to free social counselling and legal assistance provided by NGOs, as well as daily access to the Internet.

The Committee notes from the abovementioned MIPEX (2015) that asylum seekers are only entitled to "urgent medical care", and undocumented migrants to "emergency care". The Committee refers to its General Question on Article 19§2 and requests that the next report

provide information in particular on the reception facilities and integration procedures for refugees and stateless persons.

The Committee recalls that reception 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). Reception means the period of weeks which follows immediately from their 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). The Committee requests that the next report provide up to date and complete information regarding the types of assistance covered by its above-cited case law.

Due to the lack of such information in the current report, the Committee finds that it has not been established that the situation in Slovenia is in conformity with article 19§2 of the Charter.

### ***Services for health, medical attention and hygienic conditions during 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. However, in that case, the need for reception facilities is all the greater (Conclusions IV (1975), Statement of Interpretation on Article 19§2). The Committee requests details of any measures taken in regard of collective recruitment, should it occur.

### ***Conclusion***

The Committee concludes that the situation in Slovenia is not in conformity with Article 19§2 of the Charter on the ground that it has not been established that appropriate health and social assistance measures are taken to facilitate the reception of migrant workers.

## **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 Slovenia.

The Committee notes from the report that Slovenia coordinates its social security under the EU system with other European countries, and has concluded bilateral agreements with countries outside of the EU/EEA.

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).

The Committee 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.

Common situations in which co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (Conclusions XV-1 (2000), Finland).

The report states that particularly intensive cooperation is undertaken with Austria due to its geographical vicinity and economic ties, however, this is again in reference to social insurance institutions. The Committee asks whether the meetings which take place between representatives of the responsible ministries also include co-operation on the provision of social services, beyond financial arrangements and allowances.

Moreover, the report mentions regular meetings between States formed in the territory of the former Yugoslavia, and Slovenian liaison bodies including the Employment Service and the Ljubljana Bežigrad Social Work Centre. It states that their purpose is to discuss all pending issues under the competence of the liaison bodies, while topical issues are addressed through regular written and electronic communication. The Committee asks for confirmation of whether these channels are appropriate and may be used to resolve issues pertaining to the provision of social services, including problems such as those mentioned above in the Committee's case law.

The Committee asks that the next report provide a description of the situation as regards communication and cooperation between Slovenian authorities and bodies in other Member States charged with provision of social services, including social services, with particular regard to the abovementioned case-law. It notes that this may take the form of international agreements or networks, or specific examples of cooperation between the social services of Slovenia and other origin and destination countries. Should the report fail to provide the requested information, the Committee considers that there will be nothing to establish that the situation is in conformity with the Charter.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Slovenia is in conformity with Article 19§3 of the Charter.

## **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 Slovenia.

### ***Remuneration and other employment and working conditions***

The report states that Article 7 of the Employment and Work of Aliens Act (*Uradni list* No. 26/11) states that foreign workers employed in the Republic of Slovenia have the same position in the labour market as Slovenian Citizens. This means that the provisions of the Employment Relationship Act apply equally to them.

Under the Employment Relationship Act employers must ensure that both candidates for jobs and employed workers are afforded equal treatment, irrespective of their nationality, race or ethnic origin. In particular, they must be given equal access to employment, promotion, training, salaries, and all working conditions. Furthermore, in the event of the termination of the employment contract, they must also be accorded equal treatment.

The report states that in the event of a violation of the prohibition of discrimination, the employer is liable to compensate the victim under the general civil law. The employer is also liable for non-pecuniary damage caused. The amount of compensation must be proportionate to the damage suffered, and must be sufficient to discourage the employer from repeating the violation. Furthermore, Article 217 provides for an additional fine for discriminatory action, ranging from €450 to €20,000 dependent upon the size of the employer.

In its previous conclusion, the Committee recalled that States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion. The provision applies also to vocational training (Conclusions VII (1981), United-Kingdom). The Committee asks whether vocational training with a view to improving the skills of workers and their opportunities is available in Slovenia in practice on the same basis for migrants and nationals.

While the Committee notes the information provided in the report concerning the legal framework applicable to prevent and punish discrimination in the workplace in relation to remuneration and working conditions, including training, it observes that no information regarding the methods of implementation and monitoring is provided. It therefore considers that the information contained within the report is still not sufficient to establish that the situation is in conformity.

The Committee asks that the next report provide up-to-date and detailed information regarding the implementation of anti-discrimination legislation, for example through a labour inspectorate, or other complaints mechanisms.

The Committee notes from the 2010 report of the European Union's Fundamental Rights Agency (FRA) on the impact of the Racial Equality Directive, that people in Slovenia are not sufficiently informed of their rights and of their options in cases of discrimination, although it is also clear that the labour law provisions provide remedies as well. It asks whether any action has been taken to promote the rights of those who might suffer discrimination.

It also asks for any available statistics on complaints and legal cases concerning discrimination in the workplace. In the meantime, it retains its conclusion of non-conformity on the basis that it has not been established that sufficient steps have been taken to ensure that the treatment of migrant workers concerning remuneration, employment and other working conditions is not less favourable than that of nationals.

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

The Committee notes from the report that pursuant to Article 76 of the Constitution of the Republic of Slovenia, the freedom to join trade unions is guaranteed to all persons in

Slovenia, regardless of their nationality. Trade unions are free to conclude collective agreements in accordance with the Collective Agreements Act.

In accordance with the abovementioned Employment Relationships Act, Article 6, migrant workers may access administrative and managerial positions of trade unions, and must not be discriminated against by those unions.

The Committee notes that the legal framework promotes equality and provides no obstacles to the access of migrant workers to trade unions. It asks that the next report provide information concerning the implementation in practice of the anti-discrimination laws, pertaining to trade union activities. It also requests any relevant statistics concerning membership of trade unions, and of any initiatives which encourage migrants to participate in syndicated activity for their benefit.

The Committee concludes that the law provides equal treatment with nationals to migrant workers with respect to membership of trade unions and enjoyment of the benefits of collective bargaining.

The Committee refers to the Statement of Interpretation in the General Introduction and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

### **Accommodation**

According to the report, EU citizens and citizens of countries with which Slovenia has concluded appropriate agreements may purchase their own dwellings on the same legal basis as Slovenian citizens. The Committee asks whether there are any European States party to the Charter with which no such agreements exist. It also asks what the situation is regarding nationals of States which do not have such agreements with Slovenia.

The Committee 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), the Committee noted that Slovenian citizens and citizens of EU countries were eligible to receive non-profit rental housing, which is administered by the municipalities and ensures low-rents for those in need of housing. It notes that the situation in this regard has not changed. Furthermore, the report details that amendments to the Housing Act now provide that persons who are unable to secure non-profit rental housing are entitled to receive a subsidy for the market rent of an alternative property. The Committee notes from the National report for Slovenia on "Tenancy Law and Housing Policy in Multi-level Europe" that these subsidies are available only for those who have applied and are eligible for non-profit rental housing, but to whom it has not been allocated during the oversubscribed tender process. Due to the fact that non-EU citizens are not eligible for social housing, the Committee understands that they are also not entitled to receive the subsidy payments.

According to the report, there remains a serious undersupply of socially assisted housing; in 2012, 8,040 housing units were required, and while around 400 more have been able to be purchased each year by the municipalities, waiting times continue to be between 3 and 5 years, and up to 7 years in Ljubljana. Be this as it may, the Committee reiterates its finding that the lack of access to such schemes for citizens of countries outside the EU is discriminatory, particularly as they are liable to be more vulnerable, and are also ineligible for the same rent subsidies for market-rent properties. The economic obstacles to achieving full provision of social housing to those eligible do not provide a valid reason to discriminate against nationals of non-EU states.



The report also details the continuing scheme of temporary living units, which the Committee considered in its previous conclusion (Conclusions 2011), and which are available equally to migrant workers and citizens, provided they meet the criteria of social disadvantage. Even so, the Committee notes from the report that another 589 further units are required. Therefore, a significant number of people have no access to publicly supported housing, and if they are migrants, they will not be eligible to receive a subsidy for market-rent properties, even though there are a large number of such properties available.

The Committee therefore reiterates its conclusion that equal treatment for migrant workers has not been secured with respect to access to housing.

#### *Conclusion*

The Committee concludes that the situation in Slovenia is not in conformity with Article 19§4 of the Charter on the grounds that:

- it has not been established that sufficient measures have been taken to ensure that the treatment of migrant workers concerning remuneration, employment and other working conditions is not less favourable than that of nationals;
- equal treatment is not secured for migrant workers with respect to access to housing, and in particular to assisted rental schemes and subsidies.

## **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 Slovenia.

The report confirms the Committee's previous understanding of the taxation system of the Republic of Slovenia (Conclusions 2011).

The Committee notes from the Government Website that residents of Slovenia are obliged to pay personal income tax according to the principle of taxation of worldwide income, which means that they are taxed on all income earned inside and outside Slovenia. Non-residents (in particular, those who have not resided in Slovenia for 183 days of the tax year) are liable to pay personal income tax on income whose source is in Slovenia. Nevertheless Slovenia has concluded bilateral treaties and implements specific tax-exemption rules to allow for the avoidance of double-taxation.

The Committee notes that the introduction of the Personal Income Tax Act 2011 introduced tax deductions for certain categories of non-resident. Section 116 of this provides for tax allowances for residents of another EU/EEA member state other than Slovenia whose income derived in Slovenia amounts to 90% of their entire taxable income for that year. The Committee notes that the value of these allowances in 2015 was between €3302 and €6519. It understands that these tax reliefs, which pertain to general income taxes (Article 111) and reliefs for dependents and pension insurance (Article 112), are available to all residents in EU countries, regardless of their nationality.

### *Conclusion*

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

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

### *Paragraph 6 - Family reunion*

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

#### **Scope**

The report states that with the exception of foreigners holding a temporary residence permit issued for seasonal work purposes, an foreigner holding a permanent residence permit or a temporary residence permit in the Republic of Slovenia is granted the right to family reunion, maintenance and the recovery of family integrity with immediate family members who are foreigners, subject to and in accordance with the Aliens Act 2011. Applications may be lodged with a consular or diplomatic mission outside of Slovenia, or within Slovenia with a competent authority.

According to the report, a temporary residence permit for the purpose of family reunion is granted to a family member of an foreigner holding a temporary residence permit; it is issued for the period of validity of the foreigner's permit or until its time of expiration, but no longer than for one year; it may be extended for the period of validity of the foreigner's temporary residence period but not beyond two years.

Pursuant to the aforementioned Act, the family members of an foreigner include:

- a spouse, a registered civil partner or a person with whom an foreigner lives in long-term cohabitation;
- the unmarried minors of an foreigner;
- the unmarried minors of a spouse, a registered civil partner or a person with whom an foreigner lives in long-term cohabitation;
- the parents of a minor foreigner with whom he or she lived in a family unit prior to arrival in the Republic of Slovenia;
- the unmarried adult children and parents of an foreigner, his or her spouse, registered civil partner or person with whom he or she lives in long-term cohabitation in respect of which a maintenance obligation of the foreigner, his or her spouse, registered civil partner or person with whom he or she lives in long-term cohabitation has been established under the law of the country of his or her citizenship.

According to the report, the authority has discretion in exceptional circumstances to afford family reunion to other family members not included in the above list.

The Committee notes from the Migration and Integration Policy Index (MIPEX) 2015, that non-EU citizens enjoy favourable conditions to secure family life as a starting point for integration, with the 3rd most favourable policies among MIPEX countries.

Furthermore, MIPEX highlights that from 2011 until 2014 temporary migrants could apply immediately for family reunion, however, the Committee notes that this has now been restricted and they must wait for one year. The Committee recalls that States may require a certain length of residence of migrant workers before their family can join them. A period of one year is acceptable under the Charter, but a longer period is considered excessive (Conclusion 2011, Statement of interpretation on Article 19§6). The Committee requests that the next report contain up-to-date information on any length of residence requirements for all categories of migrant worker.

The Committee notes from the MIPEX 2015 report that beneficiaries of the right to family reunion have limited access to the labour market, which may inhibit their integration and independence. Furthermore, it notes that all reunited families enjoy the same rights to settle and participate as their sponsor, with the major exception of the labour market. However, the report states that the family member may have their residence permit extended if the sponsor dies, or a relationship of at least 3 years duration terminates. The Committee asks whether the residence permit of a family member who has joined the migrant worker in

Slovenia is always dependent upon the continued sponsorship of the migrant worker. It asks whether exceptions can be made, for example where the cohabitation terminates for reasons of domestic violence. The Committee also asks whether the deportation of the migrant sponsor would deprive the family member of their right of residence in Slovenia. It requests that the next report confirm whether it is possible, and whether there are any length of residence requirements, to acquire an independent status after arrival in Slovenia.

The Committee asks whether age requirements are imposed by law or in practice on spouses for the purposes of family reunion. It considers that the maximum age limit permissible under Article 19§6 for the family reunion of spouses is the age at which marriage may be legally recognised in the host state, as any higher age requirement hinders rather than facilitates family reunion.

The Committee notes from the Country report of the European Migration Network that in January 2013, participation in integration assistance programmes was extended to third-country national family members of third country nationals, Slovenian nationals or EU nationals.

### ***Conditions governing family reunion***

The foreigner must demonstrate sufficient means to support the family members who wish to join him or her, and must also prove the same upon requests for extensions of the permit. The level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of interpretation on Article 19§6). The Committee notes from the Ministry of the Interior website that “sufficient means of living” in Slovenia cannot be lower than the basic minimum income (€265.22 from August 2013, according to the website of the Ministry of Labour, Family, Social Affairs and Equal Opportunities). It asks whether social benefits can be included in the calculation of means.

The Committee notes from the abovementioned MIPEX report that applicants must also prove that they have health insurance.

The Committee notes that the Aliens Act 2011 also stipulates an accommodation requirement. The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances. The Committee asks that the next report provide information on what standard of accommodation is required and how the requirement is applied in practice.

The Committee considers 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. The Committee notes that applicants for visas or permits are afforded an appeal under Section 29 of the Aliens Act 2011. It asks whether the same appeal mechanism is available to applicants for family reunion.

From the Country Report 2013 of the European Migration Network, the Committee also notes that at the end of 2013 Slovenia was working on amendments to the Aliens Act concerning recognising the right to family reunification for refugees and beneficiaries of

international protection in Slovenia. According to this report, the amendments will enable refugees and international protection status holders to lodge a residence permit application for their family members 90 days after the status has been granted; and methods to assess family ties will be modified. In addition, free translation and interpretation services for this purpose will be provided. The Committee requests that the next report provide updated information with regard to the requirements and procedures for family reunion of all migrants including refugees and beneficiaries of international protection.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Slovenia is in conformity with Article 19§6 of the Charter.

## **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 Slovenia.

The report states that migrant workers in criminal proceedings are subject to the same rules as others. Under Section 95 of the Criminal Procedure Act, free legal aid and exemption from the obligation to reimburse the costs of criminal proceedings is envisaged the sustenance of the defendant or his or her dependants.

Pursuant to the Constitution of the Republic of Slovenia, anyone charged with a criminal offence has the right to be defended by a legal representative (the second indent of Article 29 of the Constitution).

The Criminal Procedure Act also provides for a mandatory defence. Section 70 lays down that the accused must have a defence counsel if he or she is mute, deaf, or otherwise incapable of defending him- or herself successfully. The final paragraph may apply to migrant workers if they have limited knowledge of the language. If the defendant does not appoint counsel themselves, the president of the court will appoint one *ex officio* for the duration of proceedings.

The Constitution of the Republic of Slovenia lays down that everyone has the right to use his or her language and script in a manner provided by law in the exercise of his or her rights and duties and in procedures before state and other authorities performing a public function (Section 62). According to the report, criminal proceedings are conducted in the Slovenian language or in the Italian or Hungarian language.

Nevertheless, parties, witnesses and other participants in the proceedings have the right to use their own languages in investigative (this also includes examination in the pre-trial proceedings) and other judicial actions and at the main hearing. If a judicial action or the main hearing is not conducted in the languages of such persons, interpretation of the entire proceedings, as well as a translation of documents and other written evidence, must be provided.

The translation is done by a court interpreter (Section 8 of the Criminal Procedure Act). The costs of translation are not borne by an accused person who does not understand or speak the language in which the criminal proceedings are being conducted (Section 92(5) of the Criminal Procedure Act).

In relation to civil proceedings, the report states that, Section 102 of the Civil Procedure Act lays down that the parties and other participants in civil proceedings have the right to use their own language in all procedural acts they perform in court.

The aforementioned Act provides that the costs of proceedings also include the costs of translation and interpretation (Section 151). As a rule, the party losing the litigation must bear the costs incurred by the winning party and their intervener; nevertheless, the court may decide differently with respect to the outcome of a specific procedural act (Section 154). The court may exempt from payment of the costs of proceedings a party who is not able, given their financial circumstances, to cover these costs without detriment to the maintenance of themselves and their family (Section 168(1))

The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid assistance.

### *Conclusion*

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

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

### *Paragraph 8 - Guarantees concerning deportation*

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

The report states that the Aliens Act was amended in 2014 (outside the reference period), and is applied to all foreigners in Slovenia.

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' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of interpretation on Article 19§8, Conclusions 2015).

The Committee asks whether the provisions of the Aliens Act, as amended in 2014, are applied in compliance with the Charter in this regard. In particular, it asks whether all aspects of the non-nationals' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the state will be taken into account in determining whether a migrant should be expelled.

Article 61 of the Aliens Act as amended in 2014 determines that residence may be revoked if the foreigner concerned is left without any means of subsistence or has no guaranteed access to means of subsistence. In such cases the authority deciding on the termination of residence must take into account the length of stay of the foreigner in the country, their personal, family, economic and other ties linking them to the Republic of Slovenia, and the effect that the termination of residence would have on them and their family. The Committee notes that this was also the position in law prior to the 2014 amendment of the Act (cf. Conclusions 2011).

In this respect, the Committee considers that the fact that a migrant worker is dependent on social assistance cannot be regarded as a threat against public order and cannot constitute a ground for expulsion (Conclusions V (1977), Italy).

The revocation of a residence permit (as distinct from the initial issue of a residence permit, or its extension) is an administrative act which serves as a precursor of the expulsion of a migrant whom, save for the act of revocation, was lawfully upon the territory. Therefore, the revocation of a residence permit must conform to the same conditions as an expulsion order, namely that the migrant worker is a threat to national security, or offends against public interest or morality.

Thus, the possibility of revocation of a residence permit for reasons other than the fact that the migrant worker is a threat to national security, or offends against public interest or morality is contrary to the Charter.

The Committee notes from the report that the foreigner may lodge an appeal against the decision to enforce their expulsion (the return decision); the appeal is decided on by the Ministry of the Interior. The report states that there is no appeal from this decision, but judicial review ("administrative dispute") is available. The Committee recalls that it has

previously noted that judicial review is a very specific type of remedy and cannot be considered as an appeal or review of the merits of any decision. Where this is the only type of challenge available, this is not in conformity with the Charter (Conclusions XIII-2 (1994), Ireland). The Committee recalls that States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake (Conclusions V (1977), United Kingdom). Therefore, the Committee considers that the situation is not in conformity with the Charter.

#### *Conclusion*

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

- migrant workers may be expelled in situations where they do not endanger national security or offend against public interest or morality;
- migrant workers have no independent right of appeal against a deportation order.



**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 Slovenia.

According to the report, no changes have been made in respect of the arrangements since the previous reporting cycle (Conclusions 2011). In reliance upon all the material available to it, the Committee reiterates its conclusion of conformity.

The Committee requests that the next report provide updated information on the situation in the republic of Slovenia. Furthermore, with reference to its Statement of Interpretation on Article 19§9 (Conclusions 2011), the Committee asks whether there are any restrictions on the transfer of the movable property of migrant workers.

*Conclusion*

The Committee concludes that the situation in Slovenia is in conformity with Article 19§9 of the Charter.

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

### *Paragraph 10 - Equal treatment for the self-employed*

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

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

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

The Committee has found the situation in Slovenia not to be in conformity with Articles 19§2, 19§4(c) and 19§8. Accordingly, the Committee concludes that the situation in Slovenia is not in conformity with Article 19§10 of the Charter

### *Conclusion*

The Committee concludes that the situation in Slovenia is not in conformity with Article 19§10 of the Charter as the grounds of non conformity under Articles 19§2, 19§4(c) and 19§8 apply also to self-employed migrants.

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

### *Paragraph 11 - Teaching language of host state*

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

With regard to the education of the children of migrants, the Committee notes that it previously found the measures in place to be sufficient (see Conclusions 2011). The Committee notes from the current report that upon entry into primary and secondary school and for the first two years, Slovenian language and culture lessons are organised and provided to children residing in Slovenia whose mother tongue is not Slovenian.

The Committee notes from the fourth report of the European Commission against Racism and Intolerance (ECRI) adopted in 2014 that guidelines for the education of migrant children were drawn up in 2009 defining the strategies of integration of these pupils and their parents.

According to the Ministry of Education, Science and Sport a total of 1344 pupils were registered and received such courses in 2010, and this total rose to 1797 in 2013. Pursuant to Article 16 of the 'Rules on criteria and standards for the delivery of education programs in secondary education', where there are up to 6 students of various abilities are registered, 35 hours of intensive training is given, which rises to 70 hours of intensive training for groups up to 12. Alternatively, students of similar ability may receive a 70 hour course in groups of up to 16.

The Committee asks what further measures are available for students to continue to support their education and ensure they do not fall behind their fellow students if the initial courses are not sufficient.

In the meantime, based on the understanding that every student of foreign origin is entitled to the additional language classes detailed above for the first two years after beginning education in Slovenia, the Committee reiterates its finding that the measures taken by the authorities to promote the teaching of the national language as regards children of migrant workers are sufficient. It asks that the next report provide a complete and up-to-date description of such measures, including relevant data.

As regards refugee children, the Committee notes from the abovementioned ECRI report that they are entitled to participate, free of charge, in courses on Slovene language and culture, for a total of 300 hours.

The Committee previously concluded that the situation in Slovenia was not in conformity with Article 19§11 of the Charter on the grounds that a two year residence requirement for access to free Slovenian language classes for family members of migrant workers was excessive.

According to the report, the two year residence requirement for access to free language classes and different programmes was abolished by introduction of the Aliens Act (Uradni list RS, nos. 50/11 and 57/11 – popr.) and the Decree on the means and scope of providing programmes supporting the integration of third country nationals (Uradni list RS, no. 70/12).

The report states that in 2012, the Government adopted a new Decree on the means and scope of providing programmes supporting the integration of third country nationals (Uradni list RS, no. 70/12), which entered into force in December 2013.

Pursuant to the Decree, the persons now entitled to free inclusion in Slovenian language courses and/or in the combined programme of language and culture are the following:

- third country nationals living in Slovenia on the basis of a permanent residence permit and their family members residing in Slovenia on the basis of a temporary residence permit for the purpose of family reunion; who are entitled to attend a Slovenian language course or a combined programme of 180 hours.
- third country nationals living in Slovenia on the basis of a temporary residence permit issued for a period of validity of at least one year, whereby the one-year

period starts to run at the time of the submission of the application for the permit, are entitled to attend a Slovenian language course or a combined programme of 60 hours.

- third country nationals who are family members of Slovenian citizens or of EU citizens and reside in Slovenia on the basis of a family member residence permit are entitled to attend a Slovenian language course or a combined programme of 180 hours.
- third country nationals living in Slovenia on the basis of a temporary residence permit, on the condition that this permit and the previous temporary residence permits are valid for an uninterrupted period of at least 24 months, and their family members holding a temporary residence permit granted for the purpose of family reunion, are entitled to attend a Slovenian language course or a combined programme of 180 hours. The 24-month validity of the temporary residence permit also includes the period of residence on the basis of a certificate on the filed application for the extension of the temporary residence permit or for the issuance of a further temporary residence permit.

The Committee notes the steps taken to bring the situation into conformity with the Charter. In particular, it notes that while in certain circumstances it is still necessary to have a residence permit valid for a period of two years to receive a full programme of language training, this requirement does not extend to requiring a period of previous residence. Courses which are available immediately upon entry to Slovenia have a greater chance of encouraging integration. The Committee asks for confirmation that all third country nationals who hold a temporary residence permit, including family members of those holding a temporary residence permit, are entitled to the minimum 60 hours of integration classes. On the basis of this understanding, the Committee concludes that the authorities have taken sufficient steps during the reference period to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families.

#### *Conclusion*

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

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

### *Paragraph 12 - Teaching mother tongue of migrant*

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

The Committee recalls that the undertaking of States under this provision is to promote and facilitate the teaching, in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory (Conclusions 2011, Armenia).

The report states that lessons in the mother tongue of the children of migrants are supported and co-funded by the Ministry of Education, Science and Sport. The legal basis is provided in an annual decision by the Minister on co-funding lessons in the mother tongue and culture of immigrant children. In 2012, the Ministry and the National Education Institute of the Republic of Slovenia drafted a Plan/guidelines for supplementary lessons in mother tongues and cultures for members of other language and cultural communities in Slovenia. The Committee asks for details of these guidelines, and requests that the next report provide updated information regarding their implementation.

According to the report, the languages available included Croatian, Serbian, Bosnian, Albanian and German. Some of these were introduced during the reference period. The Committee notes that these languages correspond to the largest groups of origin of migrant workers. However, it notes that whereas 1,797 children benefitted from lessons in Slovenian in public schooling, only 305 students were taught their parents' mother tongue in 2013. The Committee asks how such classes are organised, and to what the low number of students obtaining instruction in their mother tongue is due.

According to the report, some of the languages spoken by immigrants are also included in the list of elective subjects pupils can choose from (Croatian, Serbian, Russian, German, etc.).

The Committee recalls that States should promote and facilitate the teaching of the languages most represented among the migrants present on their territories within their school systems or in other contexts such as voluntary associations or non-governmental organisations (Conclusions 2011, Statement of interpretation on Article 19§12). It asks whether language classes are also encouraged and organised outside of formal education for children of migrant workers.

In the meantime it reiterates its conclusion that the steps taken to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker are in conformity with the Charter.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Slovenia is in conformity with Article 19§12 of the Charter.

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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

The Committee recalls that the aim of Article 27§1 is to promote the reconciliation of professional and family responsibilities by providing people with family responsibilities with equal opportunities in respect of entering, remaining in and re-entering employment. Article 27§1 requires States Parties to take specific measures in the field of vocational guidance and training, so as to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities and to assist them in advancing in economic activity (Conclusions 2007, Armenia).

The Committee has held that if the standard employment services (those available to everyone) are well developed, the lack of extra services for people with family responsibilities cannot be regarded as a human rights violation (Conclusions 2003, Sweden).

The Committee refers to its conclusion under Article 10§3 (Conclusions 2012, Slovenia) and considers that the situation is in conformity on this point.

### ***Conditions of employment, social security***

According to Article 182 of the Employment Relationships Act (ZDR-1) the employer must enable workers to reconcile their family and employment responsibilities more easily.

The aforementioned Act envisages the following options: home working, teleworking, a different distribution of working time, in accordance with other regulations (e.g. the Parental Protection and Family Benefits Act).

Article 148 of the aforementioned Act further stipulates that if a worker proposes a different distribution of working time during his or her employment relationship for the purposes of reconciling his or her professional and family life, the employer must communicate his or her reasoned decision in writing, taking into consideration the needs of the working process.

The employer must ensure the employee working part-time due to parenthood the right to a salary on the basis of actual working hours, while the payment of social security contributions for the difference between actual working hours and full-time work are ensured on the basis of a proportional share of the minimum wage. The State also pays employer and employee contributions for compulsory pension and disability insurance, insurance against unemployment, parental protection insurance, and contributions for health insurance covering disease or injury outside work, rights to health services and travel expense reimbursement.

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

### ***Child day care services and other childcare arrangements***

According to the report, at the end of the reference period (school year 2013/2014) preschool education was provided by 960 preschool institutions and their units. The majority of preschool institutions are public (93%). The Committee notes that in 2013/2014 the share of children in preschool institutions stood at 75,6%.

With reference to the Committee's question about the inadequate number of places in preschool institutions, mainly in the capital, the report states that owing to an increase in the population of children (due to the higher birth rate) and the State's endeavours to have more children enrolled in preschool education, the Preschool Institutions Act (*Uradni list RS*, no.

36/10) was amended and a new provision was inserted which makes it possible to set up two units in a building that was not built for this particular purpose but has an operating permit. It has enabled municipalities to resolve the space shortage quickly and at relatively low cost.

If the number of children whose parents wish to enrol them in preschool persists at a high level, municipalities can grant a concession to a private preschool. The granting of a concession entails that the private preschool provides a public service and offers a programme identical to that of a public preschool.

*Conclusion*

The Committee concludes that the situation in Slovenia is in conformity with Article 27§1 of the Charter.

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

### *Paragraph 2 - Parental leave*

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

In response to the Committee's question about childcare leave and allowance, the report indicates that that the right to the childcare leave and allowance may be exercised by both parents and, subject to statutory requirements, also by another person.

Childcare leave starts immediately after the maternity leave and is aimed at insuring further care of a child. A part of childcare leave not exceeding 75 days can be postponed but must be taken before the child reaches eight years of age.

According to the report, the right to parental compensation pertains to a person entitled to parental leave who was insured on the day prior to taking parental leave. Parental compensations (including the maternity allowance) are calculated on the average basis on which parental protection contributions were paid in the 12 months preceding the submission of the first parental leave application.

As regards the remuneration of parental leave, the Fiscal Balance Act , which entered into force on 31 May 2012, provides that the parental compensation disbursement must not exceed twice the amount of the average monthly salary, calculated on the basis of the most recent official data on monthly salaries. Parental compensation for full-time absence from work amounts to 90% of the basis. When the basis does not exceed the minimum wage, parental compensation amounts to 100% of the basis.

### *Conclusion*

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



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

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

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

### ***Protection against dismissal***

The Committee notes that Article 115 of the Employment Relations Act (ZDR-1) provides that the employer may not cancel an employment contract with parents in the period when they are on parental leave uninterruptedly in the form of full absence from work and for one month after the end of such leave.

### ***Effective remedies***

The Committee refers to its conclusion under Article 8§2 where it notes that according to Article 118 of the ZDR-1, as amended, where a court establishes that the termination of an employment contract was illegal but – given all circumstances and the interests of both contracting parties – the continuation of the employment relationship would not be possible, the worker or the employer may make a motion to the court to decide on the duration of the employment relationship (whereas this period may only last until a decision is made by the court of first instance), to recognise the worker's years of service and other rights under the employment relationship, and to grant the worker adequate compensation in the maximum amount of 18 monthly wages of the worker concerned.

The court determines the amount of compensation with regard to the duration of the worker's employment, the worker's chances for new employment and the circumstances that led to the illegality of the termination of the employment contract, taking into consideration the rights exercised by the worker related to the time up to the termination of the employment relationship.

According to the report, pursuant to Article 6 of the ZDR-1, the less favourable treatment of workers in connection with pregnancy or parental leave is considered discriminatory. In the event of a violation of the prohibition of discrimination and pursuant to Article 8 of the ZDR-1, the employer is liable to compensate the worker under the general rules of civil law. Non-pecuniary damage incurred by the worker also covers mental distress suffered due to unequal treatment of the worker and/or the discriminatory conduct of the employer. When determining the amount of non-pecuniary damage compensation, the following must be taken into account: the compensation must be effective and proportionate to the damage suffered by the candidate or worker and must discourage the employer from repeating the violation.

The Committee understands that while there is a ceiling to compensation for pecuniary damage of 18 months wage, for non-pecuniary damage the legislation does not establish such a ceiling. It asks whether this understanding is correct.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Slovenia is in conformity with Article 27§3 of the Charter.

## **Article 31 - Right to housing**

### *Paragraph 1 - Adequate housing*

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

### ***Criteria for adequate housing***

In its previous conclusion (Conclusions 2011) the Committee requested figures and statistics on the adequacy of dwellings. The report indicates that generally speaking dwellings with no water distribution and sewage systems, electricity, bathroom or toilet are deemed substandard housing. In this regard, it underlines that only few housing units lack such basic facilities. The Committee notes that 99% of housing facilities have water distribution, sewage systems and electricity, and, that approximately 7% of units lack a bathroom and toilet.

The report states that the criteria of adequate housing is defined in various laws and regulations that are applicable to all residential buildings, including emergency accommodation. The main Act in this regard is the Housing Act, which is implemented by various regulations such as the Rules on Minimum Technical Requirements for the Construction of Residential Buildings and Dwellings. The report confirms that the legislation defines the criteria for adequate housing in terms of construction, technical, health and sanitary features as well as housing size.

Concerning minimum standards applying to buildings and apartments intended for a temporary solution of housing needs of socially deprived persons, the report mentions the Rules on Minimum Technical Requirements for Living Units Intended as Temporary Solution to Housing Needs of Economically Deprived People.

In its previous conclusion the Committee concluded that the situation was not in conformity with the Charter on the ground that the criteria for adequate housing concerning size did not apply to housing available for rent on the free market resulting in substandard housing conditions for some migrant workers.

In this regard, the Committee notes from the Governmental Committee's report (Report concerning Conclusions 2011) the entry into force on 1 January 2012 of the Rules on Setting Minimum Standards for the accommodation of Aliens who are employed or work in Slovenia. These Rules lay down the minimum living and hygiene standards for the accommodation of aliens who are employed or work in the Republic of Slovenia. The Rules also determine the spatial standards. With regard to the number of people living in a facility, each person must have at least 6 m<sup>2</sup> for sleeping, 1 m<sup>2</sup> for the kitchen and 1 m<sup>2</sup> for daily activities, excluding sanitary facilities.

In view of the adoption of these rules, the Committee considers that the situation has been brought into conformity with the Charter.

### ***Responsibility for adequate housing***

In its previous conclusion (Conclusions 2011) the Committee asked detailed statistics, including the number of inspections carried out following a complaint. The report indicates that in 2013 the Housing Inspection Service dealt with 775 complaints, of which 9.4% were filed by tenants.

The report states that inspection services consider all complaints and decide on each in accordance with the General Administrative Procedure Act. Pursuant to this Act, the owners or managers are afforded an opportunity to appeal. The appeal may first be submitted to the Ministry of Infrastructure and Spatial Planning and then to the Administrative Court.

The report provides no information on the number of structures restored following inspections finding shortcomings. It also fails to provide detailed information on procedures in place to verify that buildings comply with security norms.

In view of the lack of information on the number of sanctions imposed, structures restored following inspections and additional information on procedures in place to verify that buildings comply with security norms, the Committee considers that the situation is not in conformity with the Charter on the ground that it has not been established that there is sufficient supervision for adequate housing.

### ***Legal protection***

In reply to the Committee's request, pursuant to the housing legislation, different options are available to the users of the dwellings:

- an administrative appeal against a decision concerning a non-profit dwelling allocation, a living unit allocation, a rent amount review, etc.;
- a report to the housing inspection in case of inappropriate maintenance of rented housing and shared parts, improper use of shared parts, unauthorised interventions on shared parts, a dwelling rented without a legal basis, etc.;
- a judicial proceeding in case of termination of a tenancy agreement in a dispute, tenancy relationship following a divorce or a death, etc.

The Committee notes from the report that there are no specific legal remedies in case of long waiting periods to access housing. It consequently asks the next report to indicate how the issue of long waiting periods to access housing is dealt with. It however notes that every applicant who meets the requirements to rent a non-profit dwelling has the right to rent one at the market rate. In this case, the tenant is entitled to a subsidy for market rent in accordance with the Housing Act. Funds for subsidies are ensured by the municipalities and the State.

### ***Measures in favour of vulnerable groups***

In its previous conclusion (Conclusions 2011) the Committee concluded that the situation was not in conformity with the Charter on the ground that insufficient measures were taken by public authorities to improve the substandard housing conditions of a considerable number of Roma in Slovenia.

The report indicates that spatial planning falls within the exclusive competence of municipalities. Therefore a precondition for legalising Roma settlements is to include these settlements in the municipal spatial plans, which, in most cases, have not been finalised. The majority of municipalities, including those with a Roma population, are currently conducting relevant drafting and adoption procedures. Within the drafting of the municipal spatial plans, all municipalities have engaged in improving Roma settlements; the responsible ministry monitors their work and offers technical assistance. In 2006-2011, the Expert Group for Resolving the Spatial Issues of Roma Settlements drafted an analysis of the status of Roma settlements and based thereon proposed further measures to improve the situation. The state cooperated with local and Roma communities. Basic public utility infrastructure projects in Roma settlements are co-funded by the state through public tenders (between 2008 and 2013, subsidies in the amount of approximately €8,891,000.00 were available).

The report also mentions the National Programme of Measures for the Roma 2010-2015, which aims at improving the living conditions of the Roma community. In this regard, the report identifies three relevant measures:

- setting up a comprehensive strategic framework as the basis for specific programmes and projects for the arrangement of Roma settlements;
- implementing solutions, goals and tasks to deal with spatial issues related to Roma settlements identified by the Expert Group in the process of drafting detailed municipal spatial plans for individual Roma settlements;
- implementing financial measures aimed at the development of areas with Roma communities.

The Committee notes from the report that some of these measures have already or partially been implemented.

However, the Committee notes from the European Commission against Racism and Intolerance's (ECRI) fourth report adopted on 17 June 2014 that there is still a lack of access to a safe water supply in or near some settlements and that most Roma continue to live in settlements isolated from the rest of society in conditions that are well below the minimum standard of living. The Committee asks the next report to comment on this report.

While taking note of the measures that are being taken, the Committee considers in view of the information above that the situation is still not in conformity with the Charter.

The Committee asks the next report to continue to provide information on the measures taken to improve the housing conditions of Roma.

Slovenia has accepted Article 19§4c) of the Charter on the right of migrant workers and their families to a treatment not less favourable than that of nationals in respect of accommodation. For States that have accepted both Article 19§4c) and 31§1 of the Charter, the Committee refers to its conclusion on Article 19§4c) in respect of this matter.

As regards the complaint European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia, No. 53/2008, decision on the merits of 8 September 2009, the Committee recalls that the follow-up will be made in Conclusions 2016.

#### *Conclusion*

The Committee concludes that the situation in Slovenia is not in conformity with Article 31§1 of the Charter on the grounds that:

- it has not been established that there is sufficient supervision for adequate housing;
- measures taken by public authorities to improve the substandard housing conditions of a considerable number of Roma are not sufficient.

## **Article 31 - Right to housing**

### *Paragraph 2 - Reduction of homelessness*

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

### ***Preventing homelessness***

In its previous conclusion (Conclusions 2011) the Committee concluded that the situation was not in conformity with the Charter on the ground that measures in place to reduce the number of homeless persons were inadequate in quantitative terms.

The report indicates that in 2013 there were 1,600 homeless persons and that shelters for homeless offered 252 beds. It further states that in 2013 two programmes for homeless drug users offered 31 beds. While taking note of these figures, the Committee considers once again that the number of beds available is insufficient in view of the demand. It therefore reiterates its conclusion that the situation is not in conformity with the Charter.

The Committee in its previous conclusion requested information on the conditions of accommodation. It notes from the Governmental Committee's report (Report concerning Conclusions 2011) that voluntary organisations estimate the conditions in these shelters to be adequate with regard to access to water, heating and lighting. It also notes that the majority of shelters and reception centres offer not only overnight stays but also basic food and personal hygiene facilities.

The report states that in 2013 the Ministry of Labour, Family and Social Affairs allocated €917,496 to programmes provided by NGOs and social work centres. The funding covered primarily the costs of professional staff. The Committee notes that in 2013 total expenditure on these programmes amounted to €2,072,819. Funds were granted by the above mentioned Ministry but also the local communities, the Foundation for Financing Disability and Humanitarian Organisations and other providers. The report underlines that shelter programmes offer accommodation, personal assistance and advocacy, counselling, individual planning, personal relationships management, clothing, etc.

### ***Forced eviction***

In its previous conclusion, the Committee asked whether NGOs and associations protecting the rights of homeless persons or any specific category of the population which is at risk of becoming homeless are entitled to free legal aid. The report provides no answer in this respect, the Committee therefore reiterates its request.

Following the amendments to the rules on eviction, the Committee noted in its previous conclusion two issues:

- no law provides for the postponement of an eviction in case a tenant has no possibility to access alternative accommodation. This has been confirmed by the national judicial practice;
- prior to any expulsion there are no non-formal and informative procedures enabling the individuals to really understand and take into account the aim of the eviction.

The Committee asked for clarifications on these issues. The report however provides no such information. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that it has not been established that there are adequate legal protection for persons threatened by eviction.

The report provides detailed information on eviction in case of a non-profit housing tenancy agreement. Article 104 of the Housing Act provides that a non-profit housing tenancy agreement may not be terminated if a tenant is faced with exceptional circumstances (death in the family, loss of employment, etc.) and which led to a failure to settle the full rent and other costs paid in addition to the rent, provided that not later than 30 days after the

occurrence of the circumstances the tenant initiates a procedure for obtaining subsidised rent and the procedure for claiming assistance in the use of housing and informs the owner within the said time-limit. It also provides that the municipal authority responsible for housing matters may grant temporary extraordinary assistance if the tenant is not entitled to subsidised rent or cannot settle rent despite a subsidy. Finally, if the circumstances indicate long-term inability to pay the rent and other related costs, a municipality may move a tenant to another suitable non-profit dwelling or one which is smaller in size or to a residential building intended for temporary solution.

In its previous conclusion, the Committee asked for clarifications on the relocation policy affecting Roma, especially whether evictions:

- are carried out under conditions which respect the dignity of the persons concerned;
- are governed by rules of procedure sufficiently protective of the rights of the persons concerned.

The report provides no information on these issues. The Committee notes from the European Commission against Racism and Intolerance's (ECRI) fourth report adopted on 17 June 2014 that no procedures have been put in place to ensure that a consultation is undertaken with the affected communities. The said report state that it appears that Roma are often unaware that they will be relocated and are not informed as to where or when they will be moved, which equates according to ECRI to a situation of insecurity that is unacceptable. In view of the lack of information and having regard to ECRI's report the Committee considers that the situation is not in conformity with the Charter on the ground that it has not been established that sufficient procedures have been put into place ensuring that evictions of Roma are carried out in conditions respecting the dignity of the persons concerned.

### ***Right to shelter***

In its previous conclusion (Conclusions 2011) the Committee asked clarifications on whether:

- shelters/emergency accommodation satisfy security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether they are equipped with basic amenities such as access to water and heating and sufficient lighting);
- shelter/emergency accommodation is provided regardless of residence status;
- the law prohibits eviction from shelters or emergency accommodation.

On security requirements, the Committee notes, as mentioned above, that according to an assessment made by voluntary organisations the conditions in these shelters are adequate with regard to access to water, heating and lighting.

As to whether shelter/emergency accommodation is provided regardless of residence status, the report provides no information. The Committee therefore reiterates its question.

The report indicates that the law does not prohibit eviction from shelters/emergency accommodation. The Committee recalls that eviction from shelter should be banned as it would place the persons concerned in a situation of extreme helplessness which is contrary to the respect for their human dignity (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009). Furthermore, the Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited.

In view of the fact that the legislation fails to prohibit eviction from emergency accommodation/shelters, the Committee considers that the situation is not in conformity with

the Charter on the ground that the law does not prohibit eviction from emergency accommodation/shelters without the provision of alternative accommodation.

*Conclusion*

The Committee concludes that the situation in Slovenia is not in conformity with Article 31§2 of the Charter on the grounds that:

- measures in place to reduce the number of homeless persons were inadequate in quantitative terms;
- it has not been established that there is adequate legal protection for persons threatened by eviction;
- it has not been established that sufficient procedures have been put into place ensuring that evictions of Roma are carried out in conditions respecting the dignity of the persons concerned;
- the law does not prohibit eviction from emergency accommodation/shelters without the provision of alternative accommodation.

## **Article 31 - Right to housing**

### *Paragraph 3 - Affordable housing*

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

### **Social housing**

In its previous conclusion (Conclusions 2011) the Committee concluded that the situation was not in conformity with Article 31§3 of the Charter on the ground that nationals of other States Parties to the Charter and to the 1961 Charter lawfully residing or working regularly were not entitled to equal treatment regarding eligibility for non-profit housing. The Committee notes from the Governmental Committee's report (Report concerning Conclusions 2011) that the new National Housing Programme planned to be adopted in December 2012 was supposed to eliminate the condition of citizenship when applying to non-profit housing. The report however does not mention whether this change has taken place. The Committee considers that the situation is still not in conformity with the Charter.

In its previous conclusion, the Committee considered that the supply of non-profit rental housing was inadequate. The report does not provide any information as to the improvement of this situation. The Committee therefore reiterates its conclusion.

As to the length of waiting period for non-profit housing, the Committee notes from the report that the average waiting period is 2 years and 8 months. The Committee however considered in *International Movement ATD Fourth World v. France*, collective complaint No. 33/2006, decision on the merits of 5 December 2007, §129, that an average waiting-time of 2 years and 4 months for allocation of social housing was too long. The average waiting period for allocation of non-profit rental housing is therefore too long.

In addition, the report provides still no information on the remedies available in case of excessive length of waiting period. The Committee therefore reiterates its conclusion of non-conformity.

### **Housing benefits**

The report indicates that following the entry into force on 1 January 2012 of the Exercise of Rights to Public Funds Act, the power to decide on subsidised rent was transferred to social work centres. According to the new procedure, the more precise material situation of a tenant and relevant persons is determined by a single procedure. The report underlines that legal conditions for obtaining subsidised rent and the income threshold have not been amended. The Act introduced a new provision according to which tenants renting dwellings at market prices are entitled to a "non-profit part" of the subsidy, i.e. nearly the entire market rent payment can be subsidised.

As regards the complaint *European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia*, No. 53/2008, decision on the merits of 8 September 2009, the Committee recalls that the follow-up will be made in Conclusions 2016.

### *Conclusion*

The Committee concludes that the situation in Slovenia is not in conformity with Article 31§3 of the Charter on the grounds that:

- nationals of other States Parties lawfully residing or working regularly are not entitled to equal treatment regarding eligibility for non-profit housing;
- the supply of non-profit housing is inadequate;
- the average waiting period for allocation of non-profit rental housing is too long;
- the remedies in case of excessive length of waiting period are not effective.





January 2016

# **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**SWEDEN**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Sweden which ratified the Charter on 29 May 1998. The deadline for submitting the 14th report was 31 October 2014 and Sweden submitted it on 4 November 2014. The Government submitted additional information on 24 June 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report contains also information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to social security – existence of a social security system (Article 12§1)

Sweden has accepted all provisions from the above-mentioned group except Articles 7§5, 7§6, 8§2, 8§4 and 8§5.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Sweden concern 32 situations and are as follows:

– 25 conclusions of conformity: Articles 7§2, 7§4, 7§7, 7§8, 7§10, 8§1, 8§3, 16, 17§1, 17§2, 19§1, 19§2, 19§3, 19§5, 19§7, 19§8, 19§9, 19§10, 19§11, 19§12, 27§1, 27§2, 27§3, 31§1 and 31§3

– 7 conclusions of non-conformity: Articles 7§1, 7§3, 7§9, 12§1, 19§4, 19§6 and 31§2

The next report to be submitted by Sweden will be a simplified report dealing with the follow up given to decisions on the merits of the following collective complaints in which the Committee found a violation:

- Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on the merits of 3 July 2013, violation of Articles 6§2, 6§4, 19§4a and 19§4b.
- Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002, decision on the merits of 22 May 2003, violation of Article 5.

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 Sweden.

The Committee previously found the situation to be in conformity. It noted that the minimum age for employment in Sweden is 16 and light work is permitted as of the age of 13 (Conclusions 2004). The report indicates that according to Sections 3 and 12 of Regulation on Minors' Work Environment 2012:3 (AFS 2012:3), children under 13 must not perform any work except in cases of simple work without any risks within enterprises run by a family member without other employees and when the Work Environment Authority has given a prior authorisation to performance in cultural, artistic, sports or advertising activities. The Committee asks how the Work Environment Authority monitors these situations.

The Committee notes from the report that children subject to compulsory education may work up to 7 hours per day and 35 hours per week during school holidays. The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015).

The Committee therefore considers that the situation is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.

In its previous conclusions (Conclusions 2011 and 2006), the Committee asked how the conditions under which home work is performed are supervised in practice. It also asked for updated information regarding the situation in practice as reported by the Labour Inspection (Work Environment Authority)

The report indicates that the Swedish Work Environment Authority conducts annual inspections where many young people work. The report provides the number of workplaces and the number of visits per economic activity for the period of 2010–2013. The report does not provide information on the sanctions applied in cases of breach. The Committee requests information on the number of inspections concerning the prohibition of employment for children and any sanctions imposed.

As regards work done at home, the report indicates that according to Section 15 of the Work Environment Ordinance (SFS 1977:1166), inspection visits are only performed at the request of the employer or employee concerned or if there is some other special reason for them. The same shall apply concerning work done by a person carrying on business without employees or employing only a member or members of his family.

### *Conclusion*

The Committee concludes that the situation in Sweden is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.

## **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 Sweden.

The report indicates that since 1 February 2012, there is a new Regulation on Minors' Work Environment in Sweden (AFS 2012:3). According to Section 11 of the AFS 2012:3 young persons under 18 are not allowed to perform certain hazardous jobs described in the appendix. Some exceptions are permitted in case of (i) assignments which are part of teacher-supervised tuition located on school premises or some other place specially arranged for tuition or if the minor is taking part in training, or (ii) if the minor has undergone vocational training for the assignment in question.

The Committee recalls that under Article 7§2 of the Charter, exceptions are permitted in cases where young persons under the age of 18 have completed their training for performing dangerous tasks or if such work proves absolutely necessary for their vocational training, but only under strict expert supervision and only for the time necessary). In all situations of derogation, the Labour Inspection must monitor these arrangements (Conclusions 2006, Norway; Conclusions 2006, Portugal).

The Committee requests information on the activities of the authorities of monitoring the conditions under which persons under the age of 18 perform dangerous or unhealthy activities, including in the abovementioned situations of exception.

### *Conclusion*

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

In its previous conclusion (Conclusions 2011), the Committee referred to its Statement of Interpretation on Article 7§3 and asked for confirmation that the legislation effectively guarantees an uninterrupted period of at least two weeks during the summer holidays. The report indicates that according to Section 20 of the Regulation on Minors' Work Environment 2012:3 (AFS 2012:3), children who are up to 16 years of age and still in compulsory school are entitled to a period free of any work of at least 4 consecutive weeks during the school holidays.

The report indicates that Section 14 of AFS 2012:3 provides that children who have reached the age of 13 but not the age of 16 and who are still subject to compulsory school may not perform work that requires physical or mental strength. They are not allowed to sell goods that require a certain age (for example alcohol, tobacco etc).

According to Section 20 of AFS 2012:3, children who have not reached 16 and who are still subject to compulsory education are entitled to:

- a minimum rest period of 14 consecutive hours for each 24-hour period;
- at least two days off for each seven-day period. The rest period must never be less than 36 consecutive hours;
- during school weeks they are allowed to work 2 hours per school day or 7 hours per non-school day and 12 hours per school week at the most;
- during school holidays they are allowed to work 7 hours a day and 35 hours per week.

The Committee notes from the report that children subject to compulsory education may work up to 7 hours per day and 35 hours per week during school holidays. The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015).

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

The Committee asks information on the activities of the authorities of monitoring and detecting cases of possible illegal employment of children subject to compulsory education. It also wishes to know what sanctions are imposed in practice against the employers for infringements of the applicable legislation.

### *Conclusion*

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

## **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 Sweden.

The report indicates that young persons who have reached the age of 16 and who are not in compulsory school are not allowed to work more than 8 hours per day and 40 hours per week (Section 21 of Regulation on Minors' Work Environment 2012:3).

The report indicates that young workers under 18 who are not in compulsory education are entitled to:

- a minimum rest period of at least 12 consecutive hours for each 24-hours period.
- at least two days off for each seven-day period. The rest period must never be less than 36 consecutive hours.

The report indicates that the period between 10 pm and 6 am or between 11 pm and 7 am should be free from work. The daily rest may be reduced to 11 hours in work places where the ordinary work shifts end between 10 pm and 12 pm or starts between 5 am and 7 am. The daily rest may also be reduced to 11 hours regarding work performed in hospitals or similar establishments, in agriculture or in hotels and restaurants. The same applies for activities involving periods of work split up over the day. The minors are allowed suitable compensatory rest time.

The Committee recalls that the situation in practice should be regularly monitored and asks information on the activities of the authorities of monitoring the working hours of persons under 18 years of age who are no longer subject to compulsory education. It also wishes to know what sanctions are imposed in practice against the employers for infringements of the applicable legislation.

### *Conclusion*

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

The Committee notes that young workers under 18 must have at least four consecutive weeks leave each calendar year. The leave shall be scheduled at times that are free from course schedule (Section 20 of Regulation on Minors' Work Environment 2012:3).

The Committee recalls that the situation in practice should be regularly monitored and asks how the authorities monitor the situation in practice with respect to the right of young workers to at least four consecutive weeks free from work with pay. It also wishes to know what sanctions are imposed against the employers for infringements of the applicable legislation.

### *Conclusion*

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

The report indicates that according to Section 19 of Regulation on Minors' Work Environment 2012:3 (AFS 2012:3) children who have reached the age of 16 and who are still in compulsory school must not perform work between 8 pm and 6 am.

The report indicates that according to Section 21 of AFS 2012:3 a young person who have reached the age of 16 but not the age of 18 and who are not in compulsory school must not perform work between 10 pm and 6 am or between 11 pm and 7 am. Exceptions are provided in work places where the ordinary work shifts end between 10 pm and 12 pm or starts between 5 am and 7 am, for activities involving periods of work split up over the day and for work performed in hospitals or similar establishments, in agriculture or in hotels and restaurants.

The report underlines that according to Section 16 of AFS 2012:3, a young person under 18 must never perform work between 12 pm and 5 am.

The Committee recalls that the situation in practice should be regularly monitored and requests information on the activities of the monitoring bodies with respect to the prohibition of night work for young persons under 18, including on the number and nature of violations detected and sanctions imposed on employers.

### *Conclusion*

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

The Committee previously found the situation in Sweden not to be in conformity with Article 7§9 of the Charter on the ground that a regular medical examination of young workers was not guaranteed by the existing legal framework.

The report indicates that since 1 February 2012, the Regulations on Minors' Work Environment (AFS 2012:3) in Sweden have changed. The report indicates that according to Section 5 of AFS 2012:3 regular medical controls shall be performed if necessary for risk evaluation of the minor's safety, physical or mental health or development. The interval between the medical controls shall be adjusted to the nature of the risks and to the minor's health and maturity.

The Committee notes that the legislation does not provide for compulsory medical examination of under-18 year olds at recruitment and thereafter. It recalls that, in application of Article 7§9, domestic law must provide for compulsory regular medical check-ups for under-18 year olds employed in occupations specified by national laws or regulations. Noting that the situation has not changed, the Committee reiterates its conclusion of non-conformity.

The report indicates that the Swedish Work Environment Authority continuously follows up and evaluates the health situation for young people. There is a handbook accompanying AFS 2012:3 where further instructions and examples are given to employers. Some types of work are prohibited for minors to perform altogether, whilst other types of work that do not require medical supervision for other employees are assessed to have risks for minors, and therefore medical supervision should be made. In the abovementioned handbook examples are given of such work and include different types of construction work, heavy lifting within the health sector and opening and closing of a store etc.

The Committee recalls that the obligation under Article 7§9 of the Charter entails a full medical examination on recruitment and regular check-ups thereafter (Conclusions XIII-1 (1993) Sweden). The intervals between check-ups must not be too long. An interval of two years has been considered to be too long by the Committee (Conclusions 2011, Estonia). The Committee asks what is the interval between the medical controls of young persons under 18 years, evidenced by concrete examples.

The Committee asks that the next report provide information on the activity of the monitoring authorities, including the number of inspections regarding compulsory medical examination of persons under 18 years of age, and their results. It asks data on the number of medical examinations of young persons under 18 undertaken in practice.

### *Conclusion*

The Committee concludes that the situation in Sweden is not in conformity with Article 7§9 of the Charter on the ground that a regular medical examination for young workers is not guaranteed by national laws or regulations.

## **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 Sweden.

### ***Protection against sexual exploitation***

Sweden ratified the Council of Europe's Convention on Action against Trafficking in Human Beings in May 2010 and the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in 2013.

In reply to the Committee's question in the previous conclusion (Conclusions 2011) the report states that the Government adopted a new Action Plan against Trafficking, Exploitation and Sexual Abuse of Children in February 2014. The Action Plan also includes a description of the work carried out and measures taken in the area between 2007 and 2013. The measures that have been taken include strengthened legislation, increased cooperation between relevant authorities, spreading of relevant knowledge to children, adults and people working within the field and an increased international cooperation.

The report provides examples of the measures that have been taken between 2007 and 2013:

- changes in the national legislation on trafficking in human beings, including a more clear and appropriate description of the crime;
- better coordination and cooperation between relevant authorities on work against trafficking and prostitution. The Stockholm County Administrative Board was tasked to be the national coordinator on trafficking in human beings for sexual purposes and prostitution in 2009. The role was widened in 2013 when the Board was tasked also to coordinate trafficking in human beings for other purposes than sexual.

The objective for the 2014–2015 Action Plan is that no child should be a victim of trafficking, exploitation or sexual abuse and is therefore wider in its scope than the earlier Actions Plans (from 1998, 2001 and 2007) that dealt primarily with sexual exploitation of children. The measures in the Action Plan aim to improve the protection of children in particularly vulnerable situations. The measures are expected to lead to:

- increased awareness among government agencies, professionals, the general public and children themselves of the vulnerability of children to trafficking, exploitation and abuse;
- increased effectiveness in the work of governments and other relevant stakeholders to protect children from these violations; and
- improved contributions by the authorities to international cooperation on protecting children from trafficking, exploitation and sexual abuse.

On 1 July 2010, amendments were made in the Swedish Penal Code that criminalise viewing of a child pornographic picture which the viewer has gained access to, sometimes referred to as web-viewing. On 1 January 2011, additional amendments were made in order to extend the criminalised area to include all pornographic representations of children under eighteen, regardless of whether they have undergone full pubertal development.

### ***Protection against the misuse of information technologies***

According to the report, since 2007 a Financial Coalition has been operating in Sweden for the purpose of forming a partnership between the financial and payment sectors, the Police and the organisation ECPAT (End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes) with a view to stop payments over the Internet for child sexual abuse material. In overarching terms, the development since the 2006 report from ECPAT shows that the number of websites with commercial child pornography has decreased.

### ***Protection from other forms of exploitation***

In its previous conclusion the Committee asked how the Government monitored the scope of the problem of trafficking and sexual exploitation of children.

A fundamental element in combatting the abuse and exploitation of children is the interventions of specialised authorities and agencies. The Government has tasked Stockholm County Administrative Board with monitoring, coordinating and disseminating knowledge and methods to municipalities, county councils, country administrative boards and government agencies concerning efforts to prevent trafficking in children and the exploitation of children.

The Stockholm County Administrative Board completed a national study in 2012 on children exposed to exploitation and trafficking. It found that between 2009 and 2011 there had been 166 registered cases of children suspected to be victims of human trafficking or crimes and exploitation related to human trafficking. The study showed that there were as many children that were victims of sexual exploitation as there were victims of other forms of exploitation such as pick pocketing or stealing, servitude begging and work.

Another vulnerable group was unaccompanied asylum-seeking children. Most of those children dwelled in the local municipalities on a temporary basis and many of them departed before the social services had the chance to initiate an investigation or give effect to decided measures. The survey called for clearer guidelines to the social services and also increased knowledge amongst officials that came in contact with children that risked being victims of exploitation or trafficking.

The Committee asks whether children, victims of sexual exploitation and trafficking as well as other forms of exploitation, such as begging can be treated as offenders and not as victims.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Sweden is in conformity with Article 7§10 of the Charter.

## **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 Sweden.

### ***Right to maternity leave***

Maternity leave is guaranteed to all employed women, irrespective of how long they have been employed. Section 4 of the Parental Leave Act provides that "a female employee is entitled to full leave in connection with her child's birth during a continuous period of at least seven weeks prior to the estimated time for delivery and seven weeks after the delivery". However, the law does not provide for six weeks compulsory post-natal leave, but only for two weeks compulsory leave to be taken before or after childbirth.

In this connection, the Committee considered that it should examine what legal safeguards exist to protect employees from any undue pressure to shorten their maternity leave and asked for further information in this respect, in particular as regards the safeguards enshrined in antidiscrimination legislation, existing agreements with social partners and collective agreements as well as, in general, the legal framework surrounding maternity (for instance, the existence of paid parental leave available to either parents at the end of the maternity leave).

The Committee noted in its previous conclusion that, according to a survey, 99% of women in Sweden use their whole maternity leave (the remaining 1% being on sick leave or having died during childbirth). It also noted that the Parental Leave Act (Section 22) provides sufficient protection against unfavourable treatment from an employer linked to maternity or parental leave. In addition, it noted that parental leave, which includes maternity leave, affords both parents a right to thirteen months' paid leave (80% of their previous income) to be shared between them as they wish and that the level of maternity benefits is of an adequate level to avoid economic pressure on women to return to work early (see below). In response to the Committee's question, the report indicates that, while there is no special agreement with social partners regarding postnatal leave, many collective agreements in both the public and the private sectors provide that the employer pays 10% extra under the ceiling (i.e., workers receive 90% income as parental benefit) and up to 90% above the ceiling. In the light of this information, the Committee considers that the situation is in conformity with Article 8§1 of the Charter.

### ***Right to maternity benefits***

The Committee notes from the report that parental benefit consists of two different kinds of compensation: 390 days are compensated at an income-related rate, corresponding to around 80% of the parent's sickness benefit qualifying income, up to a daily ceiling of SEK 944 (€106 at the rate of 31/12/2013), and 90 days are compensated at a flat rate of SEK 180 per day (€20). If a parent does not have a previous income, parental benefit is SEK 225 per day (€25). The Committee considers this level to be still adequate.

The Committee refers to its Statement of Interpretation on Article 8§1 (Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

### *Conclusion*

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

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

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

According to the report, there have been no changes to the situation which the Committee previously found to be in conformity with Article 8§3 of the Charter (Conclusions 2011): Section 4 of the Parental Leave Act provides for women employees' right to nursing leave, in the private as in the public sector. This time is not remunerated as working time but any loss of income is compensated by parental benefit.

### *Conclusion*

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

## **Article 12 - Right to social security**

### *Paragraph 1 - Existence of a social security system*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Sweden in response to the conclusion that it had not been established that the minimum level of sickness benefits and unemployment benefit was adequate (Conclusions 2013, Sweden).

The Committee recalls that under Article 12§1 benefits provided within the different branches of social security, should be adequate and in particular income-substituting benefits should not be so low as to result in the beneficiaries falling into poverty. Moreover, the level of benefits should be such as to stand in reasonable proportion to the previous income and should not fall below the poverty threshold defined as 50% of the median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold value (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, §§59-63).

As concerns the reliance on supplementary benefits, the Committee recalls that it is for the States Parties to prove that the supplementary benefits are effectively provided to all the persons concerned by social security benefits falling below the 50% threshold. Where the minimum level of an income-substituting benefit falls below 40% of median equivalised income, the Committee will not consider that its aggregation with other benefits can bring the situation into conformity and holds that it is manifestly inadequate (see Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, op.cit., §64, and also Conclusions 2013, Finland, Article 12§1) It reiterates in this respect its longstanding view that reliance on supplementary benefits of a social assistance nature should not transform the social security system into a basic social assistance system (Statement of interpretation on Article 12, Conclusions XIV-1 (1998)).

The Government maintains its position that the Swedish social security system provides adequate financial support for sick persons and the unemployed in accordance with the requirements of the Charter. It also reiterates that no statistical data are available on minimum benefit levels taken together with the different supplementary benefits. Despite this absence of data the Government maintains that benefit levels should be viewed together with other "intertwined benefits" when evaluating the support provided to sick persons and the unemployed.

More specifically, with respect to sickness benefits the report states that the level depends on the individual's income and the normal level is 77.6% of the person's income from work. The Swedish wage setting system is based on collective agreements between employers' organisations and trade unions. There is no minimum wage set by law. As a consequence, there is no minimum level in the sickness benefit scheme. However, there is an exception: young individuals, aged 19–29 years, can be granted activity compensation (*aktivitetsersättning*) (a kind of temporary disability benefit), if their working capacity is lastingly reduced due to sickness. Activity compensation is not part of the sickness benefit scheme but a person who has reached the age limit for activity compensation and does not have an income qualifying for sickness benefit or an income that is below SEK 80,300 per year (€ 8,672), can receive sickness benefit in special cases (*sjukpenning i särskilda fall*). This benefit is paid for all seven days of the week at SEK 160 per day (€ 17).

Individuals who receive sickness benefit in special cases are also entitled to a special supplementary housing allowance (*boendetillägg*). The size of this allowance depends on whether the individual is married or not and whether the individual has children. An unmarried recipient of sickness benefit in special cases receives SEK 84,000 per year (€

9,068) in supplementary housing allowance. A married person can receive SEK 42,000 per year (€ 4,534). The allowance is higher if a person has children: SEK 12,000 additionally per year (€ 1,275) if a person has one child, SEK 18,000 additionally per year (€ 1,913) if a person has two children and SEK 24,000 additionally per year (€ 2,550) if a person has three or more children. The amount of this supplementary housing allowance is not dependent on the individual's actual housing costs.

As regards normal sickness benefits, the Committee considers that the level of 77.6% of previous income may be regarded as reasonable in the meaning of Article 12§1 of the Charter. It nevertheless asks that the next report provide examples of typical normal sickness benefit rates for the lowest paid categories of full-time workers in the labour market (for example, unskilled manual workers) on a daily, weekly and monthly basis. It also requests clarification as to whether persons receiving normal sickness benefits may be entitled to receive any of the supplementary benefits referred to (housing allowances, social assistance, etc.) and under what conditions and circumstances, if possible illustrated by typical examples.

With respect to sickness benefit in special cases, the Committee considers that it is not a core social security benefit in the meaning of Article 12§1 as it is not an income replacement benefit, but is granted independently of any qualifying income to a special target group with little or no connection to the labour market. Consequently, the Committee will not assess the level of this benefit under Article 12§1, but reserves its position as to whether it may give rise to issues under other provisions of the Charter, such as Article 13 and Article 30.

As regards unemployment benefits, the report reiterates that it cannot provide information on the average monthly amount that a typical unemployed person might receive from the basic unemployment benefit (*grundersättning*) plus additional benefits. People covered by the basic insurance are paid a *basic level* of benefit per day, linked to the amount (of time) the job seeker worked prior to becoming unemployed. The highest basic level that can be paid per month is SEK 7,040 (€ 759). An unemployed person with two children will receive SEK 2,250 per month (€ 239) in child allowance. If the same person is a single parent he/she can receive maintenance allowance at SEK 2,546 per month (€ 271). This unemployed person will have a disposable income of approximately SEK 10,280 per month (€ 1,109). In addition, the unemployed person can receive housing allowance with the average monthly allowance for parents amounting to SEK 2,671 (€ 287) in 2014. However, this allowance is targeted at families with children and young persons aged 18 to 29.

The Government acknowledges that the housing allowance is not relevant for persons over 29 with no children, but it refers to the possibility that such persons could receive social assistance (*försörjningsstöd*). Anyone who is unable to provide for his or her needs or to obtain provision for them in any other way, is entitled to social assistance. The aim of the assistance is to ensure a reasonable standard of living. The monetary value of a reasonable standard of living for a single person household as defined by the applicable legislation corresponded to a yearly amount of SEK 104,160 in 2012 (€ 11,174) or about € 931 per month

The Committee considers that the basic unemployment benefit at its highest level of € 759 per month is manifestly inadequate as it corresponds to only about 34% of median equivalised income (2013 figures). On this basis the Committee does not consider it necessary to consider the impact of any supplementary benefits.

### *Conclusion*

The Committee concludes that the situation in Sweden is not in conformity with Article 12§1 of the Charter on the ground that the basic unemployment benefit is manifestly inadequate.



## **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 Sweden.

### ***Social protection of families***

#### ***Housing for families***

Sweden has accepted Article 31 of the Charter on the right to housing. As all aspects of housing of families covered by Article 16 are also covered by Article 31, for states that have accepted both articles, the Committee refers to Article 31 on matters relating to the housing of families.

#### ***Childcare facilities***

The Committee recalls that as Sweden has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

#### ***Family counselling services***

According to the Social Services Act (2001:453); the municipalities are responsible for family counselling being available to those who request it. Family counselling can be provided by the municipality or through another suitable professional counsellor, if the municipality has made a special agreement to that effect. The municipalities have the right to charge a fee for the counselling. During 2013 the number of municipal family counselling cases was about 34,000. During 2013 just over 110,000 family counselling sessions took place with about 60,000 persons aged 18 and above. This is equivalent to 9 per 1 000 of the population aged between 18 and 69. The number of cases initiated was about 27,000 in 2013 and almost 43,000 children under the age of 18 were directly or indirectly affected in the cases initiated during the year. In around 81% of the cases initiated in 2013, those seeking counselling were married couples or cohabiting partners. In approximately 5% of the cases they were living separately and in 10% of the cases the couple was separated. There are variations between different counties regarding the share of the population that visited municipal family counselling in 2013.

#### ***Participation of associations representing families***

The Committee refers to its previous conclusion (Conclusions 2011) where it found the situation to be in conformity in respect of the participation of associations representing families.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

As regards maintenance obligations, under the Marriage Act each of the spouses is responsible for the other spouse's maintenance during the marriage. According to the Act each spouse is normally responsible for their own support after a divorce. However, if one of the spouses needs money for her or his maintenance for a transitional period, he or she might be entitled to an allowance from the other spouse.

As regards assets and liabilities, under Swedish law spouses may have two kinds of assets, namely marital property and separate property. Marital property is the most common and applies unless something else has been specially decided. During marriage, each spouse decides over her or his own property. In principle, one spouse has no right to decide over the other spouse's assets.

As regards custody, under the Children and Parents Code all children under 18 years of age should be in custody of one or two adults. Custody of children involves certain obligations, for example, to ensure that the child has their need for care, security and a good upbringing satisfied.

As regards maintenance obligation for parents, under the Children and Parents Code parents are responsible for maintenance of their children according to what is reasonable having regard to the child's needs and the combined financial capacity of the parents. A parent who is neither the custodian nor permanently lives together with the child should fulfil his/her maintenance obligation by paying a maintenance allowance, usually a fixed amount per month.

### ***Mediation services***

The report indicates that concerning the alteration of custody, residence or contact it is possible for the court to assign a mediator with the purpose of reaching a common agreement between the parties. If court proceedings have been instituted, the court can also take the initiative for cooperation discussions. Furthermore, parents who wish to have help in concluding an agreement may apply to the municipality, which is under an obligation to offer assistance. According to the Social Services Act (2001:453) the municipalities are also liable to offer cooperation discussions. The purpose of the discussions is to reach a common view on issues relating to custody, residence and contact for parents who are separating or have separated. The cooperation discussions are free of charge. The report indicates that in 2013 around 3,700 agreements of this kind were reached.

### ***Domestic violence against women***

As regards the legal framework, since the last report the Committee notes the following information:

- the introduction of the crimes "gross violation of integrity" and "gross violation of a woman's integrity" has led to a general increase in the penal value of repeated offences in close relationships. Further, on 1 July 2013 the minimum penalty for these crimes was increased and the scope of their application widened;
- in 2011 an amendment to the Non-Contact orders Act entered into force, which introduces a new penal provision, i.e. unlawful persecution, to the Penal Code. The purpose of this provision is to strengthen the protection in penal law against harassment and persecution and to raise the level of penalties for crimes of this kind;
- Sweden signed the Istanbul Convention on preventing and combating violence against women and domestic violence in May 2011 and later ratified it on 1 July 2014.

From a practical standpoint, the Committee notes the following measures:

- in 2012, the Government appointed a national coordinator to combat violence in close relationships. The Coordinator's tasks includes bringing together and supporting the relevant authorities, municipalities, county councils and organisations to increase the effectiveness, quality and sustainability of the work against violence in close relationships;
- pursuant to the amendment to Chapter 5, Section 11 of the Social Services Act (2001:453) on the responsibility of the social welfare committee for crime victims, especially women subject to violence and children who witness violence, the National Board of Health and Welfare is carrying out enhanced supervision in this area as a commission from the Government;
- since 2013, the County Administrative Board of *Östergötland* has had a commission to develop a national competence team to combat forced marriage, child marriage and violence in the name of honour;

- the municipalities receive yearly special funding €11.7 million for measures to reinforce and develop their work to support and assist women subjected to violence and children who have witnessed violence in accordance with the legislation;
- the Government has increased the funds distributed to voluntary organisations working on combating violence against women €2.4 million in 2014.

### ***Economic protection of families***

#### ***Family benefits***

According to Eurostat data, the monthly median equivalised income in 2013 was €2,201. According to MISSOC, the monthly amounts of child benefit was €114 for the first child, €130 for the 2nd child, €180 for the 3rd child, €289 for the 4th child, etc. Child benefit represented a percentage of that income as follows: 5.1% for the first child, 6% for the 2nd child, 8.1% for the 3rd child and 13% for the 4th child, etc.

The Committee considers that, in order to comply with Article 16, child benefit must constitute an adequate income supplement, which is the case when it represents a significant percentage of the monthly median equivalised income. On the basis of the figures indicated, the Committee considers that the amount of benefits is compatible with the Charter.

#### ***Vulnerable families***

The Committee notes that on 16 February 2012, the Government adopted a coordinated, long-term strategy for Roma inclusion 2012-2032, notably by allocating €6.4 million for the period 2012-2015. It wishes the next report to provide further detailed information on the measures taken to ensure the economic protection of Roma families, including family benefits.

#### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The report indicates that foreign nationals, residing or working legally in Sweden are treated on an equal footing with nationals as regards family benefits.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

#### ***Conclusion***

The Committee concludes that the situation in Sweden is in conformity with Article 16 of the Charter.

## **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 Sweden.

### ***The legal status of the child***

The Committee notes that there have been no changes to the situation which it has previously (Conclusions 2011) found to be in conformity with the Charter.

### ***Protection from ill-treatment and abuse***

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.

### ***Rights of children in public care***

In its previous conclusion the Committee asked what were the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances. It further asked whether the national law provides for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family.

According to the report, since 1 January 2013, what is best for the child is to be the determining factor in decisions or other measures concerning care or treatment. The child's best interests are to be determined in each individual case, based on an assessment of the circumstances in the case in question. The social welfare committees shall endeavour to ensure that children and young people grow up in secure and good conditions and to promote, in close cooperation with families, the comprehensive personal development and favourable physical and social development of children and young persons.

According to the report, when a child needs to be cared for in a home other than its own, a plan for care shall be drawn up. Provisions have been introduced regarding out-of-home care. If an individual who, following a decision made by a different municipality, is already residing in a prospective private residence, the social welfare committee shall inform and consult with that municipality before making a decision on placing the individual in care.

Another situation that falls under the concept of deficient care, is when parents subject the child's health to a tangible risk of damage by failing to ensure that the child receives appropriate medical care. 'Deficient care' refers, among mothers, to situations in which the child's need for emotional security and stimulation is seriously neglected, e.g. due to substance abuse or mental disturbance on the part of the parents.

The social welfare committee may order that a young person be taken into immediate care. For such a measure to be taken, there has to be reason to assume that he or she needs to be provided with care, owing to the risk to the young person's health or development. Such an order has to be submitted to the Administrative Court for approval within a week after being made.

The Health and Social Care Inspectorate (IVO) has been responsible for supervising social services since 1 June 2013. IVO is obliged through acts and ordinances to inspect residential care facilities for children and young people regularly – at least twice a year.

### ***Right to education***

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

### ***Young offenders***

In its previous conclusion the Committee asked what was the maximum and average length of solitary confinement and how often this measure was implemented.

In reply it notes from the report that the maximum period for institutional care of young persons is four years. According to the Act on the Enforcement of Closed Juvenile Care, it is possible to keep a sentenced person separated if he or she displays violent behaviour or is affected by drugs in a way that cannot be kept in order. According to the act, a prerequisite for this measure is that he or she is under constant supervision by the staff. Furthermore, according to the act, the measure shall not last longer than what is absolutely necessary and under no condition longer than 24 consecutive hours.

According to Section 12 of the Act of institutional care of young persons, every sentenced person shall be given the opportunity to take part in education. Even if a young offender is sentenced to prison, he or she has a right to education. According to Chapter 3, Section 1 of the Imprisonment Act (Code of Statutes 2010:610), a prisoner shall be given the opportunity to take part in education.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in an irregular situation to protect them against negligence, violence or exploitation.

### ***Conclusion***

The Committee concludes that the situation in Sweden is in conformity with Article 17§1 of the Charter.

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

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

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

In its previous conclusion (Conclusions 2011) the Committee asked what measures were taken to reduce absenteeism among Roma children.

According to the report, the Swedish education system is free of charge and focused on mainstream solutions, with integrated compulsory school in which the choice of further specialisation is made relatively late. There are no special institutions or schools for Roma children; they receive the same schooling as other children. Although the basic principle of Swedish schools is inclusive, sometimes special measures are required e.g. for pupils whose mother tongue is not Swedish or pupils with learning disabilities.

Pupils with a good level of knowledge from compulsory school are better equipped to follow a national programme at upper secondary school. There is a government grant available to school organisers to arrange homework help for pupils in school years 6–9 of compulsory school. There is an ongoing initiative on summer schools.

A reform of the upper secondary school was introduced in the autumn of 2011. One of the overarching aims of the reform is that every pupil should be able to reach the goals set.

The completion ratio should be high and pupils should obtain their upper secondary diploma within three years. As few pupils as possible should drop out of their upper secondary education. In the reformed upper secondary school the quality of vocational education and training has been strengthened. The entry requirements to both general and vocational upper secondary education have been raised, so that pupils are better prepared for upper secondary level studies. For pupils that do not fulfil the entry requirements, there are five introductory programmes. These programmes should give pupils who are not eligible for a national programme an individually adapted education, which satisfies pupils' different educational needs and provides clear educational routes. The introductory programmes should lead to an establishment on the labour market and provide as good a foundation as possible for further education. Higher quality education for pupils not eligible for the national programmes is supposed to increase the completion ratio and prevent early school leaving.

As regards measures taken to reduce absences for Roma children, the Government has undertaken many efforts to support schooling of pupils of national minorities. Mother tongue tuition is regulated in the Education Act, in the School Ordinance and in the Upper Secondary School Ordinance. For education in a minority language there are fewer requirements than for other mother tongues; the pupil does not need to use the mother tongue as his/her daily language, there is no requirement of at least five pupils in the municipality and the tuition can be provided for more than seven years in compulsory school.

The Government has invested SEK 13 million in the website Tema Modersmål2. The website is designed as a support for mother tongue teachers, parents and children with another mother tongue than Swedish. On the webpage there are five Romani varieties represented. The Government has paid attention to the lack of teaching materials in Romani and has allocated over SEK 14 million to support development and production of materials in the minority languages. For example the Swedish National Agency for Education has produced a material about Roma children in preschool. The material illustrates situations in Swedish schools and corresponding situations in Roma culture; the aim is to get to know each other's cultures. To support teacher education in Romani Chib, Södertörn University has received an assignment to develop such an education.

On 16 February 2012, the Government adopted a coordinated, long-term strategy for Roma inclusion between 2012 and 2032. To speed up developments, the Government is conducting a special initiative in the form of a pilot scheme in five municipalities (Luleå,

Malmö, Helsingborg, Linköping and Göteborg). Education is one of the most important factors for achieving better living conditions for the Roma population. The National Agency for Education has therefore been instructed to describe the situation of Roma children and pupils in preschools and schools in the municipalities included in the pilot scheme, to develop and disseminate a teaching aid supplement on Roma culture, language, religion and history<sup>3</sup>, and to promote the development and production of teaching tools in all varieties of Romani Chib for children, young people and adults.

In its previous conclusion the Committee considered that Sweden failed to guarantee effective access to education to unlawfully present children, which amounted to a violation of Article 17.

The Committee notes from the report in this respect that children who are staying in the country without permission often find themselves in a very difficult situation which they usually cannot control. The children's families often try to hide from the authorities which further can increase stress for the children. The right to education means that these children are given the opportunity to achieve the same level of knowledge as peers. Such a right also plays a significant role in their health and development. The children are given the right to education and a better chance of developing mentally and socially.

According to the report, on 15 May 2013 the Swedish Parliament decided that children residing in Sweden without permission will essentially have the same right to education as the children who are residents in the country. The change of the law came into effect on 1 July 2013. The Government invests SEK 25 million in government grants for this purpose. Data about the children's identity will not be requested for the access to education.

The Committee considers that the situation has been brought into conformity.

The Committee takes note of the statistics relating to the numbers of schools, school children and teachers. It notes that almost all adolescents in Sweden start upper secondary school. According to the definition of Early School Leavers used in the European Union, the proportion of Swedish 18 to 24-year-olds without a completed upper secondary education and who were not in education was 7.1% in 2013. This is better than both the EU target level and Sweden's national target of less than 10%.

#### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 17§2 of the Charter.

## **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 Sweden.

### ***Migration trends***

In 2013, close to 16% of the Swedish population were born abroad, putting Sweden among the OECD countries with the largest foreign-born population.

Between 2010 and 2013 an average of 15,550 work permits of 12 months or more were granted each year. The largest professions of migrants included computer specialists, civil engineers and cleaning and restaurant staff. The largest number of labour migrants in 2012 and 2013 were nationals of India and China.

### ***Change in policy and the legal framework***

The main framework is contained in the Swedish Aliens Act 2005 (2005:716), as amended. Labour migrants are granted entry provided they have an offer of employment which enables them to support themselves. Permits may not be granted for a period of longer than two years, however they may then be extended up to a maximum of six years. Permanent residence may be granted to migrants who have lived in Sweden for four out of the previous seven years. If a migrant loses their job or resigns, they may remain for up to four months to search for a new employment opportunity.

Students may apply for a work permit in order to work while in Sweden, they may also remain in Sweden for six months after finishing their studies in order to find work.

In 2013 new legislation entered into force which obliges county councils to provide medical care, including emergency medical and dental care, to irregular migrants on the same basis as to asylum seekers. Children up to the age of 18 are given subsidised full healthcare regardless of their immigration status. Asylum seekers whose applications are refused may apply for a work permit and residence while still in the country. They must have worked for at least four months during the asylum process (reduced from six months) and have been offered at least one year of continued employment that meets the basic work permit requirements.

Sweden implemented the EU Blue Card Directive in 2013, which regulates conditions of entry for highly qualified workers.

In July 2014 (outside the reference period), amendments were introduced to improve mobility and circular migration. Residence permits are not automatically revoked if the person leaves Sweden to reside elsewhere. Rules for students wishing to remain and work in Sweden have been relaxed.

In August 2014 Sweden introduced new rules involving penal sanctions for employers who abuse the labour migration rules. An act passed in 2013 introduced a legal right for foreigners employed without permits to claim against their employer for any outstanding remuneration.

### ***Free services and information for migrant workers***

The report states that detailed information concerning application for work and residence permits is available in several languages on the Migration Board website. Furthermore, other websites such as “working in Sweden” and the Swedish Work Environment Authority provide information on working and living conditions, along with other useful information to facilitate integration of migrant workers.

The report also states that the Government has instructed the Swedish Migration Agency (*Migrationsverket*) to provide information to migrant workers regarding their rights and



obligations when working in Sweden. Amongst other things, the fact sheet contains information regarding basic requirements in order to obtain a work permit, the length of the work permit, salary and other conditions, as well as information relevant to accompanying family members.

While the provision of online resources is a valuable service, the Committee considers that due to the potential restricted access of migrants, other means of information are necessary, such as helplines and drop-in centres. It asks for information on any in-person services to be included in the next report.

In the meantime, the Committee considers that the situation in this regard is in conformity with the Charter.

### ***Measures against misleading propaganda relating to emigration and immigration***

In its previous conclusions (Conclusions 2011), the Committee requested a full and up-to-date description of the measures taken to counter misleading propaganda relating to emigration and immigration.

Several surveys from the SOM-institute (Society, Opinion and Media Institute) and the Eurobarometer, the numbers show that Swedes are in general positive towards immigration. The Eurobarometer shows that 72% of Swedes surveyed are positive towards immigration from countries outside the European Union.

The report states that the Office of the Ombudsman was formed on 1 January 2009 when the four previous anti-discrimination ombudsmen were merged into a single body. The Equality Ombudsman is a governmental agency that focuses on combating discrimination and promoting equal rights and opportunities for everyone. To this end, the Ombudsman is concerned with ensuring compliance with the Discrimination Act. This law prohibits discrimination related to a person's sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

The Ombudsman's responsibility also includes raising awareness and disseminating knowledge and information about discrimination and about the prohibitions against discrimination, both among those who might discriminate against others and those who risk being subjected to discrimination. This means that the Ombudsman offers guidance to employers, higher education institutions, schools and others, and helps develop useful methods on their behalf.

The Committee notes from the 2012 report of the European Committee against Racism and Intolerance (ECRI) on Sweden, that the government appointed a Special Rapporteur on Xenophobia and Intolerance to create a report in 2012, and has launched a website to refute the most common myths and negative stereotypes.

According to the report, the Swedish Committee Against Antisemitism (*Svenska kommittén mot antisemitism*, SKMA) was granted support in 2012–2014 for special training programmes on issues including antisemitism and islamophobia. The Official Council of Swedish Jewish Communities (*Judiska centralrådet i Sverige*) was granted support in 2011 and 2014 to finance measures intended to increase security and reduce vulnerability for the Jewish minority. The Swedish Christian Council (*Sveriges kristna råd*) was awarded a grant in 2014 to carry out the project "We don't hate" (*Vi som inte hatar*) in close cooperation with Swedish Inter-Faith Council.

The Living History Forum (*Forum för levande historia*) has been commissioned to carry out a major educational programme about various forms of racism and intolerance in history and today in the period 2015–2017. This commission is to be carried out in cooperation with the National Agency for Education (*Skolverket*).

The Committee notes the concerns of ECRI that "Xenophobic and islamophobic parties have gained ground over the past few years. Anti-Muslim political discourse has become more

widespread and the tone has hardened. Online racism has continued to grow exponentially and antisemitic and islamophobic comment, including by some members of Parliament, have proliferated.”

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information. It considers that in order to combat misleading propaganda, there must be effective organs to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.

The Committee notes from the report that in 2013 and 2014 the Swedish Media Council (*Statens Medieråd*) was commissioned by the Government to coordinate national activities in Sweden within the Council of Europe campaign No Hate Speech Movement. The Committee asks for further information concerning the Media Council, its role and activities.

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. As regards the Swedish police forces, the Committee notes from the abovementioned report of ECRI that the National Police Board has increased police training on hate-motivated offences since 2010.

The Committee recalls that to be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia and to prevent trafficking in women. Such measures, which should be aimed at the whole population, are necessary to counter the spread of stereotypes such as immigrants’ supposed predisposition to crime, violence or drug abuse and disease (Conclusions XV-1 (2000), Austria). Authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia). It asks for complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Sweden is in conformity with Article 19§1 of the Charter.

## **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 Sweden.

### ***Departure, journey and reception of migrant workers***

The report states that as residents, the labour migrant and accompanying family members gain access to the same rights and obligations as Swedish citizens, excluding voting rights. The spouse of the labour migrant will also be granted full access to the labour market.

The Committee notes that a major reform was introduced in the Introduction Act 2010. However, it also notes that the target group is protected persons and their family members, not migrant workers. Persons in full time employment are not entitled to benefit from an 'introduction plan'.

Newly arrived immigrants covered by the 'Introduction Act' now have the statutory right to an 'introduction plan' which includes employment preparation activities and civic orientation courses of at least 60 hours. Other measures include subsidised jobs programmes to encourage employers to take on migrants.

An introduction benefit, that is equal for everyone regardless of where one lives, is paid to newly arrived immigrants who participate actively in introduction measures.

The Committee asks for full and updated information on the measures taken to assist the arrival and departure of all immigrants and emigrants, and what services exist to improve the reception of migrant workers. The Committee recalls that reception 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 Committee notes from the previous report that migrants have full access to welfare. It understands that there are some flat rate charges for medical care in Sweden. It requests that the next report contain a detailed up-to-date explanation of the health care system as applicable to migrants, in particular the provision of emergency medical assistance.

### ***Services for health, medical attention and hygienic conditions during 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 requests details of any measures taken in regard of collective recruitment, if it should occur.

### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 19§2 of the Charter.

## **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 Sweden.

The Committee notes that the situation, which it previously considered to be in conformity with the Charter, has not changed.

The Committee notes from the report that Sweden coordinates its social security under the EU system with other European countries, and has concluded bilateral agreements with countries outside of the EU/EEA. The Committee recalls that 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). The Committee asks for further information on the content of these bilateral agreements, and specifically asks for clarification of whether they refer to coordination or cooperation of social services, rather than social security alone, on an international level.

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). 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.

Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed (Conclusions XV-1 (2000), Finland).

The Committee asked in its previous conclusion (Conclusions 2011) for an updated description of the situation. In the absence of such information, it reiterates its request and asks that the next report provide an updated description of the situation as regards communication and cooperation between Swedish authorities and bodies in other Member States charged with provision of social security and welfare assistance, with particular regard to the abovementioned case-law. The Committee considers that should the next report not contain the requested information, there will be nothing to demonstrate that the situation is in conformity with the Charter.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Sweden is in conformity with Article 19§3 of the Charter.

## **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 Sweden.

### ***Remuneration and other employment and working conditions***

The report states that penal sanctions are available against employers who abuse the labour migration system. The Swedish Migration Board can monitor employers by requiring them to provide written information about the terms of employment of migrant workers.

Work permits are only granted if the terms of employment are not inferior to those required by Swedish collective agreements or practice in the relevant profession or industry.

The Migration Board is also co-operating with other concerned authorities to prevent human trafficking and forced labour.

The previous report states that migrant workers enjoy full access to the welfare system on the same level as Swedish Citizens. The Committee asks that the next report contain a full and up-to-date description of the protection in law and practice of migrant workers' remuneration and working conditions.

The Committee notes from the report of ECRI that a relatively high proportion of migrants in Sweden are unable to find work. It notes that the Ombudsman is the main body charged with overseeing anti-discrimination policy. It asks that the next report contain information on any measures implemented to increase access to employment for migrants and combat discrimination in the workplace and in recruitment practices.

The Committee recalls that in its decision on the merits of 3 July 2013 in Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012 it held that Sections 5a and 5b of the Foreign Posting of Employees Act (1999:678) were contrary to Article 19§4(a) of the Charter insofar as these provisions do not secure for foreign posted workers lawfully within the territory of Sweden treatment not less favourable than that of Swedish workers with comparable occupational experience and skills, with respect to remuneration and other working conditions.

It notes that the situation has not changed. It refers to its statement of interpretation on posted workers and considers that should the government be able to intervene to ensure that minimum standards are protected by law, on the same terms under the applicable collective agreements for posted workers as for nationals, the requirements of Article 19§4(a) would therefore be met. In the information provided to the Committee of Ministers, the government stated that "the regulations ensure that posted workers are guaranteed a certain level of protection in terms of pay and other employment conditions, in accordance with the EU Posting of Workers Directive." The Committee asks what the procedure of complaint is, and what action is available to the government, to enforce the provisions of the 'lex Laval' which transpose the Posted Workers Directive. It asks whether the same collective agreements and conditions of work apply to posted workers as to nationals in the same area of work. In the meantime, it reserves its position as to whether Swedish law guarantees equal treatment in respect of remuneration and other employment and working conditions. It recalls in this respect that it will examine the follow-up to the above-mentioned decision (LO/TCO v. Sweden) in 2016.

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

The report does not provide updated information concerning the membership of trade unions and enjoyment of collective bargaining.

The Committee notes however from the information provided by Sweden to the Committee of Ministers that in September 2012, a Commission was assigned by the government with the task to evaluate the enforcement of the changes of the Foreign Posting of Employees

Act after the *Laval* case (C-341/05). The Commission shall examine the situation of posted workers in Sweden. After the initial investigation, the Commission shall evaluate the legislative amendments after the *Laval* case and propose any necessary amendments. The Commission shall further consider necessary changes to safeguard the Swedish labour market model in an international context. The proposals of the Commission shall further include an analysis of the consequences in relation to relevant international regulations. The Commission shall also pursue a dialogue with representatives of social partners. The Committee wishes to receive updated information on the work and/or findings of this Commission. It also requests that the next report provide information regarding any changes in law or practice regarding posted workers.

The Committee also notes from the information provided to the Committee of Ministers the government's statement according to which "the [legislative] changes restrict the Swedish trade unions' possibilities to take industrial action against a foreign employer who posts workers to Sweden, if the industrial action aims at regulating employment conditions which go beyond the minimum requirements of the so-called hard core of the EU Posting of Workers Directive." (Resolution CM/ResChS(2014)1, adopted by the Committee of Ministers on 5 February 2014 at the 1190th meeting of the Ministers' Deputies).

The Committee refers to its decision in *LO/TCO v. Sweden* and reiterates its finding that the restriction placed by Swedish law on the right of posted workers to participate in collective action to improve their conditions above the basic level of the current collective agreement is in violation of Article 19§4(b) of the Charter. It recalls in this respect that it will examine the follow-up to this decision in 2016.

### ***Accommodation***

The report provides no information on the issue of accommodation with regard to migrant workers. The Committee therefore asks that the next report provide a full and up-to-date description of the situation. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter.

### ***Conclusion***

The Committee concludes that the situation in Sweden is not in conformity with Article 19§4 of the Charter on the ground that treatment not less favourable than that of Swedish workers with respect to the enjoyment of the benefits of collective bargaining is not guaranteed for foreign posted workers lawfully within the territory of Sweden.

**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 Sweden.

The Committee notes that the situation, which it has previously considered to be in conformity with the Charter (Conclusions 2011), has not changed. The report states that migrant workers enjoy access to the welfare system on the same level as Swedish citizens. The Committee understands that they therefore pay the same social security contributions and receive equal treatment on this basis.

The Committee recalls that this provision recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions (See Conclusions II (1971), Norway, and Conclusions XIX-4 (2011), Greece).

The Committee asks for the next report to provide a full and up-to-date description of the situation as regards taxation and contributions of migrant workers.

*Conclusion*

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

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

### *Paragraph 6 - Family reunion*

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

### **Scope**

The previous report states that legislation on labour immigration allows a person who has been granted a work permit is allowed to bring his or her family members, who will be granted residence permits for the same duration as the sponsor. The spouse who joins the migrant worker gains full access to the labour market, without restriction on prospective employers or sectors. Family members allowed to join the migrant worker are the spouse, common law (de facto) spouse or registered domestic partner, and children under the age of 21 of the migrant or their partner.

The report states that it is amendments to the Aliens Act in July 2010 make it possible to a greater extent to grant parents and children who are already in Sweden a residence permit if they would have been granted one had they applied for it prior to arrival in Sweden.

### **Conditions governing family reunion**

There are no maintenance or accommodation requirements for the spouse or cohabiting partner, and dependent children under the age of 21 of the migrant or their partner.

Other relationships including persons intending to marry residents in Sweden and relatives other than members of the nuclear family who have a special relationship of dependence may apply for reunion. The report states that in April 2010, a means requirement was introduced as a condition for family reunion. The means requirement requires the sponsor to be able to support him or herself and have accommodation of adequate size and standard for himself and the family member. Where a child is involved or the sponsor is a refugee or person eligible for subsidiary protection, this condition is not applied. Exemptions also apply in cases where the sponsor has spent at least four years in Sweden with a permanent residence permit, or when there are other special grounds.

The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of Interpretation on Article 19§6). The Committee notes from the National Report to the European Policy Centre on the Family Reunification Project 2011 that unemployment insurance or similar work related income are taken into account. It notes from the same source that the Swedish courts have applied the case of *Chakroun v Minister van Buitenlandse Zaken* (Case C-578/08) in individual circumstances. The Committee asks that the next report contain further details on any income thresholds, and on what basis the calculation of income is made, including what forms of income or social assistance are eligible to be taken into account.

The Committee further recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee notes from the abovementioned National Report to the European Policy Centre that the Migration Board has the authority to set the required standards of



accommodation. By its direction, the accommodation should be of appropriate size for the number of occupants, and be of a reasonable standard, namely to be comparable to conditions required for a family of nationals. The Committee notes that there are a number of exceptions, including where the applicant or sponsor is a child, a refugee or person eligible for subsidiary protection, or when the sponsor has been living in Sweden with a residence permit for at least four years. It is also possible under Chapter 5 Section 3(e) of the Aliens Act (as amended) to grant exemptions if special reasons exist. The Committee considers that the possibilities which exist in Sweden for exemption from such requirements satisfy Article 19§6 of the Charter.

The Committee acknowledges that States may take measures to encourage the integration of migrant workers and their family members. It notes the importance of such measures in promoting economic and social cohesion. However, the Committee considers that requirements that family members pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may impede rather than facilitate family reunion and therefore are contrary to Article 19§6 of the Charter where they have the potential effect of denying entry or the right to remain to family members of a migrant worker, or otherwise deprive the right guaranteed under Article 19§6 of its substance, such as by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments (Statement of interpretation on Article 19§6, General introduction to Conclusions 2015). The Committee asks whether there are language requirements for family reunion, and if so, what are the criteria and how are they applied?

The Committee considers 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.

Between 2010 and 2013, 180,999 applications were registered, of which 166,568 were decided. 102,866 applications were approved, and 47,056 were denied. 16,646 cases were discontinued, including by withdrawal or because the applicant could not be contacted. The Committee asks for further information in the next report on the reasons for denial of requests for family reunion. It asks for up to date information concerning the procedures of appeal in cases of family reunion.

### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 19§6 of the Charter.

## **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 Sweden.

The report states that access to justice applies to all individuals within Swedish jurisdiction. The Legal Aid Act (1996:1619) is administrated by the Legal Aid Authority.

To pay the cost of a lawyer or a legal practitioner a person involved in a legal dispute must primarily use the legal protection cover that is included in his or her home insurance. If the person does not have a home insurance, he or she could be entitled to legal aid in certain circumstances. The Committee asks what these circumstances are specifically.

Legal aid includes part of the cost for the lawyer, or legal practitioner, for up to 100 hours. For persons under the age of 18 who have no income or wealth, the whole cost may be covered.

Furthermore, legal aid includes costs for interpretation and translation, court application fees, copies of documents from authorities, documents that have been served and the cost of a mediator, etc. The report states that legal aid can be increased if there are special reasons. The Committee wishes to know what types of situation may be considered a special reason.

The report indicates that legal aid does not mean that the state automatically pays all costs for a lawyer or legal practitioner. A person who receives legal aid pays a part of the cost for a lawyer as a legal aid fee. The Committee understands that the level of contribution is staggered from 2% to 40%. It recalls that whenever the interests of justice so require, a migrant worker should 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 (Conclusions 2011, Statement of Interpretation on Article 19§7). The Committee asks for further information on how the level of legal aid provision is determined, and what criteria are applied.

The report states that individuals who do not have an adequate command of Swedish have a right to be assisted by an interpreter in court. It is the Swedish Courts who consult the interpreters and pay their fees. The Committee notes that translation fees for court documents where necessary are also paid for from public funds. The Committee recalls that 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 this regard, the Committee considers that the situation is in conformity with the Charter.

The Committee refers to the Statement of Interpretation on the rights of refugees under the Charter, and asks under what conditions refugees and asylum seekers may receive legal aid.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Sweden is in conformity with Article 19§7 of the Charter.

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

### *Paragraph 8 - Guarantees concerning deportation*

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

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' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of interpretation on Article 19§8, Conclusions 2015).

Under Chapter 7 Section 4 of the Aliens Act (2005:716) (the Act), as amended, in assessing whether a residence permit should be withdrawn from an foreigner who has entered the country, account shall be taken of the ties that the foreigner has to Swedish society and of any other arguments against withdrawing the permit.

The Committee recalls that Article 19§8 obliges 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).

Under Chapter 8 Section 8 of the Act, a foreigner may be expelled from Sweden if he or she is convicted of an offence that is punishable by imprisonment.

Under Chapter 8 Section 11, when a court considers whether a foreigner should be expelled under Section 8, it shall take into account the foreigner's ties to Swedish society. The court shall pay particular attention to:

1. the foreigner's personal circumstances,
2. whether the foreigner has any child in Sweden and, if so, the child's need of contact with the foreigner, the nature of the contact in the past and how it would be affected by the foreigner's expulsion,
3. the foreigner's family situation in other respects, and
4. how long the foreigner has been in Sweden.

Under Chapter 8 Section 7 of the Act, a foreigner who has a right of residence may be expelled from Sweden out of consideration for public order and security. If the foreigner has a right of permanent residence at the time of the expulsion order, however, he or she may only be expelled if there are exceptional grounds for this.

Pursuant to Chapter 1 Section 7 of the Act, 'security cases' are cases in which the Swedish Security Service, for reasons relating to national security or otherwise bearing on public security, recommends:

- that a foreigner be refused entry or expelled,
- that a foreigner's application for a residence permit be rejected or that a foreigner's residence permit be withdrawn,
- that a foreigner not be granted a status declaration or that a foreigner's status declaration be withdrawn, or
- that a foreigner not be granted a travel document.

Under the Act 'security cases' are now examined essentially in the same manner as other cases under the same law. Under Chapter 14 Section 3 a decision of the Swedish Migration Board may be appealed to a migration court if the decision entails:

- rejection of an application for a visa or withdrawal of a visa from a foreigner who is a family member of an EEA national, though not an EEA national himself or herself,
- refusal of entry or expulsion,
- rejection of an application for a residence permit or for long-term resident status in Sweden for a third-country national or
- withdrawal of a residence permit or of long-term resident status in Sweden for a third-country national.

This provision therefore also covers security cases. The report indicates that therefore most appeals against decisions in security cases are dealt with by the migration courts and the Migration Court of Appeal, not the Government.

The report states that exceptional cases where the outcome is of special importance to national security, e.g. where the state itself is being exposed to a serious threat, may, if certain conditions are met, be processed under the Aliens Controls (Special Provisions) Act (1991:572). In particular, under this Act an alien may be expelled if specially warranted on grounds of national security or where it may be feared, in view of what is known about the foreigner's previous activities and other circumstances, that he or she will commit or be an accessory to a terrorist offence or attempt, preparation or conspiracy to such a crime. The person in question does not need to belong to a certain organisation in order for the Act to be applied.

The Committee recalls that states must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake (Conclusions V (1977), United Kingdom). The Committee previously found that the situation was not in conformity with the Charter because there was no appeal for migrants served with expulsion orders to a court of law on the merits of the case.

The report indicates that the scope of the Aliens Controls Act has been reduced by stricter prerequisites and the legal safeguards surrounding the procedures under the Act have also been enhanced by amendments. In cases relating to expulsion under this Act, the Government is still the instance of appeal. However, when an appeal is made, the Migration Board shall expeditiously also transfer the documents in the matter directly to the Migration Court of Appeal. The court is required to state its own opinion, not only as to the issue of impediments to enforcement of the expulsion order (the risk of torture, inhumane or degrading treatment or punishment etc.) but on all matters of the case. The court has investigative duties and the foreigner is assured the right to present his or her own evidence. The court is also required to hold an oral hearing before expressing its opinion. If the court considers that there are impediments to enforcement of the expulsion order, the Government is not allowed to deviate from that assessment. In this case, the Government shall order that enforcement shall not be allowed until further notice, or grant the foreigner a temporary residence permit. An expulsion order may not be enforced during the time a residence permit applies.

In the light of all of the information available to it, the Committee concludes that the situation in this respect has been remedied.

The Committee recalls that national legislation should reflect the legal implications of Article 18§1 of the Charter read in conjunction with Article 19§8 as informed by the case-law of the European Court of Human Rights: foreign nationals who have been resident for a sufficient length of time in a state, either legally or with the tacit acceptance of their illegal status by the authorities in view of the host country's needs, should be covered by the rules that already protect other foreign nationals from deportation (Conclusions 2011, Statement of

Interpretation of Article 19§8). It notes that in Sweden decisions to expel are required to take into account the personal circumstances of the migrant. Under Chapter 8 Section 12, a foreigner may be expelled under Section 8 only when there are exceptional grounds, if he or she had been in Sweden on a permanent residence permit for at least four years when prosecution was initiated or if he or she had at the time been resident in Sweden for at least five years. This also applies to a national of another Nordic country who had been resident here for at least two years when prosecution was initiated and to a foreigner who has a right of permanent residence in Sweden. The Committee considers that the situation in this respect is in conformity with the Charter.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Sweden is in conformity with Article 19§8 of the Charter.

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

### *Paragraph 9 - Transfer of earnings and savings*

The Committee notes the information in the report submitted by Sweden.

The Committee notes that the situation, which it previously considered to be in conformity with the Charter, has not changed.

The Committee recalls that migrants must be allowed to transfer money to their own country or any other country without excessive restrictions (Conclusions XIII-1 (1993), Greece). The right to transfer earnings and savings includes the right to transfer movable property (Conclusions 2011, Statement of Interpretation on Article 19§9). The Committee requests that the next report contain an up-to-date description of the situation with regards to restrictions on the transfer of money and movable property.

The report indicates that the Swedish Consumer Agency is to set up a web-based information service to compare the costs of transferring money from Sweden to low and middle income countries. The intention is to enable consumers to find the best services, and also to increase competition among providers of transfer services.

### *Conclusion*

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

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

### *Paragraph 10 - Equal treatment for the self-employed*

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

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.

On the basis of the information in the report the Committee and for the reasons stated in its conclusion under Article 19§4, the Committee finds that the specific grounds of violation, namely the restriction of the right to collective bargaining and thereby the right to equal conditions in employment, apply only to employed migrants as they relate directly to the regulation of the employment relationship. They cannot therefore apply equally to self-employed workers. The Committee finds that the difference in treatment stems from the position of work and not from the position of being a migrant. It considers that self-employed migrants are treated equally with self-employed nationals. Therefore there is no violation of Article 19§10 on this ground.

### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 19§10 of the Charter.

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

### *Paragraph 11 - Teaching language of host state*

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

The report states that courses are provided to give a basic knowledge of the Swedish language to adult immigrants. Municipalities are required to offer such courses under the 'Swedish tuition for immigrants' scheme. Courses exist at a number of different levels and intensities to accommodate different backgrounds and abilities. Study plans are tailored to individuals in order to meet their needs. Courses are usually available within 3 months of registration of the migrant, and it should be possible to combine them with work or other study. In 2013 there were more than 113,000 students following the 'Swedish tuition for immigrants' scheme. The number of students has more than doubled since 2005.

From the age of seven, children of migrants are allowed access to the normal education system. In compulsory schooling the subject 'Swedish as a second language' replaces the ordinary teaching of Swedish for those who require it.

### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 19§11 of the Charter.



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

### *Paragraph 12 - Teaching mother tongue of migrant*

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

The report states that compulsory schools offer education of the mother tongue as a separate subject. Languages with the largest number of students include Arabic, Bosnian/Croatian/Serbian, English and Spanish. All children who speak a language other than Swedish at home may receive mother tongue education, including if only one parent speaks that language. Adopted children may receive mother tongue education even if their adoptive parents do not use it at home.

Municipalities are not required to organise mother tongue education if fewer than five students are entitled to such education in a specific language, or a suitable teacher cannot be found. The Committee asks for further information on the selection of teachers and for details of any refusals to provide mother tongue education on the basis that no suitable teacher could be found. The Committee notes that the government is examining the possibility of distance learning for pupils in municipalities where mother tongue teachers are hard to find. It asks that the next report provide updated information on any developments.

About 20% of all pupils at compulsory school level are entitled to mother tongue education. In 2009/10, 173,147 students were entitled, in 2012/13 the figure was 184,220. The Committee asks that the next report also provide information on how many eligible students are enrolled in courses of education in their mother tongue.

The National Agency for Education has developed a website, 'Mother Tongue Theme', which supports learning with resources for teachers available in 35 languages.

### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 19§12 of the Charter.

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

### *Paragraph 1 - Participation in working life*

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

### ***Employment, vocational guidance and training***

According to the report, workers with family responsibilities who have been away for a long time from working life can turn to the Public Employment Service and participate in the Job and Development Programme, which allows the worker to take part in individually adapted measures that are intended to help the person to find work. The measures can consist of jobseeker activities with coaching, preparatory measures, occupational rehabilitation, labour market training and help in starting business.

### ***Conditions of employment, social security***

The Committee notes that the situation which it has previously found to be in conformity with the Charter has not changed.

### ***Child day care services and other childcare arrangements***

Under the Education Act municipalities are obliged to provide preschool and out of school centres for children aged 1–12 years to the extent necessary in order to allow for parents to be gainfully employed or study or if the child has its own need of the activity. The obligation also comprises preschool for children whose parents are unemployed or on parental leave for a sibling. These children must be offered a place in preschool at least three hours a day or 15 hours a week. Municipalities may also provide pedagogical care (e.g. family day care), instead of preschool according to the parents' choice.

The municipalities have an obligation to organise universal preschool to all children from the autumn term of the year the child reaches the age of three.

In 2013 preschool and pedagogical care comprised 87% of all 1–5-year-olds. Over 506,000 children were in preschool education and pedagogical care in 2013, where approximately 105,000 adults are employed. In 2013 the total cost of preschool was SEK 59.8 billion (€ 6.5 billion) . The number of children per worker was 5.3 children.

### *Conclusion*

The Committee concludes that the situation in Sweden is in conformity with Article 27§1 of the Charter.

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

### *Paragraph 2 - Parental leave*

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

According to the report, parental benefit is paid for a total of 480 days. Parents with joint custody of a child are each entitled to half (240 days) of parental benefit. Parental benefit days can be transferred between parents, with the exception of 60 days that are reserved for each parent.

The report states that the length of leave and flexibility in choosing when to take parental benefit ensure the possibility of not only an extended period of time off work with young children, but also of greater work-family balance through working part-time, shorter hours or taking time off work when caring for older children.

Parental benefit consists of two different kinds of compensation: 390 days are compensated at a rate based on parental income up to a maximum ceiling, and 90 days are compensated at a flat rate of SEK 180 (€ 19.49) per day. If a parent does not have a previous income, parental benefit is SEK 225 (€24.36) per day.

Collectively agreed supplementary insurance schemes (agreed upon by the social partners) play an important role. The extent of the supplement differs across labour market sectors, and is an indication of employers' generally positive view of parental leave.

### *Conclusion*

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

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

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

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

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.

*Conclusion*

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

## **Article 31 - Right to housing**

### *Paragraph 1 - Adequate housing*

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

In its previous conclusion (Conclusions 2011) the Committee asked how the amendments to the legislation on public housing companies and rent setting have contributed to the effective enjoyment of the right to housing. The report states that these amendments are not sufficient to solve the issue of growing waiting times. It indicates that it is now up to the organisations of tenants and the landlords to establish appropriate structures for rent levels through collective negotiations. Since rents are negotiated between the organised interests – tenants on the one hand and municipal housing companies (MHCs) and private landlords on the other hand – the report indicates that it takes time before the changes are actually implemented, and even longer before the results can be seen on the market. The Swedish National Board of Housing, Building and Planning (*Boverket*) has been commissioned by the Government to follow the consequences of all the different aspects of the changes in the legislation that came into force on 1 January 2011, with the aim of a full-scale evaluation when enough time has elapsed for an evaluation to be meaningful. The Committee asks that the next report provide information on the outcome of this evaluation.

The Committee recalls that in its previous conclusion (Conclusions 2011), it deferred its conclusion pending receipt of more information concerning various aspects of the provision. This conclusion will only consider recent developments and the additional information provided in reply to the Committee's requests.

### ***Criteria for adequate housing***

The report indicates that 87.8% of the population is living in housing with a good standard.

According to the legislation, the state is responsible for providing the legal and financial infrastructure for housing provision, the municipalities are responsible for the planning of housing provision and households are generally expected to solve their housing situation on the market. In its previous conclusion (Conclusions 2011), the Committee asked what measures have been taken to improve the situation of inadequately housed persons. The report indicates that for families with children, young adults and elderly there are different forms of housing benefits available. In addition, the municipalities are also required by the Social Services Act (SFS 2001:453) to provide support for families in need, such as livelihood support and rent guarantees. If the situation is acute, for instance due to eviction because of rent arrears or disturbances, the municipalities provide temporary lodgings. Concerning persons with disabilities, it is the Support and Service to Certain Disabled Persons Act that provides specific measures in relation to housing for them. The municipalities also engage in providing shelter and housing for homeless people.

The Committee notes from the report that there are no comprehensive statistics on the expenditure of the state and municipalities aimed at providing adequate housing to those who are not able to get access to housing in the market without some kind of public support. It asks the next report to provide such statistics.

### ***Responsibility for adequate housing***

In its previous conclusion (Conclusions 2011) the Committee asked to be informed on the frequency with which public and private buildings are inspected. The report indicates that once a building with dwellings has been finished it is not subject to regular inspection regarding quality or standard, except with a few exceptions, i.e. ventilation and lifts. However, if there are problems tenants or organisations of tenants can bring the matter to the municipality. If it is a matter that concerns health or environment the local Office for Environment and Health is obliged to make inspections and issue any necessary injunctions. If it is a matter of neglected repairs and maintenance the matter can be brought to the Rent

Tribunal which can decide either that the property owner shall submit the management to a special manager with whom the property owner must sign an agreement (administrative injunction) or that the property is under the management of a special manager appointed by the Rent Tribunal (compulsive management). An application for special management may be made by the municipality or by the organisation of tenants (*Bostadsförvaltningslagen / Housing Management Act, SFS 1977:792*).

### ***Legal protection***

In its previous conclusion (Conclusions 2011) the Committee asked whether the two members appointed for the Rent Tribunal by organisations in the rented housing market were independent of the parties. The report explains that the Rent Tribunal is composed of a chairman, who is legally trained, and two lay assessors, one of whom is to be familiar with the problems of the administration of property and the other with those of tenants. The lay assessors are appointed by the National Board of the Judiciary for a term of office of three years. They are appointed from organisations of the housing sector, essentially the Swedish Federation of Property Owners and the National Tenants' Union. The persons selected sit in their personal capacity and not as representatives of their organisations. Like judges, lay assessors shall make an objective assessment of all the circumstances of the case and are independent of the parties.

As regards the cost of legal representation in Rent Tribunals, the report indicates that there are no statistics available. The Committee asks one more time what is the cost of legal representation in Rent Tribunals.

Concerning entitlement to legal aid, under the Legal Aid Act if a party does not have a home insurance he/she may be entitled to legal aid if his/her annual income does not exceed €27,800 per year. The applicant must moreover be in need of legal assistance and it must be reasonable for the state to contribute. The state does not automatically pay all costs for a lawyer. An application for legal aid is examined by the Legal Aid Authority if the case is dealt with by the Rent Tribunal and by the court if the case is dealt with there.

The report indicates that the mediation role played by Rent Tribunals is most likely the reason why many applications were discontinued or dismissed, but no statistical data are available on this issue.

### ***Measures in favour of vulnerable groups***

As regards measures taken to guarantee equality of treatment in access to adequate housing for Roma families, the report indicates that on 16 February 2012 the Government adopted a coordinated, long-term strategy for Roma inclusion 2012-2032. The Government has allocated €6.4 million for the period 2012-2015 for measures for Roma people. The measures are in particular targeting discrimination against Roma people in the housing market. Furthermore, the National Board of Housing Building and Planning plays a central role in providing a status report in the framework of the strategy for Roma inclusion. Other authorities involved are the Public Employment Service, the National Agency for Education and the National Institute of Public Health. The status report is to provide qualitative data on how government agencies and other relevant actors in certain pilot municipalities address the rights of Roma with regard to housing and highlight the discrimination they face. The Committee wishes the next report to provide information on the results of this status report.

The Committee asked also in its previous conclusion (Conclusions 2011) to be informed on the work of the new Equality Ombudsman with regard to cases of discrimination regarding the right to housing of vulnerable groups. In 2009, the Equality Ombudsman was requested by the Government to investigate the existence and prevalence of discrimination in the housing market. The results of the investigation confirmed the situation of Roma as a vulnerable group. The particular vulnerability of Roma was similarly noted by the Equality

Ombudsman in its 2011 report "Roma Rights – Discrimination, paths of redress and how the law can improve the situation of the Roma".

In view of the foregoing, the report indicates that the Equality Ombudsman is currently implementing a special project for the period 2013-2015 focusing on discrimination against Roma with regard to the housing market, by conducting training and consultations with both Roma and local authorities and by entering into consultations with national authorities with a view to establishing a broader dialogue with local authorities and actors in the housing market.

During the reference period, the Equality Ombudsman received between 45 and 77 individual complaints per year concerning discrimination with respect to housing. The report stresses that the majority of the complaints concerned discrimination on the ground of ethnicity. The Equality Ombudsman has entered into settlements in eight cases, five of which related to the discrimination of Roma in the housing market. The issues raised concerned the refusal to rent or purchase an apartment or to remain in an apartment already rented on the ground that the complainants were Roma. The other settlements related to complaints of discrimination on the ground of ethnicity (other than Roma) and disability. In all eight settlements financial compensation was allocated to the complainants in amounts varying between €2,700 and €12,800.

Also during the reference period one final judgment was issued in this area in court proceedings initiated by the Equality Ombudsman. The case concerned a family of refugees which was being charged higher levels of rent than other persons living in comparable accommodation. In its judgment the court found that the housing company had discriminated against the family, and ordered it to pay financial compensation in the amount of €3,200.

Concerning refugees, the Committee notes from a study on Refugee Integration in Sweden published by UNHCR in 2013 that refugees struggle with accessing suitable, affordable, secure, independent housing. It therefore asks the next report to indicate the measures that are being taken in order to overcome this issue.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Sweden is in conformity with Article 31§1 of the Charter.

## **Article 31 - Right to housing**

### *Paragraph 2 - Reduction of homelessness*

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

It is recalled that in its previous conclusion (Conclusions 2011), the Committee found the situation to be in conformity with Article 31§2 pending receipt of more detailed information concerning various aspects of the provision (see below). This conclusion will therefore only consider recent developments and the additional information provided in reply to the Committee's questions.

### ***Preventing homelessness***

In reply to the Committee's question on the results of the strategy called "Homelessness – multiple faces, multiple responsibilities". The report indicates that the strategy was evaluated by the University of Lund in 2011. The evaluation showed a positive development mainly for the decrease in the number of evictions and the non-eviction of children. Moreover, the National Board of Health and Welfare's experiences showed that there was a strong commitment on these issues among local authorities. However, the report stresses that according to this National Board structural changes seem to be difficult to implement.

The report indicates that a new mapping of homelessness has been carried out by the National Board of Health and Welfare in 2011. This mapping shed light on the fact that homelessness had increased since 2005, but also that fewer people were sleeping rough. The report states that this could be seen as a sign that the objective of the Government that everyone shall be guaranteed a roof over his/her head was being met. Moreover, in January 2012 the Government commissioned a Homelessness Coordinator with a view to implementing research results and knowledge generated by the Homelessness Strategy 2007-2009. The Coordinator's task was to support local authorities and municipalities in combatting homelessness and exclusion from the housing market with a special focus on creating long-term, sustainable structures and working methods. The Coordinator presented his final report in June 2014. The Committee asks the next report to provide information on the follow-up to this report. The County Administrative Boards have also been commissioned by the Government to support the municipalities to enhance their housing planning processes and to support them with their work to combat homelessness.

### ***Forced eviction***

The Committee refers to its previous conclusion (Conclusions 2005) for a description of the rules governing the procedures of eviction and the legal protection persons threatened by eviction are entitled to. It wishes the next report to provide a full and up-to-date description of the situation in this respect.

The report indicates that the Swedish Enforcement Authority has been commissioned to develop and improve the statistics on evictions. Thus, from January 2013 it is now possible to show the number of evictions where children are concerned, whether a child lives on a permanent basis in the apartment concerned by the eviction, and if the family (including the child) was present during the eviction. The report indicates that 504 children were concerned by evictions in 2013.

In its previous conclusion (Conclusions 2011) the Committee asked for the number of appeals against eviction orders. The report indicates that in 2013 there were 2,532 evictions and 639 appeals against eviction orders from the Enforcement Authority to the District courts.

As regards legal aid, the Committee refers to its conclusion under Article 31§1 of the Charter.



Concerning the number of evictions of Roma families, the report explains that no information can be provided because the Enforcement Authority does not keep statistics concerning ethnicity pursuant to Section 13 of the Personal Data.

In view of the lack of information as to the number of cases brought concerning lack of alternative accommodation offered or compensation awarded, the Committee reiterates its requests in relation to these matters.

### ***Right to shelter***

In reply to the question in its previous conclusion (Conclusions 2011) the report states that shelters/emergency accommodation is offered almost exclusively according to the Social Security Act, which means that both security requirements and health and hygiene standards are fulfilled.

The Committee also asked whether shelters/emergency accommodation is provided regardless of residence status. The report indicates that the individual must be residing in the municipality and have recourse to public funds, i.e. access to the social welfare system and/or the social security system. However, in emergency situations as well as for families with children exceptions can occur. The Committee understands that in emergency situations and families with children can have access to shelters/emergency accommodation regardless of residence status. It asks the next report to confirm its understanding.

Finally, the Committee wished to know whether the law prohibits eviction from emergency accommodation/shelters. The report states that the law does not prohibit eviction from shelters/emergency accommodation. The Committee recalls that eviction from shelter should be banned as it would place the persons concerned in a situation of extreme helplessness which is contrary to the respect for their human dignity (*Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009). Furthermore, the Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited. The Committee therefore considers that the situation is not in conformity with the Charter.

### ***Conclusion***

The Committee concludes that the situation in Sweden is not in conformity with Article 31§2 of the Charter on the ground that the law does not prohibit eviction from emergency accommodation/shelters without the provision of alternative accommodation .

## **Article 31 - Right to housing**

### *Paragraph 3 - Affordable housing*

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

### **Social housing**

As regards the impact of the reform concerning the setting of the price for rented flats that entered into force in January 2011, the report indicates that a formal evaluation cannot be undertaken until a reasonable time has passed for the changes to be implemented and have effect. The report however explains that according to the annual reports of the National Board of Housing, Building and Planning so far there are no or small changes in the result of the rent negotiations and rent increases have been fairly modest. Moreover this National Board notes that the average rent level is lower in the municipal housing company (MHC) sector than in the private sector. It consequently states that the rental community did not suffer any major rent increases as a result of the new legislation.

The Committee recalls that it considers that in order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show not the average affordability ratio required of all those applying for housing, but rather that the affordability ratio of the poorest applicants for housing is compatible with their level of income (European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, § 72). It therefore asks the next report to indicate whether the affordability ratio of the poorest applicants for housing is compatible with their level of income. In the meantime, it reserves its position on this issue.

### **Housing benefits**

The report indicates that there are two types of housing benefits:

- for families with children that consist of two parts, the special allowance for children living at home and the allowance for housing costs, which depends on the allowance for housing costs but also on the number of children in the family;
- for people under 29 years of age.

In its previous conclusion (Conclusions 2011) the Committee requested the number of refusals of housing benefits requests and the number of appeals lodged against such refusals. The report indicates that, in 2013, 52,501 decisions were rendered on refusals, i.e. 13% of all housing benefits cases and 1,739 appeals were lodged. The report however does not state whether the appeals concerned exclusively refusals. The Committee therefore asks the next report to provide statistics on the number of refusals of housing benefits requests and the number of appeals lodged against such refusals exclusively. The Committee also requested information on the outcomes of the appeals and the reasons given to justify refusals. The report provides no information in these respects.

The Committee recalls that legal remedies must be available in case of refusal of housing benefits (Conclusions 2003, Sweden). The report indicates that for approximately 3% of cases of refusal of housing benefits the court rendered a verdict. The Committee wishes the next report to indicate what is the legal basis of this remedy.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Sweden is in conformity with Article 31§3 of the Charter.



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**“THE FORMER YUGOSLAV REPUBLIC OF  
MACEDONIA”**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns "the former Yugoslav Republic of Macedonia" which ratified the Charter on 6 January 2012. The deadline for submitting the 2nd report was 31 October 2014 and "the former Yugoslav Republic of Macedonia" submitted it on 23 December 2014.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

"the former Yugoslav Republic of Macedonia" has accepted all provisions from the above-mentioned group except Articles 19§2 to 4; 19§7; 19§9 to 12; 27§1, 27§2 and 31.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to "the former Yugoslav Republic of Macedonia" concern 22 situations and are as follows:

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

–7 conclusions of non-conformity: Articles 7§1, 7§3, 7§9, 7§10, 8§2, 16 and 19§6

In respect of the other 6 situations related to Articles 8§1, 17§1, 17§2, 19§1, 19§8 and 27§3, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by "the former Yugoslav Republic of Macedonia" under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 8§5**

Section 162 of the Labour Relations Act, as amended in 2013 (Official Gazette No. 13/13), provides that pregnant women and mothers until one year after the birth should not perform any work which would expose them to increased risks for their health or their child's health.

#### **Article 17§1**

Entry into force of the Child Protection Act of 12 February 2013: corporal punishment is prohibited in alternative care settings (foster care, institutions, places of safety, emergency care, etc) under Section 12.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),

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

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to bargain collectively – joint consultation (Article 6§1)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://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 "the former Yugoslav Republic of Macedonia".

The report indicates that according to Section 18 (2) of the Law on Labour Relations, work of a child under the age of 15 or a child who is still subject to compulsory education is prohibited with the exception of participation in activities that do not have a harmful influence on the health, safety, development and education of children such as: cultural and artistic activities, sport events and marketing activities. The report adds that the child should receive suitable remuneration for these activities.

In reply to the Committee's question whether the legal provisions cover all forms of economic activity, irrespective of the status of worker, the report states that the legal provisions prescribing the ban on employing children younger than 15 years of age are applicable to all forms of economic activities regardless the status of the worker.

The Committee notes from another source that the Committee on the Rights of the Child (CRC), in its concluding observations of 23 June 2010, expressed concern regarding the incidence of child labour in the informal economy, including in street vending at intersections, on street corners and in restaurants (CRC/C/MKD/CO/2, paragraph 69) (Observation (CEACR) – adopted 2013, published 103rd ILC session (2014), Minimum Age Convention, 1973 (No. 138) – The former Yugoslav Republic of Macedonia (Ratification: 1991)). The Committee asks how the Labour Inspection services monitor the work performed by young persons in the informal economy, outside the scope of an employment contract.

In its previous conclusion (Conclusions 2011), the Committee noted that children under 15 may be involved in cultural, artistic, sport and marketing activities and it asked whether this is considered light work. It also asked whether there are other types of work in which children may participate, what are the rules governing employment of children in these activities, especially duration of such work. In reply to the Committee's question, the report indicates that the activities enumerated by Section 18 (4) of the Law on Labour Relations, namely cultural and artistic activities, sport events and marketing activities, are considered to be light work which do not have a harmful influence on the health, safety, development and education of children. The report indicates that in such cases, under Section 18 (5) an approval for performing such activities by a state body competent for labour inspection is required, based on a request submitted by the organiser of activities, and following the consent of the legal representative of the child and a previous inspection of the place where the activity will be conducted by the labour inspection.

The Committee notes from the report that the duration of light work performed by children under 15 years of age cannot exceed four hours per day according to Section 18 (2) of the Law on Labour Relations. The Committee recalls that work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work", especially the maximum permitted duration and the prescribed rest periods so as to allow supervision by the competent services. Even though it has not set a general limit on the duration of permitted light work, the Committee has considered that a situation in which a child under the age of fifteen years works for between twenty and twenty-five hours per week during school term (Conclusions II, p. 32), or three hours per school day and six to eight hours on week days when there is no school is contrary to the Charter (Conclusions IV, p. 54) (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §31). The Committee considered that four hours light work per day during the school term for children aged 13-15 was excessive and therefore not in conformity with Article 7§3 of the Charter (Cyprus 2011).

Noting that children under 15 may be involved in light work for up to four hours per day, the Committee considers that the situation in the former Yugoslav Republic of Macedonia is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.

The Committee takes note of the activity of the Labour Inspectorate. It notes that during its inspections the Labour Inspectorate has not found violations of prohibition of employment of children. The report indicates that the sanctions established by the Law on Labour Relations have been amended. Section 265 provides a penalty of € 2,000 to 3,000 for a legal entity and of € 1,000 to 2,000 for an employer – natural person if the employer concludes an employment agreement with a person who is under 15 years of age.

The Committee invites the Government to provide information on the activities and findings of the Labour Inspectorate of monitoring the prohibition of employment under the age of 15 and whether the conditions for involving children in light work are met. The Committee requests information on the violations detected and sanctions applied in practice by the Labour Inspection with regard to illegal employment of children.

The Committee recalls that work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28). The Committee asks how the work done at home is monitored.

#### *Conclusion*

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.



## **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 "the former Yugoslav Republic of Macedonia".

In its previous conclusion (Conclusions 2011), the Committee took note that according to Section 173 of the Law on Labour Relations, young workers under 18 cannot perform hard physical work, work carried out underground or under water, work with sources of ionising radiation and other work that can have detrimental and increased influence on their health.

The Committee previously noted that a draft regulation defining the activities prohibited for workers under 18 years of age was being developed and asked to be provided with the list of types of work prohibited to young workers due to their dangerous or unhealthy nature (Conclusions 2011).

The Government indicates in the report that the Rulebook on the minimal requirements for safety and health during work for young workers was adopted during the reference period (Official Gazette No. 127/12). The Rulebook prescribes the minimum occupational safety and health requirements for employees younger than 18 years of age. In addition, the Rulebook prescribes the list of harmful factors and working conditions to which young workers should not be exposed. This list includes: activities which lead to exposure to ionizing radiation; activities involving lifting and moving heavy loads which put undue strain on the limbs; activities in which a worker is on his feet for longer than four hours per shift; activities that are performed in strenuous positions; activities in extreme temperatures; and activities with high noise levels. This list also includes jobs that involve harmful biological or chemical materials (such as toxic, flammable, carcinogenic and explosive substances, lead and asbestos); jobs involving excessive dust; jobs involving the slaughtering of animals; jobs in structures or facilities under construction; jobs with high-voltage related risks; and jobs at heights exceeding 1.5 metres.

The Committee notes from the report that since 2012 the amounts of sanctions for breach of the rules prohibiting the employment of young workers under 18 in dangerous or unhealthy activities have been amended. Section 265 of the Law on Labour Relations provides penalties in amount of € 2,000 to 3,000 for a legal entity and of € 1,000 to 2,000 for an employer – natural person in case of breach of the applicable rules.

The report does not provide information with regard to the inspections of the Labour Inspection during the reference period. The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity of the Labour Inspection, its findings and sanctions applied in relation to the prohibition of employment of young workers under 18 in dangerous and or unhealthy activities.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" 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 "the former Yugoslav Republic of Macedonia".

The Committee noted previously that primary education is compulsory and starts at the age of 6 and lasts 9 years. It noted that secondary education is also compulsory which brings the age of young persons subject to compulsory education up to 18 or 19 (Conclusions 2011).

The Committee took note in its previous conclusion (Conclusions 2011) that the working time of the employees younger than 18 years of age cannot be longer than 8 hours per day and 40 hours per week (Section 174 of the Law on Labour Relations). The Committee asked whether there are any restrictions during school year as to the duration of work since according to the abovementioned legal provisions, all young persons under 18 years old are subject to compulsory education.

The report indicates that the limit of 8 hours per day refers to young persons who are not subject to compulsory education. The report underlines that according to Section 187 (6) of the Law on Labour Relations young persons over 15 years of age and below 18 years of age, may conclude an employment agreement if they are not subject to compulsory education for occupations that are not harmful for their health and safety.

The Committee takes note of the information provided by the Multiple Indicator Cluster Survey of 2005–06 that 9.9 per cent of children below the age of 15 are engaged in economic activity. This survey indicated that 11.7 per cent of 13 year olds and 12.4 per cent of 14 year olds were engaged in economic activities, and that the vast majority of these children also attended school (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Minimum Age Convention, 1973 (No. 138) – The former Yugoslav Republic of Macedonia (Ratification: 1991)).

The Committee notes that, according to section 18 (2) of the Labour Relations Law, a person under the age of 15 who has not completed compulsory school may work for a maximum of four hours a day in activities determined by law. The Committee recalls that it has considered that four hours light work per day during the school term for children aged 13-15 is excessive and therefore not in conformity with Article 7§3 of the Charter (Cyprus 2011). The Committee concludes that the situation is not in conformity with Article 7§3 of the Charter on the ground that the duration of working time for children who are still subject to compulsory education is excessive and therefore cannot be qualified as light work.

The Committee refers to its Statement of Interpretation on Article 7§3 (Conclusions 2011) and recalls that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays. Its duration shall not be less than 2 weeks during the summer holidays (Statement of Interpretation on Article 7§3, Conclusions 2011). The report indicates that the summer holiday lasts from 11 of June until 1 of September. The Committee asks how the authorities ensure that children who are still in compulsory education benefit of two consecutive weeks free from any work during the summer holidays. Pending receipt of the information requested, the Committee reserves its position on this point.

As regards supervision, the Committee would like to receive information on the activities and findings of the Labour Inspection or other authorities, including on violations detected and sanctions applied, in relation to work/light work performed by children who are still subject to compulsory education.

### *Conclusion*

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 7§3 of the Charter on the ground that the duration of working time for young persons still subject to compulsory education is excessive and therefore cannot be qualified as light work.

## **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 the "former Yugoslav Republic of Macedonia".

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

The Committee noted previously that Section 174 of the Law on Labour Relations, limits the duration of the working time of workers under the age of 18 and prohibits overtime work for them. The working time of employees younger than 18 years of age cannot be longer than 8 hours per day and 40 hours per week (Conclusions 2011). It also noted that it is compulsory to have a 30 minutes break after a minimum of 4 and half hours of work and an amendment to Section 174 of the Law on Labour Relations provides for a worker aged under 18 to have the right of rest of 16 consecutive hours during the period of 24 hours. The Committee requests updated information on the rules applicable to rest periods for young persons under 18 years of age.

The report indicates that Section 18 of the Law on Labour Relations provides that young persons who are not subject to compulsory education (who have left secondary education) can work 30 hours per week if they are under 16 years of age and 37 hours and 45 minutes in case they are over 16 years of age. The same limits apply when the young person works for several employers at once. The Committee asks in particular which are the rest periods provided for young persons under 16 who are not subject to compulsory education.

The Committee recalls that the situation in practice should be regularly monitored. It asks that the next report provide information on the activity of the Labour Inspection, its findings and sanctions applied in cases of breach of the applicable rules to reduced working time of young workers who are no longer subject to compulsory education.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the "former Yugoslav Republic of Macedonia" is in conformity with Article 7§4 of the Charter.

## **Article 7 - Right of children and young persons to protection**

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

The Committee takes note of the information contained in the report submitted by the "former Yugoslav Republic of Macedonia".

The Committee noted previously that time spent in additional qualification according to the needs of the employer is considered as integral part of the working day. During the additional education, the worker is entitled to salary compensation and the amount of the salary compensation is determined by collective agreements. In its previous conclusion (Conclusions 2011) the Committee took note that the General Collective Agreement for the Business Sector No. 88/2009 and the General Collective Agreement for the Public Sector No. 10/2008 and 85/2009 provide for salary compensation for additional training. The Committee asked whether these are the only collective agreements providing for inclusion and remuneration of time spent on vocational training in the normal working time. It also asked information on the proportion of work force covered by those collective agreements and what is the situation for the rest of the work force which is not covered by those collective agreements.

The report indicates that the matter of inclusion of time spent on vocational training in the normal working time shall be subject to collective agreements since it is not specified by law. The report underlines that the General Labour Agreements affect all employees while the industrial labour agreements and the agreements at company level concern only the employees and employers from that industry, respectively that company.

The report indicates that during the reference period, there were no violations identified by the State Inspectorate with regard to the inclusion of time spent on vocational training in the normal working time. The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the number and nature of violations detected as well as on sanctions imposed by the Labour Inspectorate in relation to the inclusion of time spent on vocational training in the normal working time.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the "former Yugoslav Republic of Macedonia" 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 the "former Yugoslav Republic of Macedonia".

The Committee noted in its previous conclusion (Conclusions 2011) that young workers under 18 years of age have the right to 20 working days of holiday which is the minimum duration of the annual vacation determined by Section 137 of the Law on Labour Relations and to other additional 7 days of holiday due to protection of younger workers (Section 176 of the same Law). Pursuant to Section 145 of the Law on Labour Relations, young workers do not have the right to waive the right of annual vacation, and any agreement by which the worker would waive his right to use annual vacation is null and void.

The Committee asked whether in the event of illness or accident during the holidays, young workers have the right to take the leave lost at some other time. The report indicates that the Law on Labour Relations determines that the employee has the right to use the annual holiday that was not used in the current calendar year because of illness or injury until the 30th of June in the following calendar year.

The Committee takes note from the report that since January 2012 the amount of the penalties for breach of the applicable rules providing longer annual holiday for persons younger than 18 have been amended. It notes that during its inspections, the Labour Inspection has not found any violations. The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the findings of the Labour Inspection in relation to the paid annual holidays of young workers under 18.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the "former Yugoslav Republic of Macedonia" 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 the "former Yugoslav Republic of Macedonia".

The Committee noted previously that Section 175 of the Law on Labour Relations prohibits night work for young workers under 18 between 10:00 p.m. and 06:00 a.m. the following day (Conclusions 2011). It also noted that a young worker under 18 years of age may work at night, but only in case of *force majeure* and under the supervision of an adult worker, where such work takes certain time and it needs to be performed immediately and there are no other available full age workers.

The Committee asked if there are any other categories of young workers that could be excluded from the prohibition of night work (Conclusions 2011). In reply to the Committee's question, the report indicates that the Law on Labour Relations does not define other categories of young employees who can be excluded from the ban on night work.

The Committee takes note from the report that since January 2012 the amounts of sanctions for breach of the rules prohibiting night work for young employees under 18 have been amended. It notes that during its inspections carried out within the reference period, the Labour Inspection has not found any violations of the ban of night work.

The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity of the Labour Inspectorate, its findings and applicable sanctions in relation to possible illegal involvement of young workers under 18 in night work.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in the "former Yugoslav Republic of Macedonia" 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 "the former Yugoslav Republic of Macedonia".

The report indicates that the Decree on the kind, manner, scope and price for the medical checks of employees prescribes the medical checks conducted by authorised health institutions in the area of labour medicine and the elements to be considered when performing the medical checks (such as exposure to hazards and dangers).

The report indicates that Section 22 of the Law on Safety and Health at Work establishing the obligation of the employer to provide medical examination for the employees at least every 18 months was amended during the reference period. The Committee notes from the report that the new provision requires that employers provide medical checks of the employees at least every 24 months. The report does not indicate whether special rules are applicable to employees under 18 years of age. The Committee understands that the general rule established by Section 22 of the Law on Safety and Health at Work applies to young workers under 18 as well as regards the medical examinations during employment.

The Committee previously asked information on the types of medical examinations that the young workers must undergo. The report does not indicate that young workers under 18 years of age are subject to a mandatory medical examination at recruitment. The Committee considers that the situation is not in conformity with the 7§9 Charter on this point on the ground that a mandatory medical examination of young workers under 18 at recruitment is not guaranteed by national laws or regulations.

The Committee recalls that in application of Article 7§9 of the Charter, domestic law must provide for compulsory regular medical check-ups for under-eighteen year olds employed in occupations specified by national laws or regulations. These check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed. The obligation entails a full medical examination on recruitment and regular check-ups thereafter (Conclusions XIII-1 (1993), Sweden). The intervals between check-ups must not be too long. In this regard, an interval of two years has been considered to be too long by the Committee (Conclusions 2011, Estonia). Noting that the employers are under the obligation to provide medical checks of the employees at least every 24 months, the Committee considers that the situation in the "former Yugoslav Republic of Macedonia" is not in conformity with Article 7§9 of the Charter on the ground that the interval between the medical examinations for young workers during employment is too long.

### *Conclusion*

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 7§9 of the Charter on the grounds that:

- a full medical examination of young workers under 18 at recruitment is not guaranteed by national laws or regulations;
- the interval between the medical examinations for young workers during employment is too long.



## **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 "the former Yugoslav Republic of Macedonia".

### **Protection against sexual exploitation**

According to the report, the Children Protection Act entered into force on 22 February 2013. This Act regulates the system and the organisation of children protection as an activity of public interest. It prohibits all forms of sexual exploitation and sexual abuse of children.

In 2010 the Law on Ratification of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of the Council of Europe was adopted. The Committee takes note of the amendments to the Criminal Code of February 2014 adopted in view of the ratification of this Convention.

In its previous conclusion (Conclusions 2011) the Committee recalled that an effective policy against commercial sexual exploitation of children should cover primary and interrelated forms: child prostitution, child pornography and trafficking in children.

- child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration;
- child pornography is given an extensive definition and takes account of the fact that new technology has changed the nature of child pornography. It includes the procurement, production, distribution, making available and simple possession of material that visually depicts a child engaged in sexually explicit conduct.
- trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.

The Committee asked for confirmation that legislation criminalised all the defined activities of sexual exploitation of children with all children under 18 years of age, irrespective of lower national ages of sexual consent.

The Committee takes note of the following provisions of the revised Criminal Code:

- Article 193a- Production and distribution of child pornography: the person who produces child pornography with the purpose of its distribution or transfers it and offers it and makes child pornography available in any other manner, shall be punished by imprisonment for at least five years. (2) The person who shall purchase child pornography for him/herself or for other person or owns child pornography, shall be punished by imprisonment for five to eight years. (3) If the crime from paragraphs (1) and (2) of this article has been committed through a computer system or other means of mass communication, the perpetrator shall be punished by imprisonment for at least eight years.
- 191 a -Child prostitution: the person who recruits, leads, stimulates or entices a 14 years old child to prostitution or uses the child for executing financial or other benefit, shall be punished with at least four years of imprisonment. The same act committed to a child younger than 14 will be punished with at least 10 years of imprisonment.
- Article 192- Procuring and enabling sexual acts: a person who procures a juvenile to sexual acts shall be punished with imprisonment of at least eight years. (2) A person who enables the performing of sexual acts with a juvenile shall be punished with imprisonment of at least five years.

The Committee also notes that Article 12 of the Law on Child Protection of 2013 prohibits all forms of sexual exploitation and sexual abuse of children, including selling or trafficking of children.

The Committee thus notes that a simple possession of child pornography is a criminal offence (Article 193a of the Criminal Code). However, Committee observes that from the

information at its disposal it cannot be established that all acts of sexual exploitation, including trafficking of children (Article 419d) are prohibited with all children under the age of 18, irrespective of the lower national age of sexual consent or the consent of the minor to be engaged in such activities. Therefore, it holds that it has not been established that all acts of sexual exploitation as defined in this provision of the Charter are criminalised with all children under the age of 18.

### ***Protection against the misuse of information technologies***

The Committee asks for full information concerning supervisory mechanisms and sanctions for sexual exploitation of children through the information technologies. It further asks whether legislation or codes of conduct for Internet service providers is foreseen in order to protect children. It holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity.

### ***Protection from other forms of exploitation***

According to the report, in the Action plan for children on the streets 2013-2015 concrete measures and activities are envisaged to address this problem, both at educational as well as at health protection levels.

Since 2013 the Centres for Social Work are undertaking coordinated activities of identifying the cases of children in the street in all municipalities.

The Association for Protection of the rights of the children has been implementing the project "through education to new opportunities" in one of the municipalities which aimed at ensuring that the abandoned children have access to education and healthcare. A local coordinating body is formed whose members are state authorities representatives, public institution representatives, citizens associations. The Committee notes that similar initiative have been launched in other municipalities.

According to the report, there are four day centres for abandoned children – three national and one managed by a citizens association.

According to the amendments to the Family Act (Official Gazette of RM No. 38/14) forcing a child to beg or using a child for begging shall be considered as maltreatment and severe neglect of the parental duties. In cases when the Centre for Social Work discovers that the parent is forcing the child to beg or is using the child for begging it may establish a supervision over the exercise of parental rights and shall conduct professional counselling with the parents and the child.

The Committee notes from the Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (GRETA) by 'the Former Yugoslav Republic of Macedonia' that since 2009, the majority of the officially identified victims have been female children (all seven victims identified in 2009; eight out of nine victims in 2010; six out of 11 victims in 2011; five out of eight victims in 2012).

GRETA invites the Macedonian to continue improving the knowledge, awareness and sensitivity of relevant professionals (including police officers, social workers, labour inspectors, professionals working with children, medical staff, prosecutors, judges, trade unions staff, journalists) about trafficking and the rights of victims. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking, to assist and protect them, to facilitate compensation for victims and to secure convictions of traffickers.

The Committee notes from the report that the Ministry of Labour and Social Policy implements the prevention and protection measures of the victims of human trafficking, especially women and children through the Sector for Equal opportunities and the Office of the National Mechanism for Victims of Trafficking. The assistance to victims is

provided, including the accommodation in a national shelter, return to the family, advocacy and legal aid, individual programmes for resocialisation. The Committee wishes to be kept informed about the implementation of the national action plans on child trafficking as well as the statistics regarding the identification of victims and prosecution of perpetrators.

### *Conclusion*

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 7§10 of the Charter on the ground that it has not been established that all children under the age of 18 are protected against all forms of sexual exploitation.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 1 - Maternity leave*

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

### ***Right to maternity leave***

According to Sections 165 and 166 of the Labour Relations Act, as amended in 2012, women are entitled to nine months paid maternity leave (one year in case of multiple births), including a compulsory leave of 28 days before and 45 days after the birth. The Committee takes note of the information provided in the report concerning the sanctions applicable to employers in relation to pregnancy, maternity and parental leave.

The Committee recalls that Article 8, paragraph 1 of the Charter requires national laws to guarantee all categories of employed women a right to maternity leave of at least 14 weeks, including a compulsory period of leave of no less than six weeks which may not be waived by the woman concerned. In the light of the information above, the Committee holds that the situation is in conformity with Article 8, paragraph 1 of the Charter as regards the length of the leave and of the compulsory maternity leave.

The report fails however to clarify, in response to the Committee's question, whether the same regime applies to all women employed in the public as in the private sector. It accordingly reiterates this question; should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 8§1 on this aspect.

### ***Right to maternity benefits***

The Committee recalls that, under Article 8§1 of the Charter, maternity benefits must be at least equal to 70% of the previous wage. The right to compensation may be subject to conditions such as a minimum period of contribution or employment. However, such conditions shall not be excessive; in particular, if qualifying periods are required, they should allow for some interruptions in the employment record (Statement of Interpretation on Article 8§1, Conclusions 2015).

The Committee previously noted that, pursuant to Section 14 of the Health Insurance Act, women on maternity leave are entitled to salary compensation. The basis for the calculation of this compensation is the average monthly salary over the last 12 months during which compulsory health insurance contributions were paid. Women on maternity leave are entitled to 100% of the compensation basis.

As the report does not clarify, as previously requested by the Committee, whether the same regime applies to women employed in the public sector, the Committee reiterates the question. It furthermore wishes the next report to clarify what are the criteria for entitlement to maternity benefits, whether interruptions in the employment record are taken into account in the calculation of the qualifying period and whether benefits corresponding to 100% of the wage are paid all through the maternity leave (that is, up to nine months or one year) or for a more limited period. Furthermore, with reference to its abovementioned Statement of Interpretation, the Committee asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

It reserves in the meantime its position on this issue.

### *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 "the former Yugoslav Republic of Macedonia".

### ***Prohibition of dismissal***

The report refers to Section 101 of the Labour Relations Act, as amended in 2013, which prohibits dismissals during pregnancy, maternity and parental leave, provided that the employer was aware of the pregnancy or if the employee notifies him/her within 15 days from the receipt of the dismissal notice.

According to the report, the prohibition of dismissal does not apply in case of expiry of a fixed-term contract, nor in case of serious violations of the contractual obligations in the cases where a dismissal without notice is allowed by the law and the collective agreements. The Committee asks the next report to clarify, in the light of any relevant case-law example, under what circumstances an employee can be dismissed during pregnancy or maternity leave for serious violation of the contractual obligations. It reserves in the meantime its position on this issue.

The Committee furthermore reiterates its question as to whether the same regime applies to women employed in the public sector.

### ***Redress in case of unlawful dismissal***

The Committee notes that the report refers to the pecuniary sanctions provided by the Labour Relations Act in case of unlawful dismissal of an employee during pregnancy, maternity or parental leave. However, it notes that the information provided does not correspond to that which it had previously examined (Conclusions XIX-4, 2011). It accordingly asks the next report to present in detail the applicable provisions concerning the procedures available to the employee to contest a dismissal during pregnancy and maternity leave and how such provisions are interpreted in the domestic case-law.

The Committee recalls in this connection that, under Article 8, paragraph 2 of the Charter, the reinstatement of employees unlawfully dismissed during pregnancy or maternity leave should be the rule and that, where this is not possible (e.g. if the enterprise has closed down or the employee concerned does not wish to be reinstated), adequate compensation must be available. Domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal.

The report does not provide any information in this respect, nor does it answer any of the questions previously raised. The Committee therefore reiterates them: does the law provide for reinstatement of employees unlawfully dismissed during pregnancy or maternity leave? Does it provide for adequate compensation of such employees, particularly when the reinstatement cannot take place? Is there a ceiling on the amount that can be awarded as compensation to the employee? If so, does this upper limit cover both pecuniary and non-pecuniary damage or can the victim also seek unlimited non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation)? Are both types of compensation awarded by the same courts? How long does it take on average for courts to award compensation? Does the same regime apply to women employed in the public sector?

In the absence of this information, the Committee does not find it established that the situation is in conformity with Article 8, paragraph 2 of the Charter.

### *Conclusion*

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 8§2 of the Charter on the ground that it has not been established that reinstatement or adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave.

## **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 "the former Yugoslav Republic of Macedonia".

The Committee previously noted that under the Labour Relations Act (section 171) nursing employees are entitled to nursing breaks of up to one and half hour per day during their working time. The report confirms, in response to the Committee's questions, that these breaks are remunerated and that they also apply to women employed in the public sector. The Committee asks the next report to clarify whether the nursing breaks are granted in addition to the regular daily rest breaks, what is the situation in respect of part-time employees and whether the right to paid nursing breaks applies until the child is at least nine months old.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" 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 "the former Yugoslav Republic of Macedonia".

The Committee previously noted that Section 164 of the Labour Relations Act prohibits women from performing night work during their pregnancy and for one year after the childbirth. Mothers of children between one and three years old can perform night work upon their written consent. A similar prohibition of night work is provided by the Rulebook on the minimum occupational safety and health requirements of pregnant workers, workers who have recently given birth or are nursing their infant. The Committee asks the next report to clarify whether the employed women concerned are transferred to daytime work and what rules apply if such transfer is not possible.

The Committee recalls that it previously found that the situation in "the former Yugoslav Republic of Macedonia" was in conformity with Article 2§7 of the Charter concerning night work regulations (see Conclusions 2014) and it notes from the report, in reply to its question, that the same relevant rules apply to all workers, regardless of their gender, in the private and public sector.

### *Conclusion*

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 8§4 of the Charter.



## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

It notes from the report that Section 162 of the Labour Relations Act, as amended in 2013 (Official Gazette No. 13/13), provides that pregnant women and mothers until one year after the birth should not perform any work which would expose them to increased risks for their health or their child's health. To this effect, the employer has the obligation to perform an assessment of the risks raised in particular by physical, chemical and biological factors in the workplace for pregnant and nursing workers.

On a more specific level, the Rulebook on protection of pregnant workers and workers who have recently given birth and are nursing (Official Gazette No. 119/11) provides that pregnant women should not perform underground mining, work in hyperbaric atmosphere or activities involving exposure to toxoplasma or rubella virus (except in case of complete proven immunization of the concerned worker), as well as exposure to lead, lead compounds and chemical substances likely to damage the foetus or the infant. The following activities are furthermore prohibited for pregnant women, if the risk assessment reveals a health risk for them or their child: activities involving exposure to certain physical harmful factors (such as vibrations, noise, unfavourable temperatures or ionizing radiation); to the biological agents classified in the categories 2, 3 and 4 of the Directive 90/679/EEC (that is, certain viral agents, bacteria or protozoa); to certain chemical agents (carcinogenic substances; polycyclic aromatic hydrocarbons present in coal soot, tar, resin; mercury and mercury compounds; antimitotic medicines; carbon monoxide; harmful chemical which may be absorbed through the skin); harmful production processes (auramine production; exposure to dust, vapors and aerosols produced during roasting and electrorefining of copper and nickel compounds; strong-acid processes in production of isopropyl alcohol); work under conditions of severe stress and mental strain which could be harmful for the foetus; heavy physical work; handling loads heavier than 5kg. The Committee asks the next report to clarify whether these restrictions concern pregnant women only, or also women having recently given birth and/or nursing women. It furthermore asks the next report to confirm that the same provisions apply both to the private and the public sector.

The report states that if the health risks for the worker or her child cannot be eliminated otherwise, the employer must adapt the employee's working conditions or working hours, or transfer her to another suitable post. Should this be technically and/or objectively unfeasible, the employee can be exempted from work for as long as necessary to protect her health and the health of her child. The Committee asks 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 job at the end of their protected period. It also asks whether the same regime applies to women employed in the private as in the public sector.

### *Conclusion*

Pending receipt of the requested information, the Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 8§5 of the Charter.

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

The Committee takes note of the information contained in the report submitted by the "former Yugoslav Republic of Macedonia".

### ***Social protection of families***

#### ***Housing for families***

The Committee has constantly interpreted the right to economic, legal and social protection of family life provided for in Article 16 as guaranteeing the right to adequate housing for families, which encompasses secure tenure supported by law (Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint 52/2010, decision on the merits of 22 June 2010, § 54).

Under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment. The Committee recalls that this obligation extends to ensuring protection against unlawful eviction (European Roma Rights Center (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24).

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies. Any appeal procedure must be effective (Conclusions 2003 France, Italy Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction

To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards access to adequate housing for the families, the Committee asks for information in the next report on all the aforementioned points.

Concerning the provision of an adequate supply of housing for families, the report indicates that different national measures on social housing have been taken for families with low income. The Committee takes note of the following measures: the Program for Construction and Maintenance of Apartments that are Property of the Republic, the Project for Construction of Apartments which shall be rented to persons with low income, the Law on Social Protection which provides for the right to an allowance for social housing for socially endangered persons who do not have housing and the National Strategy for the Decrease of Poverty and Social Exclusion 2010-2020. It asks that the next report indicate the outcomes of the measures taken and the way they are applied.

As regards access to housing for vulnerable families and Roma in particular, the Committee has held that as a result of their history, the Roma have become a specific group of disadvantaged and vulnerable minority. They therefore require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community (Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40).

The Committee notes from the European Commission against Racism and Intolerance's (ECRI) report adopted in 2010 that the authorities should take specific measures to improve the situation of Roma in housing matters, notably the legal situation of Roma settlements and, more generally, to release the funding needed to implement the national action plan for Roma housing. In view of the foregoing, the Committee asks that the next report provide information on measures taken to improve the housing situation of Roma families.

### ***Childcare facilities***

The Committee points out that states must ensure that affordable, good quality childcare facilities are available to its citizens (where quality is defined in terms of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and the size of the financial contribution parents are asked to make).

The report indicates that pursuant to the Law on Child Protection, that entered into force in February 2013, the education of children at preschool age is ensured by kindergartens and Centres for early child development. These institutions can be either public or private. The educational activities are conducted following the Standards for early education and development prepared by the Bureau for Development of Education and adopted by the Minister. The Committee notes that several bylaws have been adopted concerning the monitoring of the quality of the services provided by these institutions.

### ***Family counselling services***

The Committee recalls that families should have access to appropriate social services, in particular in times of difficulty. States should provide *inter alia* family counselling and psychological guidance advice on childrearing.

The report indicates that in 2013 several regional counselling offices were opened with the aim of assisting families in times of difficulty. It adds that services are provided free of charge. The Committee asks the next report to indicate the work performed by these services.

### ***Participation of associations representing families***

The Committee recalls that in order to ensure that the views of families are taken into account in the formulation of family policy, all civil organisations representing families should be consulted by the relevant authorities (Conclusions 2006, Statement of Interpretation on Article 16).

The Committee notes that the Ministry of Labour and Social Policy regularly consults associations representing families when preparing or implementing family policies, notably when drafting legislation or national strategic documents.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The Committee recalls that spouses must be equal, particularly in respect of rights and duties within the couple (reciprocal responsibility, ownership, administration and use of property, etc.) (Conclusions XVI-1 (2002), United Kingdom) and children (parental authority, management of children's property). It asks the next report to indicate whether spouses are equal in the meaning of Article 16 of the Charter.

The Committee also states that in cases of family breakdown, Article 16 requires the provision of legal arrangements to settle marital conflicts and, in particular, conflicts relating to children: care and maintenance, custody and access to children.

The report indicates that pursuant to the Code on Family law, in a case of divorce, the court shall conduct a hearing for reconciliation. The reconciliation procedure is either conducted by the Centre for Social Work, if spouses have children, or a court if they do not. During the divorce process *per se*, in order to ensure the child's best interest, the court shall provide a special protection to children by inviting the Centre for Social Work to participate to the hearing.

### ***Mediation services***

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 considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided.

The Committee understands that pursuant to the Code on Family law mediation services are performed by a Centre for Social Work. It asks for confirmation of its understanding and information on the points mentioned above.

### ***Domestic violence against women***

The Committee recalls that Article 16 requires that protection for women exists both in law (through appropriate measures and punishments for perpetrators, including restraining orders, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (through the collection and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims) (Conclusions 2006, Statement of Interpretation on Article 16).

The provisions of the Code on Family law determine the mandate of the Centre for Social Work working with the victims of domestic violence and the action of the court imposing temporary measures of protection. Thus the Centre for Social Work shall submit a request for initiating a procedure imposing a temporary measure to the court, which may impose several measures such as a restraining order.

The report also mentions the National Strategy for Prevention of Domestic Violence 2012-2015, which aims at enhancing preventive measures through a multi-sectoral approach on both national and local levels. It further indicates the adoption of a Joint Protocol on domestic violence, which lays out the procedures through which the authorised institutions and organisations are to act in protecting and helping the victims of domestic violence. In this regard, police officers and health institutions are given directions when acting in case of domestic violence.

The Law on Social Protection establishes the Centre for persons-victims of domestic violence, which provides temporary shelter and care for the victims up to a period of six months renewable once.

### ***Economic protection of families***

#### ***Family benefits***

The Committee notes from MISSCEO that child benefit is only paid to families with low incomes. To receive child benefit the total monthly income per family member (for the entire household, including the children) must be lower than €42, which represents 32% of the minimum wage. For single parents this income threshold is €84, which represents 64% of the minimum wage. The monthly amount of child benefit is €12 for children up to 15 years of age or as long as they are full-time primary school pupils and €19 for children between 15 and 18 years of age or as long as they are full time secondary school students. Regardless of the number of children in the family and of their age the total monthly amount of child benefit which can be claimed by one parent may not exceed the maximum of €30.

The Committee recalls that child benefit must constitute an adequate income supplement, which is the case when it represents a significant percentage of median equivalised income, for a significant number of families (Conclusions 2006, Statement of Interpretation on Article 16).

The Committee understands the minimum wage to be very low, however, in the absence of the median equivalised income it is unable to assess whether the child benefit constitutes an adequate income supplement. It therefore asks the next report to indicate the monthly median equivalised income or similar indicators, such as the national subsistence level, average income or the national poverty threshold, etc. In any case, the Committee considers that the situation is not in conformity with the Charter on the ground that family benefits do not cover a significant number of families.

#### ***Vulnerable families***

States' positive obligations under Article 16 include implementing means to ensure the economic protection of various categories of vulnerable families, such as Roma families. The Committee consequently asks what measures are taken to ensure the economic protection of vulnerable families, such as Roma families.

#### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The Committee notes from MISSCEO that only Macedonian citizens permanently staying in the "former Yugoslav Republic of Macedonia" for the last three years can be granted child benefit. The Committee recalls that the period of 1 year before benefiting from family benefits is manifestly excessive (Conclusions XVIII-1 (2006), Denmark). The Committee therefore concludes that there is no equal treatment of foreign nationals with regard to child benefit.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

### *Conclusion*

The Committee concludes that the situation in the "former Yugoslav Republic of Macedonia" is not in conformity with Article 16 of the Charter on the grounds that:

- family benefits do not cover a significant number of families;
- equal treatment of nationals of other States Parties regarding the payment of family benefits is not ensured because the length of residence requirement is excessive.

## **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 "the former Yugoslav Republic of Macedonia".

The Committee takes note of the entry into force of the Child Protection Act of 12 February 2013.

### ***The legal status of the child***

In its previous conclusion the Committee asked about the legal framework concerning the establishment of parentage and whether there were any restrictions to the right of an adopted child to know his/her origins. According to the Law on Family adoption is secret, reflecting the traditional attitudes of the society. According to the report, conditions are not yet created for including a provision in the Law which could enable for the adoption to be public.

### ***Protection from ill-treatment and abuse***

In its previous conclusion the Committee held that the situation was not in conformity with the Charter as corporal punishment was not prohibited in the home and in institutions.

According to the report, the Child Protection Act foresees protection of children against any form of discrimination, sexual exploitation and sexual abuse, abduction, sale or trafficking, physical or psychological violence or inhuman treatment, exploitation and commercial exploitation.

The Family Act regulates the protection of children from neglect, abuse and violence by establishing measures of protection and supervision over the parental rights as well as by the introduction of provisions on domestic violence.

The Committee notes from the Global Initiative to End Corporal Punishment of Children that Corporal punishment is unlawful in the home. Section 12(2) of the Child Protection Act of 2013 prohibits all forms of corporal punishment. Section 12(6) states that children are to be protected in all settings: the state and institutions are obliged to take all necessary measures to ensure the right of the children and prevent any form of discrimination or abuse regardless of the place where they are committed, the severity, intensity and duration.

Corporal punishment is prohibited in alternative care settings (foster care, institutions, places of safety, emergency care, etc) under Section 12 of the Child Protection Act of 2013.

The Committee recalls that under Article 17 of the Charter, the prohibition of any form of corporal punishment of children is an important measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2). The Committee recalls its interpretation of Article 17 of the Charter as regards the corporal punishment of children laid down most recently in its decision in *World Organisation against Torture (OMCT) v. Portugal* (Complaint No. 34/2006, decision on the merits of 5 December 2006; §§19-21):

“To comply with Article 17, states’ domestic law must prohibit and penalize all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.

The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.”

The Committee asks the next report to indicate the precise legal provisions and the case law which explicitly prohibit all forms of corporal punishment of children (including the mildest forms) in the home and in institutions. In the meantime, the Committee reserves its position on this issue.

### ***Rights of children in public care***

In reply to the Committee's question concerning the criteria for limitation of custody or parental rights, the report states that according to the provisions of the Law on Family the Centre for Social Work conducts supervision over the exercise of the parental right. The Centre for Social Work will give a warning to the parents about the shortcomings in the education and the development of the child or can propose counselling. In case of repeated failure of the parents to support the child, the Centre for Social Work may establish permanent supervision over the parental rights.

According to the report, the parental rights of a parent who abuses the exercise the parental right or severely neglects the parental duties (e.g. physical, emotional or sexual abuse of the child, neglect, forcing to work etc) may be revoked by a court decision.

The procedure for revocation of parental rights may be initiated by the other parent, the Centre for Social Work or the public prosecutor.

The Centre for Social Work is obliged to initiate a procedure for revocation of the parental right when it believes that there are reasons to do so.

The parental right can, by a court decision, be returned to the parent when the reason for which it was revoked is no longer valid. A proposal for returning the parental right can be filed by a parent or the Centre for Social Work.

The Committee recalls that placement must be an exceptional measure and is only justified when it is based on the needs of the child. The financial conditions or material circumstances of the family should not be the sole reason for placement (Conclusions 2011, Statement of Interpretation on Articles 16 and 17). The Committee also refers to the judgements of the European Court of Human Rights where the latter held that separating the family completely on the sole grounds of their material difficulties has been an unduly drastic measure and amounted to a violation of Article 8 (Wallová and Walla v. Czech Republic, application No. 23848/04, judgment of 26 October 2006, final on 26 March 2007).

The Committee asks whether poor financial conditions or material circumstances of the family can become the reason for placement of children.

### ***Right to education***

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

### ***Young offenders***

According to the report, the new Juvenile Justice Act was adopted in October 2013, which made further improvement of the legal framework for juvenile justice. This Act regulates the treatment of children at risk and children who have committed acts that, by law, are qualified as crimes or misdemeanours. It determines the terms for application of measures of assistance, care and protection, of educational and alternative measures and punishment of children and young adults.

The Ministry of Justice shall submit information to the Government for the implementation of the Justice Act, on a quarterly basis.



In 2013, the total number of children and juveniles to whom a measure was pronounced stood at 482, 30% of which were pronounced in the Centre for Social Work. There were no cases of referral to Centre for Young People.

The enhanced supervision by parent/guardian was applied in 63% of the cases, while enhanced supervision by Centre for Social Work was applied in 37% of the cases.

In the majority of the cases measures/sanctions are applied which do not include imprisonment, which corresponds to the principles of the Juvenile Justice Act. Namely, in 42% of the cases measures of assistance and protection have been applied, in 36% measures of enhanced supervision, in 19% disciplinary measures and 2% institutional measures.

The Committee reiterates its previous question about the maximum length of pre-trial detention as well as the prison sentence. It also asks whether young offenders are always separated from adults. The Committee holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee takes note of the activities of the Office of the National Mechanism for Directing of Victims of Trafficking (NMD) who has coordinated procedures for assignment of a guardian to 49 unlawfully present children out of a total number of 66 children accommodated in the shelter for foreigners.

In 2013 68 unlawfully present children were assigned a guardian of whom 2 returned to their native countries.

The Committee wishes to be kept informed about the measures taken to provide assistance to unaccompanied minors or unlawfully present minors.

### ***Conclusion***

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

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

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

The Committee takes note of the information contained in the report submitted by 'the former Yugoslav Republic of Macedonia'.

The Committee recalls that Article 17 requires States to establish and maintain an education system that is both accessible and effective. The Committee recalls in this respect that under Article 17§2 of the Charter in order for there to be an accessible and effective system of education there must be *inter alia* a functioning system of primary and secondary education provided free of charge, including an adequate number of schools fairly distributed over the geographical area. Class sizes and the teacher pupil ratio must be reasonable. Measures must be taken to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.

The Committee takes note of the number of pupils enrolled in primary and secondary education as well as the numbers of those who have completed each year of the secondary school. It notes, as an example, that out of the total number of 89,884 students enrolled in secondary education in 2012/2013 87,693 (around 98%) have completed it.

The Committee wishes to be informed about the number of primary and secondary schools, which form part of the compulsory education and are free of charge, as well as their geographical distribution. It equally wishes to know what are the enrolment and drop out rates.

The Committee further recalls that under Article 17§2 all hidden costs such as books or uniforms must be reasonable, and assistance must be available to limit their impact on the most vulnerable population groups so as not to undermine the goal being pursued (European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France Complaint No. 82/2012, decision on the merits of 19 March 2013, §31).

The Committee takes note of the legislative framework governing the educational system. The Social Protection Act, as amended, provides that financial assistance shall be provided to support the children from vulnerable households with a view to ensuring their regular attendance and completion of the secondary education.

According to the report, the Programme for financial allowance for secondary education aims at improving access to and the quality of secondary education. Beneficiaries are identified in the programme and the amount of financial allowance is set for each school year. The Committee asks what is the average number of beneficiaries of this assistance compared to the overall number of children in secondary education.

The Committee further recalls that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that states parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2, 2011).

The Committee asks whether unlawfully present children have a right to education.

The Committee recalls that under Article 17§2 States have positive obligations to ensure equal access to education for all children. In this respect particular attention should be paid to vulnerable groups, such as children from minorities, children seeking asylum, refugee

children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, etc.

Under Article 17§2 as regards education of children of Roma origin, even though educational policies for Roma children may be accompanied by flexible structures to meet the diversity of the group and may take into account the fact some groups lead an itinerant or semi-itinerant lifestyle, there should be no separate schools for Roma children. Special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group (Conclusions 2011, Slovakia).

According to the report, as an additional support to Roma children in enrolling with and completing primary school as well as their successful transition in the secondary education, a strategic document with an action plan for implementation of the mediation system for support of Roma students in prepared in collaboration with the Ministry of Education and Science, the Department of communities and the National Roma Centre. In the secondary education a system of tutors is put in place who prepare the students of secondary education for continuing with university education. In the school year 2010/2011 160 mentors were selected, and in 2013/2014 102 mentors were selected.

The Committee notes from the Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to “the former Yugoslav Republic of Macedonia”, from 26 to 29 November 2012 that some of the positive measures aimed at promoting the inclusion of Roma in mainstream education have borne results, such as a reduction of the drop-out rate between fifth and sixth grade among girls and the doubling of Roma enrolment in public universities (from 150 in 2005 to 300 in 2012). However, the Commissioner is deeply concerned by the over representation of Roma in special schools for children with disabilities and believes there is an urgent need to address this issue. He has noted the recommendations made by the Ombudsman and non-governmental organisations to rectify the shortcomings in the legal and regulatory framework pertaining to special education. It is crucial that the authorities’ undertakings in this context go beyond reforming the system of categorisation of children, and include more comprehensive measures aimed at providing access to adequate education in mainstream schools for all children without discrimination on any ground.

The Committee asks the next report to provide detailed information about the measures taken to mainstream Roma children in compulsory education. It holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity.

#### *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 "the former Yugoslav Republic of Macedonia".

### ***Migration trends***

According to EUROSTAT data, from 1998 to 2011 some 230,000 people left "the former Yugoslav Republic of Macedonia" to live abroad lawfully. There is no estimate of illegal migration movements.

Special legislation passed by parliament in 2004 has permitted the acquisition of citizenship by a large number of citizens of the other republics of the former Socialist Federal Republic of Yugoslavia and nationals of the former SFRY who were resident in the country on 8 September 1991. The great majority of immigrants residing in "the former Yugoslav Republic of Macedonia" are from surrounding states.

According to the report of the International Organization for Migration (IOM) on "the former Yugoslav Republic of Macedonia" (2007), in 2005 approximately 18% of nationals had emigrated to other countries.

According to the 2010 report of the European Commission against Racism and Intolerance (ECRI) on "the former Yugoslav Republic of Macedonia", the authorities have apparently strictly applied the principle of non-refoulement and kept their undertaking not to carry out forced returns to Kosovo as long as a return in security and dignity cannot be guaranteed. The situation of 95% of the persons internally displaced by the events of 2001 has also been settled. The Committee notes from the United Nations High Commissioner for Refugees (UNHCR) that the country has more recently seen a sharp rise in arrivals from outside the region seeking asylum.

### ***Change in policy and the legal framework***

From the abovementioned report of ECRI, the Committee notes that the Ministry of Labour and Social Policy prepared the National Strategy for Equality and Non-Discrimination on grounds of ethnicity, gender, age, and physical and mental disability (NSEN), which was adopted in January 2012 and covered a three-year period. The Committee asks that the next report provide information on the results of this strategy, and updated details on potential policies replacing the previous Strategy, which it notes would have lapsed in January 2015.

Special laws enshrine the principle of non-discrimination in fields such as employment and secondary education and promote greater equality between the ethnic communities, especially as regards their representation within the public service.

The Law on Employment of "the former Yugoslav Republic of Macedonia" includes a prohibition on discrimination in relation to employment. When employing a foreigner, the employer may not put the applicant or the job in unequal position due to race, skin colour, gender, age, medical condition or disability, the religious, political or other opinion, membership in trade unions, national or social origin, family status, property status, sexual orientation or other personal circumstances. Prohibition of direct or indirect discrimination in these cases shall refer to discrimination of the candidate for employment and the worker, in accordance with the Law on Working Relations.

The employer shall have the obligation to provide to the employed foreigner with minimum rights for working hours, breaks and rest periods, night shifts, minimum annual holidays, salaries, occupational safety and health, and special protection of employees determined with the legal provisions and general collective agreement or separate collective agreement, if that is better for the worker.

According to the abovementioned IOM report, the Law for Asylum and Temporary Protection (enacted in 2003) is the main piece of legislation governing the rights of asylum seekers. Asylum seekers have the right to: residence, accommodation, basic health services, work (limited to the institutions and organizations for which Ministry of Labour and Social Policy has given its approval), legal counselling and the right to have an interpreter at the expense of the Ministry of Interior, as well as to contact and receive assistance from the UNHCR and other humanitarian NGOs. A recognized refugee has the same rights as Macedonian citizens, except the right to vote and to found and have membership of political organizations. The Committee asks for updated information on the legal rights of asylum seekers and refugees and any programmes involving these groups, in particular to improve their integration, provide information, and combat misleading propaganda related to migration.

### ***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 report states that starting from 16 June 2011 a total number of 217 meetings were held with, *inter alia*, citizens, local communities, non-governmental organisations and councils, for raising the public awareness through education of the citizens for proper use of the visa4free regime. Also, until now 7600 flyers on Macedonian, Albanian and Roma language were distributed, with detailed information on the visa4free regime posters advertising the Migration Service Centre were used to advertise its services, and television and radio advertisement were used to promote and advise people about the visa4free regime.

Four Migration Service Centres have been opened since 2008 within the Employment Service Agency and its subsidiaries. Within these centres, people wishing to emigrate may be informed about the opportunities for work and studying abroad, as well as for the procedures for obtaining a visa, permits for working and residence, approach to the health system and education abroad and other useful information if they have intent to move abroad. The information shall be provided in the form of Directions for the countries of destination, forms for recognition of the qualifications and other useful information. Within the Migration Service Centres, training and counselling for certain topics of interest for the parties shall also be organized.

For persons who are thinking about returning and want to get information for opportunities in "the former Yugoslav Republic of Macedonia", they may obtain information for services such as additional trainings, language or computer courses, help in starting small businesses and help in reintegration adapted on individual needs through the Migration Service Centres. According to the report, it is estimated that the number of persons using the services of the 4 Migration Service Centres is around 1200 per month. The Committee asks whether these services are available to foreign migrants as well as returning migrants.

Information concerning the application procedures for migrants is also available on the website of the Ministry of Foreign Affairs in Macedonian and English.

In terms of raising awareness of the population of the problems with false information about migration within the country, around 10 meetings per month shall be organised by Border Police Departments for citizens, where the topics of abuse and prevention of illegal migration shall be discussed.

### ***Measures against misleading propaganda relating to emigration and immigration***

The Committee notes from ECRI's 2013 Conclusions concerning "the former Yugoslav Republic of Macedonia" that the Commission for Protection against Discrimination was established and started functioning on 1 January 2011. The authorities informed ECRI that, in 2011, about 60 petitions were filed with the Commission, which issued an opinion on about half of them. In five cases in which discrimination was identified, the Commission has provided recommendations on how to redress the violation.

With respect to the criminal law, the Committee notes that Article 39 of the Criminal Code was supplemented: a new fifth paragraph provides that, when determining sentences to be handed down, the courts shall, where applicable, take particular account of the fact that an offence was directly or indirectly motivated by the national or social origin, political or religious beliefs, social or material situation, sex, race or skin colour of the person or group of persons targeted.

These new criminal law provisions on racism supplement those already in force, as noted by ECRI in its earlier reports, i.e. Articles 137, 138, 144§4, 173§3, 319 and 417 of the Criminal Code, which penalise the limitation or denial of individuals' rights on the basis of, inter alia, race, national origin, religious belief or language (Article 137), the violation of the right to use one's language or alphabet (Article 138), the use of a computer system in order to threaten to perpetrate a crime on the grounds of a person's religion or affiliation to a national, ethnic or racial group (Article 144 § 4), or to expose them to public ridicule (Article 173§3), inciting racial, national or religious hatred, discord or intolerance (Article 319), the violation, on grounds of race, colour, nationality or national or ethnic affiliation, of fundamental rights and freedoms recognised by the international community (Article 417§1), and spreading the notion of a given race's superiority, advocating racial hatred or seeking to instigate practices based on such ideas (Article 417§3).

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. It notes that an Academy for training of judges and prosecutors has been established and that – according to the information supplied by the authorities to ECRI prior to its fourth report on the 'former Yugoslav Republic of Macedonia' – the initial training dispensed there includes modules on fundamental rights and the fight against discrimination.

Since 1997 the country has had an Ombudsman (Office of the Public Attorney), whose role, as laid down by the Constitution, is to protect the "legal and constitutional rights of citizens in the event of their violation by state bodies".

The Ombudsman can take action not just on the basis of individual complaints but also of his own initiative, issue opinions or recommendations to the authorities concerning measures to be taken to address problems he has noted and request the opening of disciplinary or criminal proceedings. The Committee asks for the next report to contain updated information concerning the activities of the Ombudsman in relation to discrimination and misleading information.

The Committee notes from the 2010 report of ECRI that the Ombudsman cannot intervene in relations between private individuals, and from a structural standpoint his independence of the executive is not fully guaranteed. It also notes that the independence of the Commission for Protection against Discrimination was a matter of concern to ECRI, and that no cases related to the law on discrimination were notified to it in 2011. The Committee asks for information concerning the authorities responsible for monitoring and responding to discriminatory incidents and for combatting misleading propaganda related to migration.

According to ECRI's 2010 report, expressions of interethnic intolerance became more frequent around 2010. The attitude of certain political figures is apparently particularly problematic, especially during election campaigns.

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information, and of deterring the promulgation of discriminatory views. It considers that in order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.

The Committee notes that the press code of ethics requires journalists to refrain from intentionally relaying or publishing information that jeopardises human rights or fundamental freedoms and from propagating hatred or encouraging violence and discrimination. It notes the existence of the "Journalists' Council of Honour", which has competence to ensure compliance with the code of ethics, although according to the abovementioned report of ECRI, it has no powers of coercion: its only means of action is public denouncement of breaches of the code. The Committee asks for updated information on the activities of the Journalists' Council of Honour and any other bodies which monitor and combat the prevalence of misleading, discriminatory or racist publications.

The Committee recalls that authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia). It asks for complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings.

#### *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 5 - Equality regarding taxes and contributions*

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

The report states that the Law on the Personal Income Tax determines the tax liability of natural persons. A resident of "the former Yugoslav Republic of Macedonia" shall be liable to pay tax on the income realized in the country and abroad. For the purposes of this Law a resident shall be a natural person who has a permanent place of living or temporary residence in the territory. The worker shall have a residence in "the former Yugoslav Republic of Macedonia" if he or she is staying in the country for 183 or more days without or without interruptions, in any 12 month period. A payer of the personal income tax may be a natural entity who is not resident, for the income realized on the territory of "the former Yugoslav Republic of Macedonia".

The rate at which personal income tax shall be calculated is 10%. The laws applicable are the same for Macedonian citizens and migrant workers lawfully residing in "the former Yugoslav Republic of Macedonia".

The Committee understands that the same rate of taxation applies to both resident and non-resident income earners, regardless of their nationality.

The Committee asks what contributions are payable in relation to employment, and whether migrants are treated equally with nationals.

### *Conclusion*

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 19§5 of the Charter.



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

### *Paragraph 6 - Family reunion*

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

### **Scope**

The report states that Articles 71, 72 and 73 of the Law on Foreigners regulate family reunion in "the former Yugoslav Republic of Macedonia".

A foreigner who has a permit for residence in "the former Yugoslav Republic of Macedonia", issued for employment or self-employment, which is issued for a period of 1 year, under the conditions in accordance with the Law on Foreigners, shall be granted the right to family reunion.

Members of the family eligible for reunion are spouses, the minor children of the foreigner or his/her spouse, including adopted children. The minors must be younger than 18 years and unmarried. As an exception, the following groups may also be admitted through family reunion: relatives of the foreigner or the spouse in an ascending line when they are dependent upon them and do not have family support in the country in which they live; and children of the foreigner or the spouse who are over 18 years old, and due to their health condition are dependent; the parents of a minor, if that is in the best interest of the child.

The members of the immediate family of the foreigner to whom a permit for temporary residence is issued have the right to education, professional qualification and self-employment. According to the statistical data for family reunion of foreigners, in 2012, 560 persons got the right to family reunion, while in 2013, 545 foreigners availed themselves of this right.

### **Conditions governing family reunion**

The Committee acknowledges that States may take measures to encourage the integration of migrant workers and their family members. It notes the importance of such measures in promoting economic and social cohesion. However, the Committee considers that requirements that family members pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may impede rather than facilitate family reunion and therefore are contrary to Article 19§6 of the Charter where they have the potential effect of denying entry or the right to remain to family members of a migrant worker, or otherwise deprive the right guaranteed under Article 19§6 of its substance, such as by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments (Statement of interpretation on Article 19§6, Conclusions 2015). It asks whether there are any language requirements imposed on applicants or family members in order to be able to exercise the right to family reunion.

The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of Interpretation on Article 19§6). The Committee asks whether a means requirement applies in "the former Yugoslav Republic of Macedonia", and if so, what the criteria are and how is it calculated.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into

account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee considers 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.

The Committee recalls that once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they have an independent right under the Charter to stay in that territory (Conclusions XVI-1 (2002), Article 19§8, Netherlands). The Committee notes from the report that there shall be ongoing changes of the Law on foreigners by which the members of the family shall have an independent right to stay on the territory, or they shall be issued with an autonomous permit for residing, not depending on the sponsor. Committee asks for up to date information on these changes in the next cycle. However, it notes therefore that during the reporting cycle, foreigners who had joined migrant workers did not retain an independent right of residence and could accordingly be expelled when their sponsor was removed. It thus considers that the situation is not in conformity with Article 19§6 of the Charter.

#### *Conclusion*

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 19§6 of the Charter on the ground that family members of a migrant worker are not granted an independent right to remain after exercising their right to family reunion.

## **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 "the former Yugoslav Republic of Macedonia".

The report states that in accordance with Article 101 of the Law on Foreigners, a foreigner may be banished from "the former Yugoslav Republic of Macedonia", if:

- He is sentenced with a final verdict to a sentence of at least one year of imprisonment;
- Represents a danger for the public order, the national safety or the international relations of "the former Yugoslav Republic of Macedonia";
- There exist serious reasons to be considered that he committed severe criminal acts, especially related with the production and placing into operations of narcotic drugs, or exist tough evidence for his intention of performing such criminal acts;
- If there are reasons for protection of the public health;
- He is illegally staying in the state, or several times performs repeated or severe violation of the provisions of the Law on Foreigners.

The report states that when deciding about banishing a foreigner from the territory of "the former Yugoslav Republic of Macedonia", several circumstances shall be taken into consideration, including the consequences that shall arise of the imposed measure for the foreigner or a member of the immediate family who is legally residing on the territory of "the former Yugoslav Republic of Macedonia".

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' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of interpretation on Article 19§8, Conclusions 2015).

The Committee asks whether the provisions of the Law on Foreigners are applied in compliance with the Charter in this regard. In particular, it asks whether all aspects of the non-nationals' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the state will be taken into account in determining whether a migrant should be expelled, whether expulsion is the automatic consequence of any sentence to imprisonment exceeding one year and on the basis of what criteria a foreigner is considered to represent a threat to public order. It furthermore asks for details of the appeal procedures, if any, whereby migrant workers and their families can appeal against decisions to revoke their permits and/or to expel them.

### *Conclusion*

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

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

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

The Committee takes note of the information contained in the report submitted by "The former Yugoslav Republic of Macedonia".

### ***Protection against dismissal***

The Committee recalls that under Article 27§3 family responsibilities must not constitute a valid ground for termination of employment.

The report refers to Section 101 of the Labour Relations Act, as amended in 2013, which prohibits dismissals during pregnancy, birth, maternity, parenthood and unpaid parental leave.

According to Section 101§ 4 of the Act the prohibition of termination shall not refer to the termination of employment due to severe violations of the contractual obligations, violations of work order and discipline. However, according to paragraph 5 the employer may only terminate employment on these grounds with the prior consent of the trade union and with the participation of the authorised labour inspector.

### ***Effective remedies***

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 (Statement of Interpretation on Articles 8§2 and 27§3 (Conclusions 2011) .

The Committee asks whether the legislation complies with these standards. It asks whether there is a ceiling to the compensation that can be awarded in cases of unlawful termination of employment due to family responsibilities.

### ***Conclusion***

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



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**TURKEY**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Turkey which ratified the Charter on 27 June 2007. The deadline for submitting the 7th report was 31 October 2014 and Turkey submitted it on 2 October 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report contains also information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to safe and healthy working conditions – occupational health services (Article 3§4)
- the right to protection of health – advisory and educational facilities (Article 11§2)
- the right to benefit from social services – promotion or provision of social services (Article 14§1)
- the right to benefit from social services – public participation in the establishment and maintenance of social services (Article 14§2)
- the right of the elderly to social protection (Article 23)

Turkey has accepted all provisions from the above-mentioned group .

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Turkey concern 41 situations and are as follows:

– 7 conclusions of conformity: Articles 7§7, 7§9, 8§3, 8§4, 19§3, 19§5, 19§9.

– 30 conclusions of non-conformity: Articles 3§4, 7§1, 7§3, 7§4, 7§5, 7§6, 7§8, 7§10, 8§1, 8§2, 8§5, 14§1, 16, 17§1, 17§2, 19§1, 19§4, 19§6, 19§7, 19§8, 19§10, 19§11, 19§12, 23, 27§1, 27§2, 27§3, 31§1, 31§2, 31§3.

In respect of the other 4 situations related to Articles 7§2, 11§2, 14§2, 19§2, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Turkey under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

### **Article 7§2**

A new Law on Occupational Health and Safety No. 6331 of 30 June 2012 was adopted.

The amendments introduced by Regulation No. 28566/21.02.2013 to the Regulation No. 25425 on the "Employment Procedures and Principles on Children and Young Workers",

workers who have not turned 18 can not be employed in work which involve dangerous and unhealthy tasks such as: production and wholesale of alcohol, cigarettes and addictive substances; the production and wholesale of combustible, explosive, harmful and dangerous substances and their processing, storing and all sorts of work which involves exposure to such substances; work in excessive hot and cold environment.

#### **Article 8§4**

Under Section 8 of the Regulation on employment of female employees at night-work of 24 July 2013 (Official Gazette No. 28717), female employees cannot perform night work during their pregnancy, upon presentation of a medical certificate.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

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

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to just conditions of work – information on the employment contract (Article 2§6)
- the right of workers to take part in the determination and improvement of working conditions and working environment (Article 22)
- the right to dignity in the workplace – sexual harassment (Article 26§1)
- the right to dignity in the workplace – moral harassment (Article 26§2)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).



### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 4 - Occupational health services*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that there was a strategy to institute access to occupational health services for all workers in all sectors of the economy.

The Committee recalls that under Article 3§4 States must promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions. These services may be run jointly by several companies. The services must be efficient and should be able to identify, measure and prevent work-related stress, aggression and violence (see Statement of interpretation on Article 3§4, Conclusions 2013; also Conclusions 2003, Bulgaria). It further recalls that if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. Thus, States "must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Conclusions 2003, Bulgaria, Conclusions 2009, Albania).

The report provides general information on Turkey's National Employment Strategies 2014-2023, on the National Occupational Health and Safety Policy Document and Action Plan 2014-2018 as well as on the Law on Occupational Health and Safety enacted in 2012. The law stipulates, *inter alia*, that all workplaces are under an obligation to ensure health and safety, that workers are to receive regular medical surveillance, that employers have to inform all workers about health and safety issues and that expenses in "micro enterprises" arising from receiving occupational health and safety services are to be covered by the State.

However, the report again provides no detail on the actual existence of occupational health services, on their organisation, content and coverage. Apart from the mention of state funding of services in "micro enterprises", the report also does not provide information on funding of occupational health services. The Committee therefore reiterates its finding of non-conformity.

#### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 3§4 of the Charter on the ground that it has not been established that there is a strategy to institute access to occupational health services for all workers in all sectors of the economy.

## **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 Turkey.

The Committee noted previously that the employment of children under 15 is prohibited; however, children who have reached the age of 14 and completed their primary education may be employed in light work which does not hinder their physical, mental and moral development and education of those who attend school. It also noted that the Regulations on Procedures and Principles of the Employment of Children and Young Workers of 6 April 2004 define the types of light work in which children who have reached the age of 14 and completed the compulsory primary education can be employed as well as procedures and principles of their working conditions (Conclusions 2011).

The Committee previously asked which were the types of light work that children who reached the age of 14 could perform. The report provides the list of activities that children are allowed to perform such as picking fruits, vegetables and flowers except those involving a risk of falling and wounding, ancillary work in office, distributing and selling newspapers, magazines and printed media; labelling goods and packing; ancillary work in library, fairs and exhibitions; flower selling and designing.

The Committee recalled previously that regarding work done at home, States are required to monitor the conditions under which it is performed in practice and it asked information regarding the monitoring of work done at home by children. The report does not provide any information on how the authorities monitor of such work. It states that domestic responsibilities are understood as the work done by children at home for helping their own families and it should not be understood as a type of paid employment in another house.

The Committee takes note from the report of the results of the survey on child labour of the Turkish Statistical Institute according to which the rate of children engaged in domestic affairs is of 49.2%. The same data illustrate that 47.2% of children between the ages of 6-17 assist their families with domestic tasks for two hours per week, while 80.1% (over 6 million children) of them perform work at home for 7 hours per week. The survey indicates that 29.7% of children use to do the shopping for the household.

The Committee recalls that work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate. The supervision required of states must, in such cases, (..), concern not just the Labour Inspectorate but also the educational and social services (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28). The Committee asks whether the State authorities (e.g. Labour Inspectorate, child protection services, school) monitor work done at home by children under 15 and which are their findings in this respect. The Committee points out that should the next report not provide the information requested, there would be nothing to establish that the situation is in conformity with Article 7§1 of the Charter.

In its previous conclusion (Conclusions 2011), the Committee concluded that the situation in Turkey was not in conformity with Article 7§1 of the Charter on the ground that the prohibition of employment under the age of 15 is not guaranteed in practice.

The Committee notes from another source that according to the Confederation of Turkish Trade Unions, child labour in Turkey is found in the urban informal sector, in the domestic service and in seasonal agricultural work (Observation (CEACR) – adopted 2014, published 104<sup>th</sup> ILC session (2015), Minimum Age Convention, 1973 (No. 138)). The Committee asks what are the measures taken by the authorities (eg labour inspection) to detect cases of children under the age of 15 working in the above mentioned sectors.

The report indicates that the Ministry of Labour and Social Security has launched a project for Activation of Local Resources to Prevent Child Labour, targeting children engaged in hazardous work in small and medium enterprises, children working on the streets and in seasonal agricultural work except for family work. The Government indicates that child labour monitoring units have been established in five pilot provinces which cooperate with other institutions and agencies in the provinces with the purpose of preventing child labour and especially the worst forms of child labour.

The report also indicates the measures taken by the authorities in specific areas such as the Action Plan and Strategy for Improving the Working and Social Life of Seasonal Travelling Agricultural Workers which has its purpose to ensure the access of the children of seasonal workers to education; or the Action Plan for removing children from the farms in the provinces where hazelnut is produced in order to prevent children being exposed to hazardous work in the farms. The Ministry of National Education issued a circular on 20 April 2011 in order to ensure the access of children of seasonal agricultural workers to education.

The Committee takes note of the measures taken by the Government to prevent child labour. However, it notes that according to the data provided by Turkish Statistical Institute there has been an increase in the number of children aged 6 to 14 years who are in child labour. The report indicates that according to the same statistics, the number of working children between 6-14 years of age is 292,000 which means 2.6% of children between 6 and 14 were found to be involved in work.

With regard to supervision, the report indicates that the labour inspectors identified 13,278 cases in 2010, respectively 8,443 cases in 2011 of children under the age of 15 involved in labour. The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide information on the measures taken to eliminate child labour, including measures to establish child labour monitoring systems, as well as on violations identified and sanctions applied by the labour inspectors. It also requests the Government to provide statistical information on the number of children under the age of 15 engaged in child labour.

The Committee considers that the employment of children under the age of 15 remains a considerable problem in Turkey and therefore it maintains its conclusion of non-conformity in this sense.

#### *Conclusion*

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

## **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 Turkey.

The Committee concluded previously that the situation was not in conformity with Article 7§2 of the Charter on the ground that the age set by legislation for prohibition of dangerous or unhealthy work is below the age of 18 (Conclusions 2011).

The report indicates that the Regulation on Hard and Dangerous Work was abolished and a new Law on Occupational Health and Safety No. 6331 of 30 June 2012 was adopted. The Regulation No. 25425 on the “Employment Procedures and Principles on Children and Young Workers” was amended in 2013 by the Regulation No. 28566/21.02.2013. The Annexes to this latter Regulation specify/list the types of light work that children are allowed to perform (Annex 1), types of work permitted for young persons between the ages of 15-18 (Annex 1 and 2) and an additional list of types of works permitted to young persons of 16 but who did not turn 18 (Annex 3).

The Committee previously recalled that the Appendix to Article 7§2 permits exceptions in cases where young persons under the age of 18 have completed their training for performing dangerous tasks and, thus, received the necessary information and asked that the next report provide information on the regulatory framework and how was supervision of such cases ensured.

The report indicates that according to the Law on Vocational Training No. 3308/5.06.1986, semi-skilled young workers at the age of 16 and who graduated from vocational and technical education schools and institutions can be employed in work appropriate to their specialization and profession regardless of the restrictions specified in the Annexes to the Regulation, provided that their health, safety and morals are guaranteed.

The report indicates that according to the amendments brought by the Regulation No. 28566/21.02.2013 to the Regulation No. 25425 on the “Employment Procedures and Principles on Children and Young Workers”, workers who have not turned 18 can not be employed in work which involve dangerous and unhealthy tasks such as: production and wholesale of alcohol, cigarettes and addictive substances; the production and wholesale of combustible, explosive, harmful and dangerous substances and their processing, storing and all sorts of work which involves exposure to such substances; work in excessive hot and cold environment.

The Committee notes from another source that, under the terms of section 4 of the Labour Act, several categories of workers are excluded from its scope of application including workers in businesses with fewer than 50 employees or carrying out agricultural and forestry work, building work in relation to agriculture within the limits of the family economy and domestic service (Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), Worst Forms of Child Labour Convention, 1999 (No. 182), Turkey). The Committee asks the next report to provide information on the application in practice of Regulation No. 25425, as amended by Regulation No. 28566, with regard to protecting children under 18 from engagement in hazardous work. The Committee also requests the Government to indicate whether Regulation No. 25425, as amended, applies to those sectors excluded from the scope of application of the Labour Code.

In its previous conclusion, the Committee noted that employers who employ young workers in dangerous and unhealthy jobs are sanctioned with fines. It asked whether a ceiling level existed for the fines applied and, if so, what is the maximum of fines applied. The report indicates that the fine imposed in 2013 was 1,293 Turkish Liras (€ 393).

The report does not provide any information on the situation in practice, namely data on the involvement of children under 18 years of age in dangerous or unhealthy activities, violations

detected by the labour inspectors and sanctions effectively imposed on employers. The Committee notes from another source that according to the Confederation of Turkish Trade Unions (TURK-IS) worst forms of child labour continue to exist in the furniture sector in practice. The Committee asks information on the inspections undertaken by labour inspectors in this sector and their findings (Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), Worst Forms of Child Labour Convention, 1999 (No. 182) – Turkey).

The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide information on the implementation in practice of the Regulation No. 25425 on the “Employment Procedures and Principles on Children and Young Workers” as amended in 2013, on the number and nature of violations detected as well as on sanctions imposed for breach of the rules regarding prohibition of employment under the age of 18 for dangerous or unhealthy activities.

#### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

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

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

The Committee notes that children who have completed the age of fourteen and their primary education may be employed in light works that will not hinder their physical, mental and moral development, and for those who continue their education, in jobs that will not prevent their school attendance (Section 71 Labour Law). Employment of children who have not completed the age of fifteen is prohibited.

The report indicates that under Section 71 of the Labour Law, the working time of children who have completed their basic education and yet who are no longer attending school shall not be more than seven hours daily and more than thirty-five hours weekly. However this working time may be increased up to forty hours weekly. The working time of school attending children during the education period must fall outside their training hours and shall not be more than two hours daily and ten hours weekly. Their working time during the periods when schools are closed shall not exceed the hours foreseen in the first paragraph above.

The Committee notes that during school term children shall be allowed to work not more than two hours daily and ten hours weekly which is in conformity with the requirements of the Charter.

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

The Committee therefore considers that the situation is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly duration of light work for children who are still subject to compulsory education during school holidays is excessive.

The report indicates that according to the Turkish Statistical Institute, 49.8% of the working children go to school, while 50.2% do not attend school. The same source indicates that 3.2% of the children between 6-17 years of age still in school are engaged in economic activities, 50.2% of them in domestic affairs and 46.6% of them are not engaged in any activity. The Committee also takes note of the concluding observations of 20 July 2012 of the Committee on the Rights of the Child which noted that the large number of children still employed constituted a significant challenge to the rights of the child, including the right to education (CRC/C/TUR/Co/2-3, para.62). It asks the next report to provide detailed information/statistics on the number of children still subject to compulsory education who are engaged in any type of work.

The Committee takes note from the report of the measures taken by the Government to increase the rate of school attendance. It wishes to be informed on the development of relevant measures in the next report.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 7§3 of the Charter on the ground that the duration of light work permitted to children subject to compulsory education during school holidays is excessive.

## **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 Turkey.

The Committee notes that there have been no changes to the situation which it previously found to be in non-conformity with Article 7§4 of the Charter.

Young workers under 16 years of age may work up to 8 hours per day and 40 hours a week (Section 71 Labour Law) which is contrary to the requirements of Article 7§4 of the Charter. The Committee considers that the situation is still not in conformity with the Charter on the ground that the duration of working time for young workers under 16 years of age is excessive.

### *Conclusion*

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

### **Young workers**

The Committee noted previously that the minimum wage for workers under 16 was of 86.6% of the minimum net wage of adults and the minimum wage of workers aged more than 16 was the same as the minimum wage of adults. It concluded that the situation was in conformity with the Charter (Conclusions 2011).

The report indicates that since 2013 the minimum wage applies to all employees, irrespective of age. No information is provided with respect to the amount of the net minimum wage during the reference period.

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

In order to assess the situation, the Committee asks information on the minimum wage of young workers calculated net. It also requests information on the net starting wage or net minimum wage of adult workers as well as on the net average wage. 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.

Pending receipt of the information requested, the Committee reserves its position on this point.

### **Apprentices**

With regard to the allowances paid to apprentices, the report indicates that according to Section 25 of the Vocational Education Act No. 3308 the amount of allowance cannot be less than 30% of the minimum wage.

The Committee previously asked information on the allowances paid to apprentices during the apprenticeship and whether the allowance increases towards the end of apprenticeship (Conclusions 2011). It recalls that under Article 7§5 of the Charter, apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period (Conclusions II (1971), Statement of Interpretation on Article 7§5), starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end (Conclusions 2006, Portugal).

The Committee previously asked what the situation was with regard to the allowances paid to the apprentices in practice. The report does not contain any information on the situation in practice evidencing that apprentices receive at least one third of the adult minimum or starting wage at the beginning of apprenticeship. Moreover, no information is provided on the amount of the allowance paid to apprentices at the end of the apprenticeship. Given the lack of information, the Committee concludes that the situation is not in conformity with Article 7§5 of the Charter on the ground that it has not been established that the allowances paid to apprentices are appropriate.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 7§5 of the Charter on the ground that it has not been established that the allowances paid to apprentices are appropriate.

## **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 Turkey.

The Committee concluded previously that the situation in Turkey was not in conformity with Article 7§6 of the Charter on the ground of a repeated lack of information providing evidence that time spent by young workers on vocational training is considered as working time and that this right applies to at least 80% of young workers receiving training (Conclusions 2005).

In its previous conclusion, the Committee reiterated its request for information on the situation in practice and on the monitoring activities of the Labour Inspectorate, including the level of fines imposed for breach of the applicable rules (Conclusions 2011).

The report indicates that in accordance with Vocational Education Act No. 3308, apprentices undergo training of a general and vocational nature at least 8 hours a week. In order to attend such training the apprentices must be granted paid leaves. The report indicates that in 2013 the total number of apprentices was 99,651 and the number of apprentices who benefited of vocational training amounted to 186 between the ages of 6-14 and 13,837 between the ages of 15-22.

The Committee notes that there is no information in the report evidencing that time spent by young workers on vocational training is considered as normal working time and that this right is guaranteed to young workers. The report does not provide information on the monitoring activities of the Labour Inspectorate with regard to the inclusion of time spent on vocational training by young workers in the normal working time.

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.

Given the lack of information, the Committee considers that the situation is not in conformity with Article 7§6 of the Charter on the ground that it has not been established that the time spent in vocational training by young workers is included in the normal working time and remunerated as such.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 7§6 of the Charter on the ground that it has not been established that the time spent in vocational training by young workers is included in the normal working time and remunerated as such.

## **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 Turkey.

The Committee previously noted that according with Section 53 of Labour Act No. 4857, the paid annual leave that shall be granted to children and young workers cannot be less than 20 days. It asked whether the full annual leave is granted uninterruptedly upon certain conditions and whether in the event of illness or accident during the holidays, young workers have the possibility to take the leave lost at some other time (Conclusions 2011).

The Committee notes that Section 53 of the Labour Act provides that the right to annual leave with pay shall not be waived. The report indicates that the annual leave must be granted without interruption in conformity with the days indicated in Section 53 of the Labour Act. However, the annual leave may be divided, by mutual consent, into three parts at the maximum, provided that one of the parts shall not be less than ten days. Other types of leave, with or without pay, granted by the employer during the year or taken by the employee as convalescent or sick leave must not be deducted from annual leave.

The Committee asks whether young workers are allowed to waive their right to annual leave in return of financial compensation.

The Committee previously asked for information on the monitoring activity of the Labour Inspectorate and on the fines imposed on employers for breach of the regulations regarding paid annual holidays of young workers. The report does not provide any information in this sense.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It therefore asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding paid annual holidays of young workers under the age of 18.

### *Conclusion*

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

The Committee previously found the situation in Turkey not to be in conformity with Article 7§8 of the Charter on the ground that night work for workers under 18 years of age is prohibited only in industrial undertakings.

The report indicates that there have been no changes to the situation which the Committee previously found to be in non-conformity during the reference period. The report reiterates that under Article 73 of the Labour Code, the prohibition of night work for young workers applies only to industrial work. The report indicates that trade, service, agricultural and forestry are excluded.

Noting that the situation has not changed and the report does not provide any information/statistics with regard to the number of young workers performing night work, the Committee reiterates its conclusion of non conformity.

The Committee recalls that the situation in practice should be regularly monitored and therefore it asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of night work for young workers under the age of 18.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 7§8 of the Charter on the ground that night work for workers under 18 years of age is prohibited only in industrial undertakings.

## **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 Turkey.

The Committee noted previously that Article 87 of Labour Act No. 4857 stipulates that, prior to recruitment, children and young workers between 14 and 18 must undergo an obligatory medical examination, and have it certified by medical health reports that they are physically fit with regard to the qualifications and conditions of work. They must undergo regular check-ups every 6 months until they reach the age of 18.

The Committee previously asked whether some categories of young workers were exempted from the medical examination requirement. The report indicates that there is no sector or working group exempted from medical examination.

The report indicates that according to Section 15 of the Law on Occupational Health and Safety No. 6331 which entered into force on 30.06.2012, the employer shall ensure the medical examinations of the employees at recruitment and at regular intervals during employment. The employer shall cover all expenses arising from medical examinations. The Committee asks whether the provisions of the new Law on Occupational Health and Safety applies to all workers including those excluded from the Labour Code (such as those working in businesses with fewer than 50 employees or carrying out agricultural and forestry work).

The Committee previously asked information on the monitoring activity of the Labour Inspectorate. The report does not provide any information in this sense. The Committee recalls that the situation in practice should be regularly monitored and asks how the State authorities monitor the observance of the applicable rules in practice. It also asks the next report to provide information on the number and nature of violations detected by the monitoring bodies (eg the Labour Inspectorate, health services) as well as on sanctions imposed on employers in practice for breach of the rules concerning the medical examination of young persons under 18 years of age.

### *Conclusion*

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

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

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

### ***Protection against sexual exploitation***

The Committee notes that Turkey ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Abuse which entered into force in 2012. It notes however, that Turkey has not ratified the Council of Europe Convention on Action Against Trafficking in Human Beings.

In its previous conclusion (Conclusions 2011) the Committee took note of the legislative framework governing sexual exploitation of children (Articles 103, 226 and 227 of the Penal Code) and asked whether legislation criminalised simple possession of child pornography. It notes from the report in this regard that according to Article 226 production, offer for sale, transfer, storage, export, keeping of materials of child pornography are criminalised. The Committee notes that 'keeping' is interpreted as simple possession.

The Committee asks whether the above mentioned legal provisions criminalise all acts of sexual exploitation of children, including simple possession of child pornography with all children below 18 years of age, irrespective of lower national age of sexual consent. The Committee holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

In its previous conclusion the Committee asked whether child victims of sexual exploitation could be prosecuted for any act connected with this exploitation. In the absence of the reply the Committee holds that it has not been established that child victims of sexual exploitation cannot be prosecuted.

### ***Protection against the misuse of information technologies***

According to the report, within the context of the Law No: 5651 on "Regulation of Publications on the Internet and Suppression of Crimes Committed By Means of Such Publications" preventive studies are carried out. For this purpose, in order to eliminate and prohibit access to illegal web content another crime line has been created in coordination with Information Technologies and Communication Institute. This line has enabled law enforcement officers to report the detected illegal contents.

The Committee further notes that with a view to combating child molestation and child pornography through internet, efforts are made in coordination with Information Technologies and Communication Institute (BTK) and Interpol Europe Sirene Unit to prohibit access to web pages including child pornography and apprehend the related perpetrators.

### ***Protection from other forms of exploitation***

In its previous conclusion the Committee held that it has not been established that sufficient measures had been adopted to protect children from trafficking and other forms of sexual exploitation.

In notes in this respect that Child and Youth Centres carry out protective, preventive and supportive services for the children living on the streets whose family ties were ruptured partly or wholly and who are under risk. These children are enabled to benefit from social support services and measures are taken to prevent children from living in the streets through early intervention methods by the said Centres.

Activities are carried out at the places where the children are found by mobile teams composed of civil police officers affiliated to security child department, with a view to determining the children under risk on the streets and guiding them to a proper organisation.

The Ministry of Family and Social Policies developed the Service Model for the Children Living/Working on the Streets to assist them to go back to their families, to be directed to formal or vocational education and to meet all their needs such as accommodation, nutrition, clothing, health-care, education, etc.

The Committee takes note of the National Strategy Paper on the Rights of Children and Action Plan, which determines the basic objectives of protecting the rights of children in 2013-2017. The primary aim of this document is to strengthen the family ties of children living on the streets and to ensure their return to their families. The nursing and social support services for the above-mentioned children were decided to be enhanced in cooperation with all the relevant institutions and organisations.

In its previous conclusion the Committee recalled that the gathering and analysis of statistical data is indispensable to the formation of rational policy aiming at protection of particularly vulnerable groups or at reducing a particular phenomenon. It asked for how the Government monitored the scope of the problem of trafficking and sexual exploitation of children and requested the next report to provide the relevant data. It also asked for information on the incidence of sexual exploitation and trafficking.

The Committee takes note of the information concerning rehabilitation of child victims of sexual abuse and human trafficking. According to the report, one case of child trafficking was identified in 2013 and the child concerned was transferred to the shelter affiliated to the Foundation of Women's Solidarity in Ankara. Nursing and Rehabilitation Centres were established within the Ministry of Family and Social Policies for children who are in need of psycho-social rehabilitation due to sexual abuse.

Moreover, according to the report, the Ministry of Internal Affairs continues to work in order to prepare Draft law on Fight against Human Trafficking and Protection of Victims. The draft law has been prepared on the basis of Council of Europe Convention on Action against Trafficking in Human Beings.

The main aim of the draft law is to prevent human trafficking, implement an effective combat against it and protect and support human trafficking victims. The Committee notes that there are some special provisions for children in the draft law. According to these provisions the best interest of children will be pursued, the persons encouraging, facilitating, meditating child prostitution or the persons forcing children to prostitute will be punished.

Furthermore, forcing children for begging falls within in the scope of human trafficking. In the draft law, protection of victims is set out under a separate part and victim support periods are defined in details.

The Committee wishes to be informed about the adoption of the draft law and wishes the next report to provide up-to-date information concerning incidence of child trafficking and sexual exploitation.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 7§10 of the Charter on the ground that it has not been established that child victims of sexual exploitation cannot be prosecuted.



## **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 Turkey.

### ***Right to maternity leave***

The Committee previously noted (Conclusions 2011) that pursuant, to Section 74 of the Labour Act No. 4857, "In principle, female employees must not be engaged in work for a total period of sixteen weeks, eight weeks before confinement and eight weeks after confinement". A similar provision applies to women employed in the public service under Section 104 of the Civil Service Act No. 657. Under Section 16 of the Press Labour Act, female journalists are entitled to maternity leave from the seventh month of their pregnancy until the end of the second month following birth.

Under the Labour Act, the leave can be extended, on the basis of a medical certificate, in case of multiple birth or if required in view of the worker's health condition and the working conditions. On the other hand, the law explicitly allows the prenatal leave to be shortened, with a doctor's consent or in case of preterm delivery, in which case the days not taken before the birth can be added to the postnatal leave. In this connection, while taking note of the pecuniary sanctions provided under Sections 104 and 105 of the Labour Act against employers who would not respect the employee's right to maternity leave, the Committee had requested clarifications as to whether there is a six-week period of compulsory postnatal leave, including for employed women coming under the Press Labour Act.

The Committee recalls that, while national law may permit women to opt for a shorter period of maternity leave, in all cases there must be a compulsory period of postnatal leave of no less than six weeks which may not be waived by the woman concerned. If no such compulsory leave is provided for, legal safeguards must exist to avoid any undue pressure on employees to shorten their maternity leave, in particular legislation against discrimination at work based on gender and family responsibilities, an agreement between social partners protecting the freedom of choice of the women concerned, or other guarantees enshrined in the general legal framework surrounding maternity, for instance a parental leave system whereby either parents can take paid leave at the end of the maternity leave.

The report refers to the possibility to prolonge the maternity leave by an additional leave of six months under Section 74 of the Labour Act, or up to 24 months for civil servants and their spouse, under Sections 104 and 108 of the Civil Service Act No. 657. In both cases, however, such leave is unpaid. The Committee reiterates its request of clarifications as to whether under the relevant laws (Labour Act, Civil Service Act, Press Labour Act) the postnatal leave provided is compulsory or can be shortened at the employee's request. It furthermore asks the next report to provide any relevant statistical data on the average length of maternity leave effectively taken. It reserves in the meantime its position on this point.

### ***Right to maternity benefits***

In its previous conclusions (Conclusions 2011), the Committee found that, while women employed in the public sector continue receiving their wage during maternity leave, the situation of women employed in the private sector and receiving maternity benefits under the Social Insurance and Universal Health Insurance Act No. 5510 was not in conformity with Article 8§1 of the Charter on account of the inadequate level of such benefits, corresponding only to 66% of the worker's earnings in the last three months. The Committee noted that were entitled to this benefit the employed women who had contributed to the insurance scheme for at least 90 days over a period of one year prior to the birth.

In response to this finding, the report explains that the temporary incapacity allowance granted during the maternity leave is calculated on the basis of two thirds of the gross daily

income of the employee. For the purpose of this calculation, the daily income which is taken into account cannot be less than the daily minimum wage (that is, for the first half of 2012, TRY 886.50 (€385) / 30 = TRY 29.55 (€13)) and cannot exceed 6.5 times this amount (TRY 29.55 x 6.5 = TRY 192.07 (€83)). Accordingly, an employee earning the minimum wage would get as daily maternity allowance the sum of TRY 19.07 (€8) (2/3 of TRY 29.55), which would correspond to 83% of her net wage (TRY 23.37 (€10)).

The Committee takes note of this information, but asks the next report to clarify whether a woman earning more than the minimum wage is also entitled, on the basis of this regime, to an allowance corresponding at least to 70% of her previous wage. As regards the ceiling applying to the allowance, it recalls that a ceiling on the amount of compensation for high salary earners is not, in itself, contrary to Article 8§1. Various elements are taken into account in order to assess the reasonable character of the benefit reduction, such as the upper limit for calculating benefit, how this compares to overall wage patterns and the number of women in receipt of a salary above this limit. It accordingly asks the next report to provide data concerning the percentage of women earning a daily gross wage higher than the upper limit ceiling set by the law (i.e. 6.5 x the daily gross minimum wage), the wage bracket of this category or at least the average monthly wage for executive women. It reserves in the meantime its position on this point.

With reference to its Conclusions 2013 on Article 13, where the Committee had noted that certain provisions of Act No. 5510 only applied to foreign residents under conditions of reciprocity, the Committee asks the next report to clarify whether the provisions concerning the temporary incapacity allowance during maternity leave apply without restrictions to the nationals of States Parties to the Charter who are lawfully residing in Turkey.

In response to the Committee's request for clarification concerning the scope of the Press Labour Act, the report confirms that this Act derogates from the general regime set by the Labour Act No. 4857 and applies to all employees of the press sector. Pursuant to this Act, employed women on maternity leave are entitled to the payment of half their salary by their employer. The Committee asks the next report to provide further information on these provisions, including the conditions of entitlement to the benefits and their level, and considers in the meantime that the level of maternity benefits provided to women employed in the press sector is not adequate.

Furthermore, with reference to its Statement of Interpretation (Statement of Interpretation on Article 8§1, Conclusions 2015), the Committee asks whether the minimum rate of maternity benefits – under the Labour Act, the Press Labour Act and the Civil Service Act – corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 8§1 of the Charter on the ground that the level of maternity benefits provided to women employed in the press sector is not adequate.

## **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 Turkey.

#### ***Prohibition of dismissal***

The Committee previously noted that, pursuant to the Civil Service Act No. 657, women employed as permanent staff in the civil service enjoy job security except in situations which may justify dismissal. In response to its request for clarifications concerning the admissible grounds for dismissal as well as on the protection offered to women employed in the public sector on temporary contracts, the report merely refers to Section 125, paragraph E of Act No. 657 without providing, however, any information on the content of this provision. The Committee reiterates its questions and considers that, should the next report fail to provide the information requested, there will be nothing to establish that the situation is in conformity with the Charter on this point.

As regards employees in the private sector covered by the Labour Act No. 4857, the Committee recalls from its previous conclusions that pursuant to Section 18, employees with an open-ended contract working since at least six months in an enterprise employing thirty staff or more are explicitly protected against dismissal based on pregnancy and maternity leave. However, they can still be dismissed during pregnancy or maternity leave for reasons related to the capacity or conduct of the employee or the operational requirements of the enterprise. Replying to the Committee's request for clarifications, the report explains that dismissal is possible on the one hand for reasons related to economic, technological, structural and similar requirements of the enterprise, for example in the context of reorganisation or with a view to increasing its productivity and competitiveness and, on the other hand for reasons related to the employee's capacity or conduct, for example in case of under-performance compared to other employees, lack of skills required and failure to develop them, frequent sickness, behaviour causing or potentially causing a prejudice to the employer, etc.

The Committee recalls that Article 8, paragraph 2 of the Charter allows, as an exception, the dismissal of pregnant women and women on maternity leave in certain cases such as misconduct which justifies breaking off the employment relationship, if the undertaking ceases to operate or if the period prescribed in the employment contract expires. Exceptions are however strictly interpreted by the Committee. In light of the information provided, it finds that the grounds for dismissal under Section 18 of the Labour Act go beyond the exceptions admissible under Article 8§2 of the Charter.

The same conclusion of non-conformity with Article 8§2 of the Charter applies with regard to employees with an open-ended contract, who have been working for less than six months in an enterprise or work in an enterprise employing less than thirty staff: this category of employees can be dismissed without referring to specific reasons for dismissal, provided that the employer complies with the notice periods prescribed by Section 17 of the Labour Act.

Accordingly, the situation is not in conformity with Article 8§2 of the Charter as there is no adequate protection in the Labour Act against unlawful dismissal during pregnancy or maternity leave.

The Committee furthermore notes that the Labour Act also provides under its Section 25 for dismissal without notice, both for employees with open-ended and fixed-term contracts, in the following circumstances:

- For reasons of health a) If the employee has contracted a disease or suffered an injury owing to his own deliberate act, loose living or drunkenness, and as a result is absent for three successive days or for more than five working days in any month; b) If the Health Committee has determined that the suffering is incurable and incompatible with the performance of the employee's duties. In

case of pregnancy or maternity leave, if the illness or accident are not attributable to the employee's fault, the employer is entitled to terminate the contract if recovery from the illness or injury continues for more than six weeks beyond the notice periods set forth in Section 17, which shall begin at the end of the period stipulated in Article 74 (Maternity leave).

- For immoral, dishonourable or malicious conduct or other similar behaviour a) If, when the contract was concluded, the employee misled the employer by falsely claiming to possess qualifications or to satisfy requirements which constitute an essential feature of the contract, or by giving false information or making false statements; b) If the employee is guilty of any speech or action constituting an offence against the honour or dignity of the employer or a member of his family, or levels groundless accusations against the employer in matters affecting the latter's honour or dignity; c) If the employee sexually harasses another employee of the employer; d) If the employee assaults or threatens the employer, a member of his family or a fellow employee, or if he violates the provisions of Article 84 (consumption at work of alcoholic beverages or narcotic substances); e) If the employee commits a dishonest act against the employer, such as a breach of trust, theft or disclosure of the employer's trade secrets; f) If the employee commits an offence on the premises of the undertaking which is punishable with seven days' or more imprisonment without probation; g) If, without the employer's permission or a good reason, the employee is absent from work for two consecutive days, or twice in one month on the working day following a rest day or on three working days in any month; h) If the employee refuses, after being warned, to perform his duties; i) If either wilfully or through gross negligence the employee imperils safety or damages machinery, equipment or other articles or materials in his care, whether these are the employer's property or not, and the damage cannot be offset by his thirty days' pay.
- In case of "force majeure" preventing the employee from performing his duties for more than one week.
- In case of prolonged absence due to the employee's being taken into custody or due to his arrest.

The Committee refers to the abovementioned restrictive list of exceptions admitted under Article 8§2 of the Charter and notes that the Turkish law allows for a wide list of exceptions, which seem to go beyond the notion of "misconduct which justifies the breaking of the employment relationship". In particular, it considers that the dismissal of an employee during pregnancy or maternity leave for reasons of health, even when the employee is responsible of her sickness or accident, does not comply with Article 8§2 of the Charter.

The Committee asks whether a different regime for dismissals during pregnancy or maternity leave applies to employees covered by the Press Labour Act No. 5953 or by other legislation, in derogation to the Labour Act.

### ***Redress in case of unlawful dismissal***

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with Article 8§2 of the Charter because not all employed women are entitled to reinstatement in case of unlawful dismissal during pregnancy or maternity leave.

It notes from the report that this continues to be the case, at least as regards employees with an open-ended contract, who have been working for less than six months in an enterprise or work in an enterprise employing less than thirty staff: pursuant to Section 17 of the Labour Act they are entitled to be paid compensation equal to three times their wage if their employment contract is abusively terminated. If the notice period was not respected, they can be granted an additional compensation (notice pay) comprised between two and eight

weeks wage, but the employer may terminate the employment contract by paying in advance the wages corresponding to the term of notice.

The report explains the lesser protection afforded to this categories of employees by referring to ILO Convention No. 158, which allows that a category of workers be left out of the coverage of whole or part of the provisions of job security in terms of private employment conditions of the workers or of the size or quality of the enterprise where there are vital problems. The Committee recalls in this respect that its task is not to judge the conformity to the Charter of other international instruments, but rather to assess whether the situation in Turkey is in conformity with Article 8§2 of the Charter. In this connection, the Committee recalls that reinstatement of employees covered by Article 8§2 who have been unlawfully dismissed should be the rule. Exceptionally, if this is impossible (e.g. where the enterprises closes down) or the employee concerned does not wish it, adequate compensation must be available. Domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal. Accordingly, the Committee reiterates its finding of non conformity with Article 8§2 of the Charter because in Turkey not all employed women are entitled to reinstatement in case of unlawful dismissal during pregnancy or maternity leave.

Reinstatement is on the other hand explicitly provided in respect of dismissals covered by Section 18 of the Labour Act No. 4857, for employees recruited on open-ended contracts and working since at least six months in an enterprise employing thirty staff or more. Pursuant to Section 20 of the Labour Act, they can contest the reasons for their dismissal before a labour court or, in some cases, to private arbitration, within one month. "The burden of proof that the termination was based on a valid reason shall rest on the employer. However, the burden of proof shall be on the employee if he claims that the termination was based on a reason different from the one presented by the employer. The court must apply fast-track procedures and conclude the case within two months. In the case the decision is appealed, the Court of Cassation must issue its definitive verdict within one month".

Pursuant to Section 21 of the Labour Act, "if the court or the arbitrator concludes that the termination is unjustified because no valid reason has been given or the alleged reason is invalid, the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him in work, compensation to be not less than the employee's four months' wages and not more than his eight months' wages shall be paid to him by the employer. In its verdict ruling the termination invalid, the court shall also designate the amount of compensation to be paid to the employee in case he is not re-engaged in work. The employee shall be paid up to four months' total of his wages and other entitlements for the time he is not re-engaged in work until the finalization of the court's verdict. If advance notice pay or severance pay has already been paid to the reinstated employee, it shall be deducted from the compensation computed in accordance with the above-stated subsections. If term of notice has not been given nor advance notice pay paid, the wages corresponding to term of notice shall also be paid to the employee not re-engaged in work. For re-engagement in work, the employee must make an application to the employer within ten working days of the date on which the finalized court verdict was communicated to him. If the employee does not apply within the said period of time, termination shall be deemed valid, in which case the employer shall be held liable only for the legal consequences of that termination".

The report does not provide the information requested in the previous conclusion about the remedies available to employees on fixed-term contract, as well as to civil servants (including those on fixed-term contracts), in case of unlawful dismissal during pregnancy or maternity leave. The Committee accordingly reiterates its request for information and considers that, should the next report fail to provide the information requested, there will be nothing to establish that the situation is in conformity with the Charter on these points. The Committee furthermore asks the next report to provide information on remedies available in case of unlawful dismissal without notice based on Section 25 of the Labour Act, occurring

during the employee's pregnancy or maternity leave, as well as on the remedies available against unlawful dismissals during pregnancy or maternity leave under the Press Labour Act No. 5953.

In its previous conclusion, the Committee also asked whether the ceilings to compensation provided for in the Labour Act (Sections 17 and 21) covered compensation for both pecuniary and non-pecuniary damage or 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 whether both types of compensation were awarded by the same courts, and how long it took on average for courts to award compensation. It considered that, in the absence of this information, there would be nothing to establish that the situation is conformity in this respect. As the report does not contain any reply to these questions, the Committee reiterates them and holds in the meantime that the situation is not in conformity with Article 8§2, on ground that it has not been established that adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 8§2 of the Charter on the grounds that:

- there is no adequate protection in the Labour Act against unlawful dismissals during pregnancy or maternity leave;
- not all employed women are entitled to reinstatement in case of unlawful dismissal during pregnancy or maternity leave;
- it has not been established that adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave.

## **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 Turkey.

Pursuant to Section 74 of Labour Act No. 4857, employees are entitled to one and a half hour nursing breaks per working day until their child reaches one year of age. In the public sector, according to Section 104 (d) of the Civil Service Act No. 657, as amended in 2011, a female civil servant is entitled to up to three hours for breastfeeding during the first six months after the expiry of maternity leave and one and a half hours in the following six months. Both in the private as in the public sector, the employee can decide at what times and in how many instalments she will use the nursing time, which is treated as part of the daily working time and remunerated as such.

The Committee asks the next report to indicate whether the same rules apply to employees covered by the Press Labour Act.

### *Conclusion*

The Committee concludes that the situation in Turkey 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 Turkey.

It notes from the report that the relevant provisions have been amended following the entry into force in 2012 of the Law on Occupational Health and Safety No. 6331. According to Section 9 of the Regulation on Working Conditions of Pregnant and Nursing Women, Nursing Rooms and Child Nursing Homes of 16 August 2013 (Official Gazette No. 28737) female employees cannot be obliged to perform night work during the period starting from the date their pregnancy is certified by a medical certificate, until delivery. Similarly, under Section 8 of the Regulation on employment of female employees at night-work of 24 July 2013 (Official Gazette No. 28717), female employees cannot perform night work during their pregnancy, upon presentation of a medical certificate. Both regulations prohibit night work for one year after childbirth, and this period can be further prolonged if need be, upon presentation of a medical certificate.

The Committee had previously noted that pursuant to Civil Service Act No. 657 female civil servants cannot be employed for night work starting from the 24th week of pregnancy (or before that, if a medical certificate supports it) up until one year after childbirth (Section 101).

The Committee asks the next report to clarify whether the employed women concerned, both in the private as in the public sector, are transferred to daytime work and what rules apply if such transfer is not possible. It furthermore asks whether the abovementioned provisions cover all female employees or whether a different regime applies for example to women covered by the Press Labour Act.

### *Conclusion*

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



## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

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

It refers to its previous conclusion (Conclusions 2011), where it noted that women cannot be employed in underground and underwater work, including mines (Section 72 of the Labour Act No. 4857).

It furthermore noted the regulations on arduous and dangerous activities which could not be carried out by women in general or specifically by pregnant women, women having recently given birth or nursing their infant. According to the report, the regulation on arduous and dangerous work was repealed in 2012 and replaced by a Circular on Hazard Classes of Occupational Health and Safety (Official Gazette No. 28509 of 26 December 2012). The Committee asks the next report to specify whether and how arduous and dangerous activities – in particular as regards risks related to exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents, etc. – are prohibited or strictly regulated for pregnant women, women having recently given birth or nursing their infant. It reserves in the meantime its position on this issue.

The Committee previously noted that the employer is under the obligation to evaluate the risks incurred by pregnant women, women who have recently given birth and women who are nursing their infant and determine the protective measures to be taken including, if need be, the reassignment of the employees concerned to another post suited to their condition without loss of pay.

The Committee found however that the situation was not in conformity with Article 8§5 of the Charter because, when no such reassignment is possible, the employee concerned is not entitled to paid leave, but only to unpaid leave. It notes from the report that this situation has not changed and that the same situation concerns also women employed in the public sector. It accordingly reiterates its finding of non-conformity.

The Committee furthermore asks the next report to clarify whether the employees transferred to another post or on leave because of the impossibility to reassign them to another suitable post maintain a right to reinstatement when their condition allows it.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 8§5 of the Charter on the ground that pregnant women, women who have recently given birth or who are nursing their infant are only entitled to unpaid leave when such leave is granted because no other protective measures can be taken to protect them from exposure to risks inherent to their post.

## **Article 11 - Right to protection of health**

### *Paragraph 2 - Advisory and educational facilities*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that counselling and screening of the population at large as well as of children and adolescents, through school medical check-ups, were adequate.

As regards screening, the Committee recalls that it should exist and preferably be systematic for all the diseases that constitute the principal causes of death (Conclusions 2005, Republic of Moldova). The Committee has ruled that "where it has proved to be an effective means of prevention, screening must be used to the full" (Conclusions XV-2 (2001), Belgium).

The report states that a series of programmes has been developed to combat certain chronic diseases, including the Cardiovascular Diseases Prevention and Control Programme, the Global Alliance Programme Against Respiratory Diseases, the Obesity Counteracting and Control Programme and the Diabetes Control Programme. Mention is also made of screening programmes in respect of maternal and child health, such as the "Iron-Like Turkey Programme", the "Programme for the Prevention of D Vitamin Deficiency", the "Hypothyroid Screening Programme", the "Hearing Screening Programme", the "Biotinidase Screening Programme" and the "Hemoglobinopathy Control Program". The Committee asks whether screening programmes are in place for cancerous diseases.

From another source (WHO, Turkey Health System Performance Assessment 2011, May 2012), the Committee notes that the coverage of health services in Turkey has improved in recent years, including in respect of cancer screening, antenatal care and newborn screening. There has been a progressive increase in women undergoing breast and cervical cancer screening – from 940 000 to 1.5 million and from 960 000 to 3.2 million, respectively, between 2007 and 2009).

Nevertheless, in the absence of up-dated information in the report, the Committee asks that the next report contain detailed statistical information on the results achieved through the above-mentioned programmed and any other existing mass screening programmes, including information on coverage rates (number of persons screened from the target population and on the impact of the screening programmes (impact on early diagnosis rates, survival rates, etc.). Meanwhile, it reserves its position on this point.

With respect to free medical supervision during schooling, the Committee recalls that its assessment takes into account the frequency of medical checks, their objectives, the proportion of pupils concerned and the level of staffing (Conclusions XV-2 (2001), France).

The report states that school health services are shared between family physicians and Community Health Centres and that there are legal arrangements about school health services in Turkey, without however going into any further detail. The Ministry of Education, the Ministry of Health and the Ministry of Agriculture conduct health programmes in schools together with non-governmental organizations. In this context the Ministry of Education and the Ministry of Health have signed a "Cooperation Protocol on School Health Services". The report further states that the health situation of pupils in primary and secondary schools "is controlled throughout the country."

In view of the lack of detail allowing a proper assessment of the situation, the Committee asks that the next report contain full information on health services provided during schooling, including on the frequency of medical checks, their objectives, the proportion of

pupils concerned and the level of staffing. Meanwhile it reserves its position also on this point.

*Conclusion*

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

## **Article 14 - Right to benefit from social services**

### *Paragraph 1 - Promotion or provision of social services*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that there existed an effective and equal access to social services (Conclusions 2013).

The Committee recalls that effective and equal access to social services implies an individual right of access to counselling and advice from social services shall be guaranteed to everyone. Access to other kinds of services can be organised according to eligibility criteria, which shall not be too restrictive and in any event ensure care for those who lack personal capabilities and means to cope. The goal of welfare services is the well-being, the self-sufficiency and the adjustment of the individual and groups to the social environment. The rights of the client shall be protected: any decision should be made in consultation with and not against the will of the client; remedies shall be available in terms of complaints and a right to appeal to an independent body in urgent cases of discrimination and violation against human dignity. Social services may be provided subject to fees, fixed or variable, but they must not be so high as to prevent the effective access of these services. For persons lacking adequate financial resources in the terms of Article 13§1 such services should be provided free of charge. The geographical distribution of these services shall be sufficiently wide and they must be guaranteed to all nationals of other States Parties who are lawfully resident or regularly working in the territory on an equal footing with nationals. (Statement of interpretation on Article 14§1, Conclusions 2009).

The report states that the procedure and principles for discharging of social services in Turkey are regulated by the Social Services and Society for the Protection of Children Code No. 2828. According to the Code, social services are delivered to unprotected and needy families, children, persons with disabilities, the elderly and other target groups. The report also confirms that nationals and foreigners are entitled to social services on an equal footing indicating that the Social Services and Society for the Protection of Children Code contains no provision discriminating between nationals and foreigners.

Otherwise, however, the report adds little to the information already examined by the Committee in its previous conclusion, in particular on the establishment in 2011 of the new Ministry of Family and Social Policy. The information provided on health insurance and social security concerns mainly Articles 11 and 12 of the Charter. Information is still lacking on any eligibility criteria for social services and the decisionmaking procedure, including appeals possibilities, on the resources available to the social services (financial and human) and on their geographical distribution. Figures are needed on the number of beneficiaries broken down by type of service, on staff and on expenditure. In the absence of this information the Committee reiterates its finding of non-conformity.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 14§1 of the Charter on the ground that it has not been established that there exists an effective access to social services.

## **Article 14 - Right to benefit from social services**

### *Paragraph 2 - Public participation in the establishment and maintenance of social services*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that the conditions under which non-public providers take part in the provision of welfare services were adequate (Conclusions 2013).

The Committee recalls that Article 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services (Conclusions 2005, Statement of Interpretation on Article 14§2). This does not imply a uniform model, and States may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The "individuals and voluntary or other organisations" referred to in paragraph 2 include, the voluntary sector (non-governmental organisations and other associations), private individuals, and private firms. Moreover, in order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms, an effective preventive and reparative supervisory system is required.

The report states that the participation of individuals and voluntary organizations in the establishment and maintenance of social services is foreseen by Decree Law No. 633/2011 conferring responsibility to the Ministry of Family and Social Policy in these matters. Under the Decree Law the Ministry identifies the principles, methods, and standards for the provision of social services and assistance activities by voluntary organizations as well as by natural and legal persons. The Ministry is also responsible for the inspection of social services and assistance carried out by these actors and ensures their compliance with predefined principles, methods, and standards.

In reply to the Committee's question, the report confirms that all services managed by the private sector are accessible on an equal footing to all regardless of race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

The Committee notes that tax-exempt statute may be granted by the Council of Ministers to associations which pursue "public benefit". Public benefit association statute is also granted by the Council of Ministers upon the advice of the relevant Ministry and the Ministry of Finance and on the proposal of the Ministry of Internal Affairs. In order to obtain public benefit statute, an association must be operating at least for a year and must pursue public benefit (Section 27, Law No. 5253).

While acknowledging the information provided, the Committee asks that the next report contain more detailed information on the types of social services provided by voluntary associations and individuals and on the number of beneficiaries of these services. It also wishes to receive information on the public and/or private funding set aside for encouraging participation by voluntary associations and individuals in social services provision and on the results of the supervision carried out by the public authorities. Finally, it asks whether and how the users of social services are consulted on questions concerning the organisation and delivery of social services. Meanwhile, the Committee reserves its position as to the conformity of the situation.

### *Conclusion*

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

## **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 Turkey.

### ***Social protection of families***

#### ***Housing for families***

Turkey has accepted Article 31 of the Charter on the right to housing. As all aspects of housing of families covered by Article 16 are also covered by Article 31, for states that have accepted both articles, the Committee refers to Article 31 on matters relating to the housing of families.

#### ***Childcare facilities***

The Committee notes that as Turkey has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

#### ***Family counselling services***

In response to the Committee's request for up-to-date information on family counselling services, the report refers to the law on Social Services No. 2828 and the setting up of a new day care organisation model "Social Service Center", which is responsible for presenting and coordinating the services aimed at identifying the needs and implementing social work intervention and follow-up. Social service centers shall provide both preventing and support services, including guidance and counseling services for children, young people, men, women, people with disabilities, elderly people and families. According to the report, until the end of 2013 these services were to be provided by the existing day care social service agencies (community centers, family counseling centers, child and youth and elderly services) with their own human and financial resources but under the coordination of the Social Service Center, if necessary in cooperation with the public institutions, local governments, universities, civil society organisations and volunteers. In 2013, new Regulations on Social Services Centers entered into force (Official Gazette No. 28554 of 9 February 2013 and No. 28725 of 1 August 2013) to regulate the transition to the new system of Social service centres. Provincial Directors of Family and Social Policies have been consulted in order to determine their number and location. The Committee takes note of the information provided in the report concerning the ongoing work aimed at restructuring the existing institutions and converting them into the new system of Social Service Centres and asks the next report to provide updated information on the implementation of this programme.

The Committee also takes note of the setting up, by the end of 2013, of new private family counseling centres following the entry into force in 2012 of new Regulations on "Natural Persons and Special Legal Entities and Regulation on Family Counselling Centres that will be opened by Public Institutions" (Official Gazette No. 28401 of 4 September 2012). According to the report, by the end of 2013, there were in total 51 private family counseling centres.

The report also mentions the setting up of a programme on pre-marriage education for couples, which involved the training of trainers in 9 regions, the issuing of four books as course background material and the overall participation of 1453 people.

#### ***Participation of associations representing families***

The report does not address the Committee's reiterated request for information concerning the membership, statute and competences of the Family Consultation Council (Conclusions XVIII-1 (2006) and 2011). The Committee asks whether and how associations representing

families are consulted when framing family policies, and considers in the meantime that it has not been established that such consultation is effectively ensured.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The Committee refers to its previous conclusion (Conclusions 2011), where it noted that women have since 2001 the right to equality in marriage. It notes from the report that Article 10 of the Constitution was amended by Law No. 5982 in 2010, which clarified that measures taken for ensuring equality between men and women cannot be interpreted as being contrary to the principle of equality.

The Committee notes however that the European Court of Human Rights, in its judgment of 16 November 2004, final on 16 February 2005 in the case *Ünal Tekeli v. Turkey* (application No. 29865/96) found that Article 187 of the Turkish Civil Code discriminated against married women, in that they have to bear their husband's name throughout their marriage and are not entitled to use their maiden name alone. The Committee notes that this provision remains in force and that, in March 2011, the Constitutional Court has dismissed an objection of unconstitutionality of this provision raised by three Family Courts (E. 2009/85, K. 2011/49). The Committee asks the next report to clarify what measures have been taken in this respect.

#### ***Mediation services***

The report mentions the setting up in 2012 of divorce process counselling services. It states that, as of June 2013, such services are available to any couple in 12 out of 81 provinces and that 932 couples availed themselves of these services in 2013.

As regards the legislative work on mediation referred to in the previous conclusion (Conclusions 2011), although the report does not provide the information requested, the Committee notes from other sources that a Mediation Act on Civil Disputes was in fact adopted during the reference period and entered into force on 23 June 2013. (Act No. 6325 and Regulation No. 28540, Official Gazette of 22 June 2012).

The Committee recalls that States are required to provide family mediation services. The following issues are examined: conditions for access to family mediation services as well as whether they are free of charge, cover the whole country and are effective. The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the provision of mediation services whose object should be to avoid the further deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from seeking such services for financial reasons. Providing these services free of charge constitutes an adequate measure to this end. Otherwise, in case of need, a possibility of access for families should be provided.

The Committee asks the next report to provide information on mediation services in the light of these points.

#### ***Domestic violence against women***

The report presents the steps taken by the authorities during the reference period in response to the Committee's finding in its previous conclusion that the measures taken to solve the problem of domestic violence were inadequate.

In particular, the Committee notes that Turkey ratified the Istanbul Convention on Preventing and Combating Violence against women and domestic violence (Official Gazette 8 March 2012) and adopted a new Law on the protection of family and prevention of violence against

women (No. 6284, Official Gazette 8 March 2012), which covers all form of violence – physical, verbal, sexual, economic and psychological – against all women without discrimination. The law regulates in detail the protective and preventive measures, such as the issuing of restraining orders, which can be directly taken at any time as needed by law enforcement authorities. The law provides that the perpetrator of violence who violates a protection order can be immediately subject to three to ten days' imprisonment, and up to 15 to 30 day' imprisonment in case of reiterated violation. Moreover, in case the life of the person under protection is under threat and other measures are not deemed to be sufficient for her protection, her identity information and other personal data together with supporting documents may be changed, in conformity with the Witness Protection Act No. 5726 of 27 December 2007.

Interim guidance on the new legislation was issued in April 2012 (Ministerial circular No. 2012/13), followed by the adoption and entry into force on 18 January 2013 of the implementation regulation (No. 28532) of Law No. 6284. Women shelters were reorganised by a Regulation (No. 28519) of 5 January 2013 and a circular was issued on duty, authority and responsibility of the Gendarmerie in combating domestic violence, violence against women and juvenile crime.

Among the non-legislative measures taken, the report mentions that a protocol between the Gendarmerie general command and the General Directorate of Statutes of Women in the Ministry of Family and Social Policies entered into force on 12 April 2012, that violence prevention and monitoring centres dealing specifically with domestic and juvenile violence were set up within 14 provincial general commands of the Gendarmerie and that some 5,126 Gendarmerie staff participated to training on the prevention of juvenile crimes and domestic violence. Gender mainstreaming training started in 2009 covered so far nearly 3,300 public officials and is continuing. In-service training was also organised for 250 staff working in the field of violence against women in Ankara in April 2013 and a handbook was drafted, another "train the trainers" project involving 81 staff was carried out in Antalya in October-November 2013. A National Action Plan on Combating Violence against women (2012-2015) entered into force on 7 October 2012, following the expiry of the previous Action Plan (2007-2010). An International Seminar on Combating Violence against Women and Police Force Practices was also held, and a project on the prevention of domestic violence against women was launched on 23 July 2013. In the 81 provinces, the Gendarmerie at local level organised awareness raising conferences and meetings on prevention of violence against women: 425 activities were organised, involving 41,455 people, and the distribution of 20,500 brochures and 5,432 posters.

According to the report, the cases of domestic violence increased from 12,741 to 13,551 between 2012 and 2013, involving respectively 14,119 and 15,019 women as victims, cases of violence against women in the same period passed from 15,711 to 15,748, involving respectively 16,940 and 16,883 women as victims; protective and preventive measures were decided in favour of 6,139 women in 2012 and 5,928 women in 2013. The number of such decisions taken by law enforcement officers increased from 701 to 2,548 in the same period. The report states that the number of women shelters increased from 77 in June 2011 (with a capacity of 1650 places) to 125 in January 2014 (with a capacity of 3,247 places) and is planned to further increase.

The Committee asks the next report to provide comprehensive and updated information on the implementation of the ongoing measures, including statistical data indicating the results achieved. In the meantime, it reserves its position on this issue.



## ***Economic protection of families***

### ***Family benefits***

In its previous conclusion (Conclusions 2011), the Committee considered that the situation was not in conformity with Article 16 because Turkey had no general system of family benefits. Only civil servants and workers covered by collective agreements were eligible for such benefits. The Committee had noted that a draft law was being prepared and requested information on its content, entry into force and implementation.

The Committee notes from the report that, although the setting up of a general system of family benefits remains on the agenda, the situation did not change during the reference period and remains therefore in breach of Article 16 of the Charter.

### ***Vulnerable families***

The Committee recalls that States are required to ensure the protection of vulnerable families such as single-parent families and Roma families, in accordance with the principle of equality of treatment. As the report does not provide the information requested on the measures taken in this respect, the Committee reiterates its question and holds that, should the next report fail once more to provide this information, there will be nothing to prove that the situation is in conformity with the Charter on this issue.

### ***Conclusion***

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

- it has not been established that associations representing families are consulted when framing family policies;
- there is no general system of family benefits.

## **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 Turkey.

### ***The legal status of the child***

In reply to the Committee's question the report states that Article 20 of the Regulation on Mediation Activities for Adoption, in case the adopted child so requests, he/she shall be informed about his/her parents by the social worker. According to the report, there is no provision in the legislation preventing the children from knowing their origins.

### ***Protection from ill-treatment and abuse***

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with the Charter as corporal punishment of children was not explicitly prohibited in the home.

The Committee notes from the Global Initiative to End Corporal Punishment of Children that Turkey expressed its commitment to prohibiting all corporal punishment during the Universal Periodic Review of Turkey in 2010. However, prohibition is still to be achieved in the home, alternative care settings, day care and schools.

According to the same source, legal recognition of parents' right of correction was removed from the Civil Code in 2002, but the Criminal Code 2004 recognises a person's disciplinary power arising from the right of tutoring of a person under his/her care or to whom he/she has obligation to raise, educate, care, protect or teach an occupation or art. Prohibition of corporal punishment should be enacted in relation to disciplinary measures in all alternative care settings (foster care, institutions, places of safety, emergency care, etc). Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc). Prohibition of corporal punishment should be enacted in relation to all schools, public and private.

According to the report, Article 232 of the Law No. 5237 provides that the persons should have particular discipline competences because of the duty to discipline and to educate the persons who they are obliged to raise, educate, look after, protect or teach a profession or a skill. Furthermore, the limits of authorisation of discipline were drawn, stating that the limit of authorisation of discipline can be used at a degree not leading to breakdown both physically and mentally or subjecting to any hazard.

The Committee notes from the report that according to both the legislation as well as the Supreme Court case law, harsh warnings or punishments that are not educational, incompatible with affection and leaving physical and psychological marks on the child shall constitute an offense. The offender shall be punished under Article 232 of the Law No. 5237 if the action has made an impact on the sufferer requiring simple medical intervention.

Therefore, according to the report, the aim of including the regulation in Article 267 of the Civil Law No. 743 and also in the Civil Law No. 4721 is to prohibit the bodily sanctions, particularly beating the child which prevent physical and psychological development of the child. The lawmaker preferred to make regulations enabling the enjoyment of the right to discipline and the right to education within the limitations instead of fully rejecting the authorisation of discipline.

The Committee recalls that in interpreting Article 17 of the Charter, the Committee has held that the prohibition of any form of corporal punishment of children is an important measure for the education of the population. It is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal

punishment and what is not (General Introduction to Conclusions XV-2). The Committee recalls its interpretation of Article 17 of the Charter as regards the corporal punishment of children laid down most recently in its decision in *World Organisation against Torture (OMCT) v. Portugal* (Complaint No. 34/2006, decision on the merits of 5 December 2006; §§19-21):

“To comply with Article 17, states’ domestic law must prohibit and penalize all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.

The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.”

The Charter contains comprehensive provisions protecting the fundamental rights and human dignity of children – that is persons aged under 18 (*Defence for Children International v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 25-26). It enhances the European Convention on Human Rights in this regard. It also reflects the provisions of the United Nations Convention on the Rights of the Child, on which in particular Article 17 is based.

The Committee has noted that there is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers, in particular, in this respect to the General Comments Nos. 8 and 13 of the Committee on the Rights of the Child (*Association for the Protection of All Children (APPROACH) v. Ireland* , decision on the merits of 2 December 2014, §§45-47).

The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not fully evolved towards the general and explicit prohibition of all forms of corporal punishment. Therefore, it reiterates its previous finding of non-conformity on the ground that not all forms of corporal punishment of children are prohibited in the home, in schools and in institutions.

### ***Rights of children in public care***

According to the report, the Ministry of Family and Social Policies provides care service for children under 18 years of age in need of protection. 11,605 children were actually offered service at the end of 2013.

*Nurseries* are social service organisations responsible for ensuring physical and social development of children between the age of 0-12 who are in need of protection. 901 children in total were offered a service at 21 nurseries at the end of 2013. *Love Houses* are boarding social service organisations where 12 children at most stay in rooms. 3,952 children were offered a service at 61 love house sites at the end of 2013. *Houses for Children* are a service model where 5-8 children at the age group of 0-18 stay together in city centres, at flats or private houses close to schools and hospitals. 4,953 children in total were offered a service at 906 houses at the end of 2013.

The Committee further notes that 1,934 children were placed next to foster-parents in 2013, compared to 306 in 2012.

The Committee asks the next report to provide up-to-date information regarding the total number of children in foster care as opposed to institutions.

In its previous conclusion the Committee asked what were the criteria of restriction of parental rights, the scope of these restrictions as well as the procedural guarantees for placement of children only in exceptional cases.

According to the report, the removal of custody is regulated by Article 348 of the Civil Code No. 4721 and is decided only by the judge. If custody is removed from both parents, a guardian is appointed for the child.

In case of removal of custody, the responsibility of the parents for maintenance and education costs of their children continues. However, if the parents or the child cannot afford, the above-mentioned costs are covered by the State. If the reason requiring the removal of the custody is removed then the judge awards the custody officially or at the request of the mother and the father.

The Committee asks whether the decisions regarding the placement of children can be appealed.

### ***Right to education***

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

### ***Young offenders***

In its previous conclusion the Committee held that the situation was not in conformity with the Charter as a prison sentence imposed on minors could be up to 20 years.

The Committee observes that when referring to the juvenile justice, the competent international bodies require that the prison sentences imposed on juveniles should be as short as possible (Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Recommendation CM/Rec(2008)11 of the Committee of Ministers of the Council of Europe concerning the European Rules for juvenile offenders, United Nations Standard Minimum Rules for the Administration of Juvenile Justice). Accordingly, the Committee asks the States Parties to the Charter to take all possible measures to reduce the maximum length of prison sentence for young offenders, as well as to ensure that they make the best possible use of their right to education and vocational training, with a view to their reintegration into the society, once the sentence has been served.

In its previous conclusion the Committee recalled that the criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly. Minors should only exceptionally be detained pending trial for serious offences, for short period of time and should in such cases be separated from adults. The Committee asked what was the maximum length of a pre-trial detention and whether young offenders were always separated from adults. In the absence of information in the report, the Committee holds that it has not been established that the situation is in conformity with the Charter on this point.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

*Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 17§1 of the Charter on the grounds that:

- not all forms of corporal punishment are prohibited in the home, in schools and in institutions;
- it has not been established that the maximum length of a pre-trial detention is not excessive;
- it has not been established that minors are always separated from adults in prisons.

## **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 Turkey.

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as children unlawfully present in Turkey did not have effective access to education (Circular No 2010/48 of 16 August 2010 and the Private Education Institutions Act No 5580).

The report states in this regard that migrants in an irregular situation reside in violation of the national laws and cannot be granted residence permits. However, in some situations foreigners who have arrived legally but whose term of stay has expired are granted residence permits in order to enable them to continue their education.

The report further explains that children of irregular migrants do not have the right to education. Unaccompanied minors are placed in hostels. Their situation as regards education and training are followed by the hostel management.

The Committee considers that in the meaning of the Charter no child of compulsory education age should be turned away from educational institutions on the basis of his/her residence status. The Committee notes that in some cases the situation of irregularly present child may be regularised in order for them to continue their education. However, the Committee takes the view that limiting access to education to only the holders of residence permits amounts to the denial of the right to education to children who do not have a residence permit for whatever reason. Therefore, the Committee considers that the situation is not in conformity with the Charter.

The Committee takes note of measures taken to ensure effective access to education for vulnerable groups as well as to increase enrolment rate and reduce drop-out, with a particular emphasis on girls. It notes that course books are given to the students and the teachers in a pack (course book, student work book and teacher's guide book) as of the 2003-2004 school year. Moreover, students at private schools will also benefit from the distribution of free course books during the 2014-2015 school year.

In line with the paper of the Directorate General of Basic Education of the Ministry No 493985 of 2013, regarding children not enrolled in school, measures will be taken by school managements such as visiting their homes. Sanctions shall be imposed on parents who do not send their children to school.

As regards access of children of vulnerable groups to education, the Committee takes note of measures implemented, such as the Conditional Educational Aid, the social benefit programme aimed at children of families under the risk of poverty, which, according to the report, had a significant impact on increasing the level of attendance and reducing absenteeism, of female students in particular. It also helped raise awareness of families. The rate of absenteeism has been reduced by 50% and even higher in rural areas.

The Committee notes from the UNESCO institute of statistics that the gross enrolment rate for both sexes in secondary education stood at 86% in 2012 and 102% in 2013.

The Committee also takes note of other financial support measures, such as training material aid, lunch aid, as well as accommodation, transport and food aid for pupils.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 17§2 of the Charter on the ground that irregularly present children do not have effective access to education.

## **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 Turkey.

### ***Migration trends***

Throughout history, Turkey has experienced diverse forms of migratory movements. Traditionally, Turkey has been a country of emigration (in 2010, the number of Turkish citizens living abroad was around 3.7 million) with large numbers of its nationals migrating to Western Europe, particularly Germany, since the 1970s. Europe's oil recession in the 1970s redirected the flow of the Turkish migrant labour force to the Middle East, and in the 1990s to the Russian Federation and Commonwealth of Independent States. As a result of emigration, remittance flows have been an important input to the country's economy since the 1960s; however, in the 2000s there has been a downward trend in migrant remittance inflows (in 2013 they amounted to 1,046 million US\$).

Turkey has also long been a country of destination for migrants, either economic migrants or refugees and asylum seekers. There has been an enormous increase in the number of migrants arriving each year in Turkey: in the second half of the 2000s, the number of total migrants coming to Turkey was around 235 000 annually, of whom around three quarters (some 177 000) had arrived legally, an estimated 50 000 were irregular migrants, and the proportion of asylum seekers was over three percent of the total. Largely due to the ongoing conflict in Syria, Turkey has recently emerged as a destination for refugees from the Middle East; as of the end of July 2014, the estimated total number of Syrian refugees in Turkey was over 800,000, increasing to 1.5 million by the end of 2014.

### ***Change in policy and the legal framework***

In line with Turkey's aspirations to join the EU and its candidacy status, the Turkish Government is making efforts to align its migration policies with the migration-related EU acquis and policies. The Law on Foreigners and International Protection No. 6458 was enacted on 4 April 2013; in compliance with it, a Migration Policies Board and a Migration Advisory Board have been established in order to implement migration policy and strategies. Moreover, the Directorate General of Migration Management became operational from April 2014, becoming a coordinating force to implement the new law.

### ***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 notes from the report of the European Commission against Racism and Intolerance (ECRI), adopted on 5 December 2013, that Article 88d of Law No. 492 on Administrative Fees provides that residence permits shall be given free of charge to persons in need. Governors' offices have been instructed to apply Circular No. 2010/19, which exempts indigent refugees and asylum seekers from the payment of residence permit fees. Furthermore, Articles 76 (4) and 83 (3) of Law No. 6458 provide that persons who apply for or who are granted international protection receive an identification document free of charge, which replaces residence permits.

According to the report, accurate information on work permits for foreigners are published in the website of the Ministry of Labour and Social Security

(<http://www.csqb.gov.tr/csqbPortal/itkb-en.portal>) and are available in Turkish, Arabic, Chinese, Russian and English. However, the Committee observes that the information, excepting the homepage of the above-mentioned website, appears to be available exclusively in Turkish. The Committee takes into account that as from November 2010, the telephone helpline of the ALO 170 'Labour and Social Security Communication Center' provides, free of charge, any information on work permit processes, social security, social services and healthcare.

The Committee considers that free information and assistance services for migrants must be accessible in order to be effective. While the provision of telephone helpline is a valuable service, it considers that due to the potential restricted access of migrants, other means of information are necessary, such as online resources in different languages. The Committee asks that the next report provides a full description of the services and information available in all formats to migrant workers. In the meantime, it considers that it has not been established that migrant workers are provided with free assistance services and information.

### ***Measures against misleading propaganda relating to emigration and immigration***

According to the report, information aiming at fostering familiarity with rights arising from national and international legislation are provided through several projects and workshops launched both in Turkey and in the receiving countries, in particular in Germany, Belgium and Austria. In order to avert misleading propaganda for people emigrating from Turkey to other countries, an educational project was launched in 2013. Furthermore, a cooperation protocol was signed by the Ministry of Justice, the Ministry of European Union and the Ministry of Foreign Affairs in August 2013 in order to assure an active cooperation with public institutions on the protection of rights of Turkish migrant citizens. Furthermore, the report states that several programmes aiming at training Turkish as well as foreign legislators have been launched in 2012 and 2013.

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. It asks what training the Turkish police and other officials receive in relation to racism, discrimination, and human rights.

The Committee considers that the report provides only partial information on the measures taken against misleading propaganda relating to emigration and immigration, as an implementation of Article 19§1 of the Charter. The Committee recalls that States have an obligation to take measures or undertake programmes to prevent the dissemination of false information to departing nationals, as well as to prevent the misinformation of foreigners wishing to enter the country. Authorities should take action in this area as a means of preventing illegal immigration and trafficking in human beings (Conclusions 2006, Slovenia). It asks for complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings.

The Committee recalls that statements by public actors are capable of creating a discriminatory atmosphere. Racist misleading propaganda indirectly allowed or directly emanating from the state authorities constitutes a violation of the Charter (Centre on Housing Rights and Evictions (COHRE) v Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010). The Committee stresses the importance of promoting responsible dissemination of information. It considers that in order to combat misleading propaganda, there must be effective mechanisms to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere. It asks whether such mechanisms exist in Turkey, and for information on the legal framework and any policies or activities implemented in this regard.



### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 19§1 of the Charter on the ground that it has not been established that migrant workers are provided with free assistance services and information.

## **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 Turkey.

The Committee previously asked for a full and up-to-date description of the situation.

### ***Departure, journey and reception of migrant workers***

The report states that pursuant to Article 21 of the Law on Work Permits of Foreigners No. 4817, the employer will pay an administrative fine of 5000 TRY (€1500) for every foreigner who does not have a work permit. In this case, the employer or its deputy must cover the accommodation expenses of the spouse and children of the foreigner and the necessary costs for their return back to their countries and, if needed, their medical expenses.

The Labour Inspectorate is empowered to monitor the obligations laid down in the abovementioned law.

The Committee recalls that reception 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). Reception means the period of weeks which follows immediately from their 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). The Committee asks that the next report provide a full and up to date description of the assistance available to migrant workers upon arrival and during reception, with particular regard to the issues mentioned above. In the meantime, it defers its conclusion.

### ***Services for health, medical attention and hygienic conditions during 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 requests details of any measures taken in regard of collective recruitment, if it should occur.

### *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 Turkey.

The report provides information on the Decree having the force of Law No. 662 dated 11/10/2011, which assigns to the Ministry of Family and Social Policies Department of European Union and Foreign Relations the task of “cooperating with international organizations and conducting international case studies” on difficulties faced by migrant workers and their families. Nevertheless, no measures related to the new legislative provision have been implemented.

The Committee recalls that the scope of Article 19§3 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 (1996), Belgium).

It also recalls that formal arrangements are not necessary, especially if there is little migratory movement in a given country. 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.

Common situations in which the 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 XIV-1 (1996), Finland).

The Committee found that the previous report did not provide any specific, updated information on the degree of effectiveness of the co-operation between social services of emigration and immigration States. An up-to-date description of the situation concerning the co-operation between social services of emigration and immigration States is provided in the report. The report states that the Ministry of Family and Social Policies Department of European Union and Foreign Relations has been largely cooperating with International Social Services, conducting several case studies (nearly 600 up to 2013), and involving both national and foreign citizens.

Furthermore, several national laws refer to services provided to assure procedural and psychological help to children, meant as national or foreign citizens in 0-18 age group. Moreover, in order to fight human trafficking and organized crime networks, many agreements on cooperation and security have been signed by the Turkish government.

### *Conclusion*

The Committee concludes that the situation in Turkey is in conformity with Article 19§3 of the Charter.

## **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 Turkey.

### ***Remuneration and other employment and working conditions***

The Committee previously noted (Conclusions 2011) that, under Labour Act No. 4857 (2003), a foreign worker lawfully residing in Turkey has in general the same rights as Turkish citizens in terms of remuneration, working hours, paid and unpaid leaves, severance pay and dismissal notices, conclusion of a contract and its termination. The Committee furthermore understands that the Labour Inspectorate continues to be the relevant body charged with ensuring the working conditions and labour rights of all employees, including migrant workers.

The Committee also however previously noted that certain professions may not be practiced by foreigners in Turkey, and asked for confirmation that all restrictions on access to occupations previously reserved to Turkish nationals which are not justified by the exercise of sovereign prerogatives had been eliminated in law and in practice. The report states that recent legislative amendments have removed healthcare services, such as those of doctors and midwives, from the list of prohibited employment and that further amendments are envisaged with a view to ensuring equal access of migrant workers to professions not related to public security. The Committee notes that while as from October 2011 foreign nationals could apply to exercise as doctors in private hospitals, at the end of the reference period they were still barred from working in public hospitals. Furthermore, the report does not indicate that the restrictions on foreign workers have been lifted in respect of other professions, such as seaman, docker or newspaper editor. The Committee asks the next report to provide updated information as regards the professions which remain not accessible to foreign workers. It notes in the meantime that, during the reference period, migrant workers were not entitled equal access to certain employments in fields, such as healthcare, in which such a restriction cannot be objectively justified by reference to the sovereign prerogatives of the state. Accordingly, the Committee concludes that the situation was not in conformity with Article 19§4 of the Charter during the reference period.

The Committee recalls that under this sub-heading, States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion (Conclusions VII (1981), United-Kingdom). The Committee asks whether migrant workers have the same rights to professional or vocational training as Turkish citizens.

It recalls that States are required to take steps to eliminate discrimination, direct or indirect, in terms of law and practice (Conclusions III (1973), Italy) and should inform the Committee of any practical measures taken to remedy cases of discrimination. The Committee asks for a full and up to date description of the legal framework for migrant workers. It also asks for details of legislation and policy which targets discrimination in relation to employment, and for information on any measures taken to implement it.

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

The Committee previously considered the situation not to be in conformity with the Charter, on the ground that migrant workers were not entitled to be founding members of trade unions (Conclusions 2011). The report states that the Law No. 6356 on Trade Unions and Collective Agreements of 18 October 2012 grants migrant workers equal rights to be founding members of trade unions. The Committee considers that the situation has thus been rectified.

The Committee refers to its Statement of Interpretation in the General Introduction and asks for information concerning the legal status of workers posted from abroad, and what legal

and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

### ***Accommodation***

In response to the Committee's request for a full and up-to-date description of the situation concerning the access of migrant workers to public and private housing in law and in practice, the report indicates that in 2012 the condition of reciprocity for foreigners who wish to buy property in Turkey has been abolished (Article 35 of the Land Registry Law No. 2644, as amended by Law No. 6302, which entered into force on 18 May 2012).

However, the buying of real estate by foreigners remains subject to certain restrictions. In particular, the Committee notes from the Ministry of Foreign Affairs website that not all foreigners are entitled to buy property and estate. The Committee also notes that certain limits apply to the size and location of property which foreigners can buy in Turkey. It asks the next report to clarify what restrictions in this regard apply to foreigners.

The Committee recalls that, under this sub-heading, States undertake to eliminate all legal and de facto discrimination concerning access to public and private housing. This means that there should be no legal or de facto restrictions on home-buying, access to subsidised housing or housing aids, such as loans or other allowances. The Committee notes the information provided on council house aid and the council housing programme of TOKİ. It asks the next report to confirm, in light of any relevant statistical data, that migrant workers can apply for access to public housing and other housing benefits without discrimination.

### ***Conclusion***

The Committee concludes that the situation in Turkey is not in conformity with Article 19§4 of the Charter on the ground that, during the reference period, migrant workers were not entitled equal access in employment.

## **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 Turkey.

The Committee found that the previous report did not provide any specific, updated information on the treatment of migrant workers lawfully within the national territory, regarding employment taxes, dues or contributions. An up-to-date description of the situation is provided in the current report. The report states that foreigners legally residing in Turkey do not receive a less favourable treatment than that of Turkish citizens in terms of taxes, charges and social security premiums. Particularly, Law on Income Tax No. 193 specifies that Turkish citizens and foreigners settled in Turkey (individuals residing in Turkey for more than six months continuously within one calendar year) are taxed over incomes and revenues obtained inside and outside Turkey in one calendar year, while non-residents are taxed only on earnings and revenues derived in Turkey.

The Committee notes that Law on Income Tax No. 193 provides for an exception to the abovementioned six-month rule, applying to foreigners who perform temporary and predefined work in Turkey, as well as those who have arrived for the purpose of education, medical treatment, rest and travel; such persons are considered to be non-residents even if they stay in Turkey longer than 6 months in a calendar year.

The Committee further notes from the Revenue Administration website (<http://www.gib.gov.tr/en>) that “taxpayers can request explanation about ambiguous provisions or issues causing hesitation from Ministry of Finance or authorities authorized by the Ministry of Finance”, according to Article 413 of the Tax Procedures Code.

The Committee asks what contributions are payable in relation to employment, and whether migrants are treated equally with nationals.

### *Conclusion*

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

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

### *Paragraph 6 - Family reunion*

The Committee takes note of the information contained in the report submitted by Turkey.

#### **Scope**

The Committee notes the introduction of Law No. 6458 on Foreigners and International Protection.

Section 3 defines family members as the spouse, the minor child and the dependent adult child of the applicant or the beneficiary of international protection.

Section 34 provides for the grant of a family residence permit. The permit may be granted for the maximum duration of 2 years, to the family members of Turkish citizens, foreigners holding a residence permit, and refugees or recipients of subsidiary protection. The duration of the permit shall not exceed the duration of the residence permit of the sponsor.

The Sponsor can apply for family reunion after one year of residence. The Committee considers that the maximum period of one year of residence laid down in its case-law (Conclusions I, II, (1969-1970) Germany) must apply without discrimination to all migrants and their families regardless of their specific situations, save for legitimate intervention in cases of marriages of convenience and fraudulent abuse of immigration rules. The Committee asks for details of the application procedure, and how long it can take to be granted a permit.

Minor children who receive a family reunion permit have the right to education until the age of 18, after which they must request a student permit if required.

Furthermore, pursuant to Section 34, in the event of divorce, a short-term residence permit may be issued to a foreign spouse of a Turkish citizen, provided that he or she resided on a family residence permit for at least three years. However, in cases where it is established by the relevant court that the foreign spouse has been a victim of domestic violence, the condition for three years residence shall not be sought.

In the event of the death of the sponsor, a short-term residence permit may be issued without any minimum residence condition attached to those who have resided on a family residence permit in connection with the sponsor.

The Committee recalls that once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they have an independent right under the Charter to stay in that territory (Conclusions XVI-1 (2002), Article 19§8, Netherlands). The Committee notes that Section 34 paragraph 5 of the aforementioned Law No. 6458 provides that upon request, family members over the age of 18 may replace their family residence permits with short-term residence permits, provided that such foreigners stay in Turkey for at least three years holding a family residence permit. Therefore, the Committee understands that family members whose permits are dependent upon the stay of the migrant worker, and who have been in Turkey for less than 3 years, have no independent right of residence and will lose all right to remain in Turkey if the sponsoring migrant worker is expelled. The Committee considers that an independent right to stay must be granted to family members, save for legitimate intervention in cases of marriage of convenience and fraudulent abuse of immigration rules. It recalls that it is acceptable for states to impose a minimum period of residence before such an independent right of residence is granted (Conclusions 2011, Netherlands Article 19§8). However, it considers that the imposition of a three year time limit in this regard is disproportionate, and cannot be justified under Article G of the Charter. Therefore, the Committee finds that the situation is not in conformity with the Charter.

### ***Conditions governing family reunion***

The Committee recalls that a refusal of entry on this ground may only be admitted for specific illnesses which are so serious as to endanger public health, stipulated in the World Health Organisation's International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis (Conclusions XVI-1 (2002), Greece). With regard to health requirements under the Law on Foreigners, the Committee notes that the relevant authorities, where necessary and upon consultation with the relevant government departments and institutions, may impose an entry ban against foreigners and refuse a visa to those whose entry into Turkey is objectionable for public health reasons. The Committee asks what health risks may qualify to justify refusal of family reunion, and what controls there are on the exercise of this decision.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances. Under Article 35(1)(b) sponsors must have accommodation appropriate to general health and safety standards corresponding to the number of family members. The Committee asks how this requirement is applied in practice.

The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Section 35(1)(d) requires the sponsor to have a monthly income not less than the minimum wage in total, and corresponding to not less than one third of the minimum wage per dependent family member. The Committee notes that the minimum wage in July 2013 was 415 €. It asks how the minimum wage is calculated, and whether it has a legal basis. It recalls that social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of Interpretation on Article 19§6), and asks whether the calculation of a sponsor's means takes account of any income based on entitlement to social benefits.

According to the Migration and Integration Policy Index (MIPEX), authorities possess several grounds for rejecting applications for family reunion, without being subject to time limits, a requirement to consider individual situations, or procedures providing sponsors with an opportunity to seek legal redress. The Committee asks for further information on the procedure for considering applications for family reunion.

The Committee also notes from MIPEX that there are no language requirements for family reunion, and language ability is only considered when applying for naturalisation.

The Committee notes that the law requires the sponsor to submit proof of not having been convicted of any crime against the family during the five years preceding the application with a criminal record certificate. It asks how migrants can obtain such a certificate.

The Committee considers 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. The Committee notes from the MIPEX report that foreigners can go to court to challenge decisions against the grant of family reunion, but will only be informed of the reason for refusal of their application after filing their appeal. The Committee requests more information concerning the procedure for appealing, and in



particular, at what stage the authorities are obliged to notify the applicant of the reason for refusal of their request for family reunion.

*Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 19§6 of the Charter on the ground that the requirement that family members of a migrant worker reside in Turkey for three years before acquiring an independent right of residence is excessive.

## **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 Turkey.

It refers to its previous conclusions (2011), in which it took note of the various international agreements ratified by Turkey, assuring benefits from legal aid to nationals of Contracting Parties who are the subject of bilateral and multilateral agreements. It took note as well of Article 465 of the Code of Civil Procedure, granting benefits from legal aid to persons “who are completely or partially unable to pay the necessary expenses”, and envisaging reciprocity on the matter for foreigners.

The Committee recalls that the rights guaranteed in the Charter must be granted to all nationals of states parties lawfully within the territory on an equal footing with nationals, irrespective of reciprocity or bilateral agreements.

It notes that the report does not provide the clarification previously requested, in particular as to:

- whether domestic legislation makes provision for migrant workers who are involved in legal or administrative proceedings and who do not have counsel of their own choosing to be advised to appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if they do not have sufficient means to pay the latter;
- whether migrant workers may have the free assistance of an interpreter if they cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated;
- whether such assistance is also available for obligatory pre-trial hearings (Conclusions 2011, Statement of Interpretation on Article 19§7).

The Committee reiterates its questions and considers in the meantime that it has not been established that migrant workers are guaranteed equal treatment with regard to legal proceedings, in particular to legal aid.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 19§7 of the Charter on the ground that it has not been established that migrant workers are guaranteed equal treatment with regard to legal proceedings, in particular to legal aid.

## **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 Turkey.

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’ behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual’s connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Interpretative statement on Article 19§8, Conclusions 2015).

The Committee previously found that the grounds of expulsion of a migrant worker were not established to comply with those permitted by Article 19§8, in particular because the law (Act No. 5683) did not provide an exhaustive list of grounds for expulsion and gave accordingly considerable discretionary powers to the Ministry of Interior in this field. It requested detailed information on the legislative framework applicable to expulsion.

In response to the Committee’s questions, the report states that when sentencing a deportation, factors such as residence permits, attendance of educational institutions, work permits and family togetherness are taken in consideration. It also states that deportation decisions taken by the Ministry of Interior can be appealed before a court. According to the report, the authority given to the Ministry of Interior with Section 19 of Act No. 5683 corresponds to the lawful use of authority of taking measures and deportation, as described in the first three articles of the European Convention on Establishment. The Committee recalls in this respect that its task is not to judge the conformity to the Charter of other international instruments, but rather to assess whether the situation in Turkey is in conformity with Article 19§8 of the Charter.

While taking note of the information provided, the Committee finds that it is insufficient to assess whether in law and in practice the grounds for expulsion of migrant workers from Turkey went beyond those admitted under Article 19§8 of the Charter. It accordingly holds that the situation in Turkey was not established to be in conformity with Article 19§8 of the Charter during the reference period.

The Committee notes from the report that a new Foreigners and International Protection Act No. 6458 (Foreigners Act 2013) was passed in 2013, and entered into force on 11 April 2014, out of the reference period ([http://www.goc.gov.tr/files/files/eng\\_minikanun\\_5\\_son.pdf](http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf)). This law has made substantial changes to the Turkish asylum system, as well as specifying, inter alia, the rules and principles regarding deportation. An exhaustive list of foreigners who can be subject to a deportation decision is provided in Section 54 and includes in particular people removed pursuant to Article 59 of the Turkish Penal Code No. 5237 (that is, when a foreigner is sentenced to imprisonment for a period of two years or more for committing a criminal offense); people who are leaders, members or supporters of a terrorist organisation or a benefit oriented criminal organisation; people who submit untrue information and false documents during the entry, visa and residence permit actions; people who made their living from illegitimate means during their stay in Turkey and people who pose a public order or

public security or public health threat. Pursuant to the same provision, a deportation decision may be rendered against international protection applicants or international protection status holders only when there are serious reasons to believe that they pose a threat to national security of the Turkey or if they have been convicted upon a final decision for an offence constituting a public order threat. Section 55 of the Law provides for exceptions to deportation to be assessed on a case by case basis, in respect of victims of human trafficking or violence or if the deportation would put at risk the health or life of the person concerned.

The Committee asks the next report to clarify whether, under the Foreigners Act No. 6458, migrant workers can be removed on the grounds that they pose a threat to public order only as a penalty imposed by a court in connection with a criminal conviction. It also asks whether the individual circumstances of the migrant (such as residence permits, attendance of educational institutions, work permits, family ties and length of presence on the territory) are taken in consideration.

The Committee notes that Section 54 of Act No. 6458 also provides for expulsion on grounds of public health. The Committee considers that risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion acceptable under the Charter, unless the person refuses to undergo suitable treatment (Conclusions V (1977), Germany). The Committee asks how this ground of expulsion is applied in practice, and whether the situation conforms to this requirement.

As regards the right to appeal a deportation decision, Section 53 of Act No. 6458 states that a "foreigner, legal representative or lawyer may appeal against the removal decision to the administrative court within fifteen days as of the date of notification" and that "the foreigner shall not be removed during the judicial appeal period or until after the finalisation of the appeal proceedings".

The report does not provide any information concerning the Committee's finding of non-conformity on the ground that, under Section 21 of Act No. 5683, the Ministry of Internal Affairs could "expel stateless and non-Turkish citizen gypsies and aliens that are not bound to the Turkish culture". The Committee notes however from the European Roma Rights Centre report on Turkey 2011-2012 that this provision was amended in January 2011. It asks the next report to confirm that this ground of deportation no longer applies.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 19§8 of the Charter on the ground that it has not been established that, during the reference period, lawfully resident migrant workers were entitled to adequate guarantees in case of expulsion.

**Article 19 - Right of migrant workers and their families to protection and assistance**

*Paragraph 9 - Transfer of earnings and savings*

The report submitted by Turkey provides no information concerning the right of migrant workers to transfer their earning or savings.

According to the previous report submitted by the Turkish Government, there are no restrictions on migrant workers in transferring their wage and savings outside of the country, as a result of the regulations within the scope of liberalisation of Exchange Legislation.

The Committee refers to its Statement of Interpretation on Article 19§9 in Conclusions 2011, and reiterates its question whether there are any restrictions on the transfer of movable property of a migrant worker.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Turkey is in conformity with Article 19§9 of the Charter.

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 10 - Equal treatment for the self-employed*

The Committee takes note of the information contained in the report submitted by Turkey.

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.

However, in the case of Article 19§10, a finding of non-conformity in any of the other paragraphs of Article 19 ordinarily leads to a finding of non-conformity under that paragraph, because the same grounds for non-conformity also apply to self-employed workers. This is so where there is no discrimination or disequilibrium in treatment.

The Committee has found the situation in Turkey not to be in conformity with Articles 19§1, 19§6, 19§7, 19§8, 19§11 and 19§12. Accordingly, the Committee concludes that the situation in Turkey is not in conformity with Article 19§10 of the Charter.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 19§10 of the Charter as the grounds of non-conformity with Articles 19§1, 19§6, 19§7, 19§8, 19§11 and 19§12 apply also to self-employed migrants.

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 11 - Teaching language of host state*

The Committee takes note of the information contained in the report submitted by Turkey.

Under this provision, States should promote and facilitate the teaching of the national language to migrants and to members of their families for the purposes of integration (Conclusions 2002, France).

Although the report pointed out that no amendments were made in its national legislation during the reference period, the Committee notes that Turkey undertook specific measures to enhance education of migrants by opening Turkey's first Migrants School in July 2015 (outside the reference period). Moreover, the Law on Foreigners and International Protection, adopted in 2013, specifies that foreigners may attend courses where the basics of Turkish language are explained (Article 96 (2)). The Committee asks for further details on the content of these courses. It asks who organizes the courses and where they are run.

The Committee previously noted (Conclusions 2011) that by virtue of Turkey's ratification of the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families (Articles 43 and 45), children of migrant workers have equal rights in terms of access to education as nationals. The Committee considers however that fact that the language of the host country is automatically taught to primary and secondary school students throughout the school curriculum is not enough to satisfy the obligations laid down by Article 19§11. Therefore, States must make special effort to set up additional assistance for children of immigrants who have not attended primary school right from the beginning and who therefore lag behind their fellow students who are nationals of the country. The Committee accordingly asks what steps have been taken by Turkey to facilitate the integration of children of migrant workers in the local school system, in respect of teaching them the local language.

Moreover, the Committee recalls that States shall encourage the free-of-charge teaching of the national language in the workplace, in the voluntary sector or in public establishments such as universities (Conclusions 2002, France). A requirement to pay substantial fees is not in conformity with the Charter. States are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible (Conclusions 2011, Norway). It asks that the next report provide a complete and up to date description of the programmes available for adult migrants to learn Turkish, and in particular, on any fees for these courses applicable to migrants.

The Committee notes that the report does not contain the information previously requested (Conclusions 2011) on both the legal provisions and the situation in practice governing the teaching of the Turkish language to children of migrant workers, in particular additional educational support; on language teaching for adult migrant workers and their families; on the number of children and adults benefitting from such teaching, waiting lists for courses and any fees that may be payable. In the absence of this information, the Committee considers that it is not in a position to assess the situation in practice. It accordingly reiterates its questions and in the meantime, it considers that it has not been established that Turkey takes sufficient steps to promote the teaching of the national language to migrant workers and their families.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 19§11 of the Charter on the ground that it has not been established that Turkey takes sufficient measures to promote the teaching of the national language to migrant workers and their families.

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 12 - Teaching mother tongue of migrant*

The Committee takes note of the information contained in the report submitted by Turkey.

It previously noted (Conclusions 2011) that the “Regulations on the Education of the Migrant Workers’ Children” (Official Gazette No. 24936, 14 November 2002), provide for mother tongue language teaching to migrant worker’s children but that it was unclear whether this took place only within the framework of bilateral/reciprocal agreements. As the report does not reply to its request for clarifications on this issue, the Committee reiterates it and recalls that the rights guaranteed in the Charter must be granted to all nationals of states parties lawfully within the territory, and are not dependent on reciprocity or bilateral agreements.

The Committee recalls that States should promote and facilitate the teaching of the migrants’ mother tongue within their school systems or in other contexts such as voluntary associations or non-governmental organizations (Conclusions 2011, Statement of Interpretation on Article 19§12).

It notes from the report that no legislative development has occurred in this field during the reference period. In addition, according to the Migrant Integration Policy Index (MIPEX 2015) report on Turkey, immigrant children’s access to schools remains limited and, in particular, hardly any targeted support is provided to migrant children, as no nation-wide policy has been developed to implement the general guidelines from the Education Ministry. In particular the MIPEX report states that immigrant communities are not assisted to teach their children about their languages and cultures.

The Committee asks the next report to clarify whether migrant’s children are taught their mother tongue in the normal school system and, if this is the case, how this occurs in practice, and who is eligible to receive such education. It furthermore repeats its request for information as to how many students have education in their mother tongue through schools or cultural/voluntary organizations in our country and as to the amount of subsidy the Government provides in this area.

The Committee considers that the information provided is insufficient to assess the situation in practice. It accordingly considers that it has not been established that Turkey takes sufficient steps to promote the teaching of the official language to migrant workers and their families.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 19§12 of the Charter on the ground that it has not been established that Turkey effectively promotes and facilitates teaching of the migrants’ mother tongue to their children, in particular through the school system or community organisations.



## **Article 23 - Right of the elderly to social protection**

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Turkey in response to the conclusion that it had not been established that there was legislation protecting elderly persons from discrimination on grounds of age.

The Committee recalls that anti-discrimination legislation should exist at least in certain domains protecting persons against discrimination on grounds of age. The focus of Article 23 is on social protection of elderly persons outside the employment field it requires States Parties to combat age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services (Conclusions 2009, Andorra).

The report states that a draft Law on Combating Discrimination and Establishing an Equality Body is being prepared but has still not been adopted. It adds that there are anti-discrimination clauses in the Constitution and in various criminal, administrative and civil laws, which provide protection on varying grounds. According to the report, Article 10 of the 1982 Constitution provides an open-ended list of enumerated protected grounds. A 2010 amendment to this provision allows positive measures to be adopted for the elderly and persons with disabilities and to ensure equality between men and women.

While acknowledging the legislative developments accomplished and underway, the Committee understands that comprehensive anti-discrimination legislation to specifically protect elderly persons outside the field of employment still does not exist. It therefore holds that the situation is not in conformity with the Charter.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 23 of the Charter on the ground that there is no anti-discrimination legislation to protect elderly persons outside the field of employment.

## **Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

### *Paragraph 1 - Participation in working life*

The Committee takes note of the information contained in the report submitted by Turkey.

### ***Employment, vocational guidance and training***

In its previous conclusion (Conclusions 2011) the Committee asked whether there was any vocational guidance, counselling, information and placement services for workers with family responsibilities.

The Committee recalls that the aim of Article 27§1 is to provide workers with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment. To be able to return to professional life, such persons may need special assistance in terms of vocational guidance and training. However, if the standard employment services (those available to everyone) are well developed, the lack of extra services for people with family responsibilities cannot be regarded as a human rights violation (Conclusions 2003, Sweden). Since under Articles 10§3 and 10§4 (Conclusions 2012, Turkey) the Committee expressed no objections as to the level of standard training and employment services, it therefore considers the quality of vocational guidance and training offered to people with family responsibilities to be compatible with the Charter.

### ***Conditions of employment, social security***

In its previous conclusion the Committee asked whether workers were entitled to social security benefits under the different schemes, in particular health care, during periods of childcare leave. The Committee notes that the report does not provide this information. It considers therefore that it has not been established that workers on parental leave are entitled to social security benefits.

The Committee further asks to what extent period of leave due to family responsibilities are taken into account for determining the right to pension and for calculating the amount of pension.

### ***Child day care services and other childcare arrangements***

In reply to the Committee question in the previous conclusion the report states that private nurseries and day care centres as well as private child clubs are inspected once a year in line with the provisions of the Regulation No 22781 on Principles of Establishment and Operating of Private Nurseries and Day Care Centres and Private Child Clubs.

As is included in the Strategic Objectives of the Ministry for 2013-2017, it is envisaged to establish the system of self-assessment and reporting for the implementation of minimum standards and for effective and result-oriented monitoring so as to enhance the satisfaction of the beneficiaries.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 27§1 of the Charter on the ground that it has not been established that workers on parental leave are entitled to social security benefits.

## **Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

### *Paragraph 2 - Parental leave*

The Committee takes note of the information contained in the report submitted by Turkey.

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with the Charter as the law did not provide fathers with a right to parental leave.

The Committee notes from the report in this regard that Article 108 of the Act no. 657 was amended. The amendments are as follows:

- the non-paid leave of 12 months which was given to the civil servants was extended to 24 months at their own request;
- civil servants whose wives are giving birth are entitled to an unpaid leave of up to 24 months as of the date of birth at their own request.

The Committee notes that with the second amendment the situation was brought into conformity as regards civil servants. However, the Committee further notes that these amendments do not cover employees covered by the Labour Act No. 4857. The Committee considers therefore, that fathers, other than civil servants do not have the right to a parental leave.

In its previous conclusion the Committee noted that the parental leave was unpaid (Conclusions 2011). It notes that there have been no changes to this situation.

The Committee considers that under Article 27§2 of the Charter the States Parties are under a positive obligation to encourage the use of parental leave by either parent. States shall ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave.

The modalities of compensation is within the margin of appreciation of the States Parties and may be either paid leave (continued payment of wages by the employer), a social security benefit, any alternative benefit from public funds or a combination of such compensations. Regardless of the modalities of payment, the level shall be adequate (Statement of Interpretation of Article 27§2, General Introduction to Conclusions 2015).

The Committee considers that because of the absence of any remuneration or compensation during parental leave, the situation is not in conformity with the Charter.

### *Conclusion*

The Committee concludes that the situation in Turkey is not in conformity with Article 27§2 of the Charter on the grounds that:

- fathers, other than civil servants do not have the right to parental leave;
- no compensation or remuneration is paid for parental leave.

## **Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

### *Paragraph 3 - Illegality of dismissal on the ground of family responsibilities*

The Committee takes note of the information contained in the report submitted by Turkey.

### ***Protection against dismissal***

The Committee notes that employees with indefinite contracts in companies with more than 30 employees cannot be dismissed without a valid ground related to their qualification or behaviour. The marital status or family obligations of an employee is not considered as a valid reason for the termination of a contract (Section 18 of Labour Act No. 4857).

The Committee considers that workers in companies with less than 30 employees are not protected against dismissal due to family responsibilities. Therefore, the situation is not in conformity with the Charter.

### ***Effective remedies***

In its previous conclusion the Committee asked whether there was a ceiling for compensation that is awarded in case of unlawful dismissal. It asked in particular whether the upper limit would cover both pecuniary and non-pecuniary damage or whether compensation could also be sought through other legal avenues. The Committee notes in this respect that Article 5 of the Labour Act No 4857 provides that in case of unlawful dismissal the employee may demand compensation up to his/her four months' wages plus other claims of which he/she has been deprived. As the report does not contain any reply to these questions, the Committee reiterates them and holds in the meantime that the situation is not in conformity with Article 27§3, on ground that it has not been established that adequate compensation is provided for in cases of unlawful dismissal due to family responsibilities.

### ***Conclusion***

The Committee concludes that the situation in Turkey is not in conformity with Article 27§3 of the Charter on the grounds that:

- workers in companies with less than 30 employees are not protected against dismissal due to family responsibilities.
- it has not been established that adequate compensation is provided for in cases of unlawful dismissal due to family responsibilities.

## **Article 31 - Right to housing**

### *Paragraph 1 - Adequate housing*

The Committee takes note of the information contained in the report submitted by Turkey.

### ***Criteria for adequate housing***

The Committee recalls that it considers that the notion of adequate housing must be defined in law. It must be applied not only to new constructions, but also gradually to the existing housing stock. It must also be applied to housing available for rent as well as to owner occupied housing (Conclusions 2003, France).

The Committee also recalls that under Article 31§1, “adequate housing” means a dwelling which is safe from a sanitary and health point of view, i.e. it must possess all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity and must also be structurally secure, not overcrowded and with secure tenure supported by the law (see Conclusions 2003, France and Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 43).

In its previous conclusion (Conclusions 2011) the Committee asked whether the legislative framework included a definition of adequate housing. The report provides no information in this respect. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that it has not been established that adequate housing is defined in law.

The report indicates that between 2003 and 2014 633,295 houses have been constructed by the Housing Development Administration (TOKI) and that nearly 85% of houses corresponded to social housing.

### ***Responsibility for adequate housing***

Following the Committee’s request in its previous conclusion (Conclusions 2011), the report indicates that the monitoring of adequacy of housing in construction is ensured by consultant companies and engineers of TOKI.

In its previous conclusion, the Committee also asked concerning the maintenance of housing whether rules exist imposing obligations on landlords to ensure that dwellings they let are of an adequate standard and how public authorities supervise such rules. The report provides no information on these issues. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that it has not been established that there are rules imposing obligations on landlords to ensure that dwellings they let are of an adequate standard.

### ***Legal protection***

The Committee recalls that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial judicial or other remedies (administrative review, etc.) (Conclusions 2003, France). Any appeal procedure must be effective (European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81).

In its previous conclusion (Conclusions 2011), the Committee asked for detailed information on all the above mentioned points. The report provides no information. The Committee, therefore, considers that the situation is not in conformity with the Charter on the ground that it has not been established that the legal protection of the right to adequate housing is guaranteed.

### ***Measures in favour of vulnerable groups***

In its previous conclusion, the Committee concluded that the situation was not in conformity with the Charter on the ground that measures taken by public authorities to improve the substandard housing conditions of most Roma in Turkey were inadequate. In this regard, the report indicates that TOKI and local authorities are investing in the construction of social housing of an adequate standard in the framework of the "urban transformation and renovation". The report also states that between 2003 and 2014, 5,133 houses have been constructed for Roma families. The Committee asks the next report to continue to indicate the measures that are being taken in favour of Roma.

In its previous conclusion, the Committee concluded that the situation was not in conformity with the Charter on the ground that insufficient measures were taken by public authorities to improve the substandard housing conditions of most internally displaced persons. The report indicates that in big cities such as Istanbul, Ankara and Izmir specific projects have been elaborated to remedy the inadequate housing conditions of internally displaced persons. The Committee asks the next report to provide figures such as the number of houses that have benefited from the projects mentioned above. It also asks the next report to continue to indicate the measures that are being taken in favour of internally displaced persons. Meanwhile, it reserves its position in this respect.

### ***Conclusion***

The Committee concludes that the situation in Turkey is not in conformity with Article 31§1 of the Charter on the grounds that it has not been established that:

- adequate housing is defined in law;
- there are rules imposing obligations on landlords to ensure that dwellings they let are of an adequate standard;
- the legal protection of the right to adequate housing is guaranteed.

## **Article 31 - Right to housing**

### *Paragraph 2 - Reduction of homelessness*

The Committee takes note of the information contained in the report submitted by Turkey.

### **Preventing homelessness**

The report states that, although, no quantitative study or comprehensive research on homelessness in Turkey is available, on the basis of data of Şefkat-Der, a NGO, there would be 7-10 thousand homeless citizens in Istanbul and more than 70 thousand in the whole country. As regards the emergency solutions available and their adequacy to the demand, the report states that although no precise data is available, service is provided by some municipalities in coordination with NGOs, such as Şefkat-Der and the Association of Umut Cocuklari.

The Committee recalls that, in addition to a housing policy for all disadvantaged groups of people to ensure access to social housing (cf. Article 31§3), States must take action to prevent categories of vulnerable people from becoming homeless. To this effect, States Parties must (see Conclusions 2011, Italy):

- adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- maintain meaningful statistics on needs, resources and results;
- undertake regular reviews of the impact of the strategies adopted;
- establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
- pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

The Committee asks the next report to provide comprehensive and updated information on the measures implemented by Turkey to respect the abovementioned obligations and considers in the meantime that the situation is not in conformity with the Charter on the ground that there are no effective measures to reduce and prevent homelessness.

### **Forced eviction**

The Committee refers to its previous conclusion (Conclusions 2011), where it noted cases of forced evictions of Roma which had been carried out under conditions which did not respect the dignity of the persons concerned and had therefore breached Article 31§2.

In this connection, the authorities provide information on the housing and other services available to Turkish citizens of Roma origins as well as on affirmative action measures taken to support them. According to the report, the evictions at issue were carried out with the aim *inter alia* to increase the security of the area, including in respect of seismic risks, and taking into account the needs of the inhabitants. The Committee takes note of the detailed explanations contained in the report. It notes that a preliminary study was carried out to identify the people concerned, with a view to providing a suitable number of houses and working places and that, according to a survey, 91% of the people concerned were aware of the project. It also notes the information provided on the measures taken to ensure the re-housing of the evicted people.

It is acknowledged in the report that, in the framework of the abovementioned major urban renewal projects, evictions have been carried out in breach of the right to housing; the authorities contest however that Roma citizens have been discriminated in that respect, although they admit that the areas concerned happened to be mainly inhabited by Roma people.

While taking note of the information provided in response to the finding of non-conformity on the specific case of the evictions of the Sulukule area, the Committee notes that the report does not provide any of the other information requested concerning the legal framework

applicable to evictions in Turkey, i.e. the legal protection of persons threatened by eviction and the rules governing the procedures of eviction, in the light of Article 31§2 requirements (obligation to consult the parties affected in order to find alternative solutions to eviction and to fix a reasonable notice period before eviction; prohibition to carry out evictions at night or during winter; accessibility to legal remedies and legal aid; compensation in case of illegal eviction; obligation to carry out evictions under conditions which respect the dignity of the persons concerned and with rules of procedure sufficiently protective of the rights of the persons; obligation to adopt measures to re-house or financially assist the persons concerned by evictions carried out in the public interest). Neither does the report contain any figures concerning evictions in Turkey, rehousing or financial assistance provided following eviction. Accordingly, the Committee finds that it has not been established that Turkey has adequate eviction procedures.

### ***Right to shelter***

The report does not contain any of the information requested as to whether:

- shelters/emergency accommodation satisfy security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether they are equipped with basic amenities such as access to water and heating and sufficient lighting);
- shelter/emergency accommodation is provided regardless of residence status;
- the law prohibits eviction from shelters or emergency accommodation.

Furthermore, the Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited.

In view of the lack of information, the Committee reiterates its questions and considers in the meantime that it has not been established that the right to shelter is guaranteed.

### ***Conclusion***

The Committee concludes that the situation in Turkey is not in conformity with Article 31§2 of the Charter on the grounds that:

- there are no effective measures to reduce and prevent homelessness;
- it has not been established that adequate eviction procedures exist;
- it has not been established that the right to shelter is guaranteed.



## **Article 31 - Right to housing**

### *Paragraph 3 - Affordable housing*

The Committee takes note of the information contained in the report submitted by Turkey.

### **Social housing**

In its previous conclusion (Conclusions 2011) the Committee asked for more information on the operation of the Large Programme of Housing Construction.

According to the report, Articles 56 and 57 of the Constitution provide that each Turkish national has the right to convenient housing and the State has the responsibility of promoting mass housing projects.

The Mass Housing Law (Law No. 2 985) is a framework law defining the fundamental principles of the housing policy. This Law also describes the duties of TOKI (Housing Development Administration of Turkey), which is a leading organisation dealing with housing and settlement issues. The target group of TOKI are the families of low and middle income having no house within the framework of the existing market conditions in Turkey.

Since November 2002, TOKI has been assigned as the only responsible organisation in house production, particularly for the target groups in need as determined in the Urgent Action Plan which aims at addressing the social, economic and administrative problems, in parallel with the Governmental Programme.

In its previous conclusion, the Committee asked how the system of subsidies for social housing operated to facilitate the payment of costs by the most disadvantaged.

The Committee notes in this regard that around 85% of the houses TOKI has constructed (council houses) are social houses and are sold to the low and medium income families with payable monthly instalments and advance payments. In the framework of Council Housing Project conducted by TOKI, houses are being constructed for the families with low income within the scope of the Law No. 3294 on Encouraging Social Aid and Solidarity.

The beneficiaries of the council house projects of TOKI pay in the beginning of the construction (no money is taken in the projects for low-income groups) and then continue monthly payments according to a single indexed repayment schedule.

Low and middle income groups constitute 40% of the council housing projects. 23% of the projects is for the low income groups. These projects are financed by the Social Aid and Solidarity Promotion Fund.

TOKI delivers council houses to the Directorate-General of Social Aid within 30 months at the latest following the site delivery. Social Aid and Solidarity Promotion Fund pays the costs to TOKI within 5 years. Within the scope of the Law No. 3294, no guarantor and advance payment or price is requested in the beginning of the project. Reimbursement is completed within 270 months. According to the report, 18,686 houses were delivered by the end 2013. Construction of 100,000 houses is foreseen by 2023.

The Committee notes that around 528,000 houses that TOKI constructed are qualified as social housing. About 144,000 of them are the houses produced for the families with low income.

With the work TOKI carries out, 633,295 houses were constructed in 2,991 construction sites in 81 provinces and 800 counties in the period of 2003-2014. 535,051 of the houses mentioned above (85,39%) are social houses. 144,604 of them (23,08%) are for low-poor income groups.

The Committee recalls that the States must adopt measures to ensure that waiting periods for the allocation of housing are not excessive and judicial and non-judicial remedies must be available when waiting periods are excessive (International Movement ATD Fourth World

v. France, Complaint No 33/2006, decision on the merits of 5 December 2007, § 131) . In this connection, in its previous conclusion the Committee also asked for information on the remedies with respect to excessive waiting periods for the allocation of housing. The Committee notes that the report provides no information. It asks the next report to provide data on waiting periods for the allocation of social housing as well as on remedies. Meanwhile, the Committee considers that the situation is not in conformity with the Charter on the ground that it has not been established that there are remedies with respect to excessive waiting periods for the allocation of social housing.

### ***Housing benefits***

The Committee recalls that States must introduce housing benefits at least for low-income and disadvantaged sections of the population (Conclusions 2003, Sweden). Housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal (Conclusions 2003, Sweden).

In its previous conclusion, the Committee asked the next report to clarify whether Council Housing Programme implemented among low-income persons covered financial aid. It also asked how many persons qualified for such social housing projects and how many persons were granted the support in practice. The Committee also asked whether remedies were available for those who are refused support by social housing projects.

The Committee notes that the report does not provide a reply to its questions. It, therefore, considers that it has not been established that the majority of qualified households receive housing benefits in practice.

In its previous conclusion, the Committee asked whether the foreign nationals benefit from housing benefits on equal footing. The report provides no information in this respect. The Committee reiterates its question. Should the next report fail to provide this information, there will be nothing to show that the situation is in conformity with the Charter.

### ***Conclusion***

The Committee concludes that the situation in Turkey is not in conformity with Article 31§3 of the Charter on the grounds that it has not been established that:

- there are remedies with respect to excessive waiting periods for the allocation of social housing;
- the majority of qualified households receive housing benefits in practice.



January 2016

## **European Social Charter**

European Committee of Social Rights

Conclusions 2015

**UKRAINE**

*This text may be subject to editorial revision.*



The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the Revised European Social Charter (the Charter). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Ukraine which ratified the Charter on 21 December 2006. The deadline for submitting the 7th report was 31 October 2014 and Ukraine submitted it on 25 April 2015. On 16 September 2015, a request for additional information regarding Articles 7§3, 7§10 and 17§1 was sent to the Government, which submitted its reply on 3 November 2015.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of 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).

In addition, the report contains also information requested by the Committee in Conclusions 2013 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to safe and healthy working conditions – occupational health services (Article 3§4)
- the right to protection of health – advisory and educational facilities (Article 11§2)
- the right to be protected against poverty and social exclusion (Article 30)

Ukraine has accepted all provisions from the above-mentioned group except Articles 19 and 31§3.

The reference period was 1 January 2010 to 31 December 2013.

The conclusions relating to Ukraine concern 26 situations and are as follows:

–12 conclusions of conformity: Articles 7§2,7§4, 7§6, 7§7, 7§8, 7§9, 8§2, 8§3, §84,17§2, 27§1 and 27§3

–12 conclusions of non-conformity: Articles 3§4, 7§1, 7§3, 7§5, 7§10, 8§1, 8§5, 11§2, 16, 30, 31§1 and 31§2

In respect of the other 2 situations related to Articles 17§1 and 27§2, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Ukraine under the Charter. The Committee requests the Government to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 7§6**

The Law on Professional Development of Employees of 21 January 2012, which provides rules for organising employees' professional training, was adopted.

## Article 17§1

The Law of 15 March 2012 on amendments to the Family Code has amended Article 22 of the Family Code and set the equal minimum legal age of marriage at 18 for both genders.

The next report will deal with the following provisions of the thematic group "Employment, training and equal opportunities":

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).]

The report should also contain information requested by the Committee in Conclusions 2014 in respect of its findings of non-conformity due to a repeated lack of information:

- the right to just conditions of work – Night work – transfer to daytime work, consultation with worker's representatives (Article 2§7)
- the right to organise – registration fees, sanctions and remedies, compensation and representativity (Article 5)
- the right to dignity in the workplace – sexual harassment (Article 26§1)
- the right to dignity in the workplace – moral harassment (Article 26§2)
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28)

The deadline for submitting that report was 31 October 2015.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 4 - Occupational health services*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Ukraine in response to the conclusion that it had not been established that there is a strategy to progressively institute access to occupational health services for all workers in all sectors of the economy (Conclusions 2013, Ukraine).

The Committee recalls that under Article 3§4 States must promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions. These services may be run jointly by several companies. The services must be efficient and should be able to identify, measure and prevent work-related stress, aggression and violence (see Statement of interpretation on Article 3§4, Conclusions 2013; also Conclusions 2003, Bulgaria). It further recalls that if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. Thus, States "must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Conclusions 2003, Bulgaria, Conclusions 2009, Albania).

In its previous conclusion the Committee specifically noted that access to occupational health services seemed to be restricted to workers employed in heavy works, works under harmful or hazardous conditions or works requiring professional selection (Conclusions 2013, Ukraine).

The report states that Section 2.4 of the Procedure for conducting medical examinations of certain categories workers approved by Ministry of Health Order No.246/2007 provides that in order to carry out prior and periodic medical examinations of its employees the employer shall sign or timely renew the contract with a health care facility and provide them with a list of staff who are subject to medical examination. According to Section 2.5 of the Procedure the employer at own expense shall ensure that medical examinations are carried out and shall pay the costs of in-depth medical examination of employees with suspected occupational or production-caused diseases and of any medical rehabilitation, as well as the costs of clinical examination of workers at risk of occupational diseases.

From ILO information it appears that occupational health services are provided by the State Sanitary and Epidemiological Services as public authorities under the Ministry of Health, and by labour protection services established by the employer, in enterprises with 50 or more workers, as well as by appropriately trained persons in undertakings with less than 50 workers. The Committee notes the statistical information on the activities of the State Sanitary and Epidemiological Services in 2013, notably that 407,719 enterprises were under the supervision of this Authority 83,103 of which employed workers in harmful or hazardous conditions and 55,724 enterprises employed workers who were subject to medical examination (prior and periodic). The report further states that in 2013 a total of 2,026,417 workers in 56,791 enterprises in the industrial, municipal and other sectors underwent medical examinations corresponding to about 96% of planned examinations. The examinations were carried out in 971 state-owned facilities, in 44 private facilities and in 62 sanitary and medical stations. Finally, the report provides information on occupational services in three specific sectors: state coal mines, the energy sector and the oil and gas sector. The Committee notes in particular the information on the number of health facilities in these sectors and the number of their health staff.

While noting the above information and while noting that health services do not appear to be narrowly restricted to heavy or harmful and dangerous work, it is still unclear to the Committee, whether occupational health services are available for all workers in all branches and sectors of the economy, public as well as private, and if not, whether there is a national strategy for bringing about such access. It therefore asks that the next report contain a detailed clarification of the situation in this respect. It also wishes to know whether health services are limited to medical examinations or include for example information, advice and counselling in occupational health matters and whether workers participate in organisation and/or management of health services. Having regard to the distinction between enterprises with over and under 50 workers it wishes to receive a description of the content and organisation of occupational health services in enterprises with less than 50 workers.

Finally, the Committee notes that Decree of Cabinet of Ministers No. 442/2014 "On the optimization of the system of central governments executive bodies" establishes a new State Labour Service of Ukraine through a reorganisation of State Inspectorate of Ukraine for Labour and State Service of Mining Supervision and Industrial Safety of Ukraine. It asks that the next report provide information on the objectives and consequences of this reorganisation as far as occupational health services are concerned. In view of the outstanding information, the Committee reiterates its conclusion that it has not been established that the situation is in conformity with the Charter.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 3§4 of the Charter on the ground that it has not been established that there is a strategy to progressively institute access to occupational health services for all workers in all sectors of the economy.



## **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 Ukraine.

The Committee previously noted that according to Article 188 of the Labour Code, the minimum age for employment is 16 years. As an exception, under Section 188(2) of the Labour Code, children of 15 years of age may be admitted to employment with the consent of one of the parents or a guardian (Conclusions 2011).

The Committee asked whether the prohibition of employment under the age of 15 applies to all economic sectors, all places of work and all forms of economic activity, irrespective of the status of the worker. The report does not respond to the Committee's question. The Committee notes from another source that the Committee on the Rights of the Child in its concluding observations expressed concern at the high number of children below the age of 15 years working in the informal economy, in particular in illegal coal mines, as well as at the extent of violations of labour law regarding the employment of children (CRC/C/UKR/CO/3-4, paragraph 74, 21 April 2011). The Committee asks what are the measures taken by the authorities (e.g. labour inspection) to improve the supervision and the mechanisms of detecting cases of children under the age of 15 working in the informal economy, outside the scope of an employment contract.

The Committee previously noted that children of 14 years of age in secondary, vocational and specialised secondary schools are allowed to perform light work with the consent of one parent or a guardian. Light work is defined as work which is not harmful to health and which does not interfere with the educational process, carried out in free time from studies. The Committee concluded that the situation was not in conformity with Article 7§1 of the Charter on the ground that the definition of light work was not sufficiently precise because there was no definition of the types of work which may be considered light or a list of those which are not (Conclusions 2011).

The Government states in the report that the new draft Labour Code of Ukraine will include a definition of light work, namely that light work represents work that may not endanger health, life and mental and physical development of minors and may not prevent them to study. The list of light works shall be determined by the central executive body.

The report further indicates that the Ministry of Social Policy through an Order dated 23 April 2013 approved an expert and consulting council on the European Social Charter, which includes representatives of ministries, social partners, academia, and NGOs. A draft Cabinet of Ministers of Ukraine regulation was prepared with regard to activities aimed to implement the provisions of the European Social Charter in 2015 – 2019 envisaging a study on the issue of definition of "light work" in the national law and preparation of light works list for children. The Committee asks the Government to provide information on any developments in this regard. In the meantime, noting that the situation has not changed during the reference period, the Committee maintains its conclusion of non-conformity on this point.

The Committee notes from another source that the Government indicates that the draft Labour Code sets no restrictions on daily work for children aged up to 14 years in artistic performances, but provides that the working conditions must be agreed upon with the Service for Children's Affairs (Observation (CEACR) – adopted 2013, published 103rd ILC session (2014), Minimum Age Convention (No.138). The Committee notes from the report that the draft of the Labour Code has not been adopted yet. It therefore asks to be fully informed of any future developments. In the meantime, the Committee wishes to know under which conditions children may be admitted to employment in the cinema, theatre and concerts and how the Labour Inspectorate monitors the involvement of children under 15 years of age in artistic performances.

As regards work done at home, the report indicates that in 2012, a Multiple Indicator Cluster Survey (MICS) of households was carried out, particularly on the situation of the work done

at home by children under the age of 15. The results of the MICS show that 68% of children aged 5-14 years were involved in household chores for less than 28 hours a week, and 9.4% children of 12-14 years old were involved in such work. Not many children in both age groups did household chores for more than 28 hours a week.

The Committee recalls that work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28). The Committee asks whether authorities monitor the conditions under which such work is performed in practice.

With regard to supervision, the Committee asked what kind of measures were taken in case of violations and what measures were taken to prevent the employment of children below the permitted age (Conclusions 2011). The report provides the number of violations of Section 188 of the Labour Code identified during the reference period, namely: 19 violations in 2010, 14 violations in 2011, 11 violations in 2012 and 23 violations in 2013. The report adds that as a result of the inspections, 66 instructions to remedy the violations were issued to employers and 46 protocols were drawn up and filed with the courts against the breaching employers.

The Committee recalls that the situation in practice should be regularly monitored. It therefore asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment under the age of 15.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 7§1 of the Charter on the ground that the definition of light work is not sufficiently precise.

## **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 Ukraine.

The Committee noted previously that under Article 190 of the Labour Code, persons under 18 years of age may not be employed in hard work, work with unhealthy or hazardous working conditions, as well as in underground work (Conclusions 2011).

The Committee recalled that if hazardous work proves absolutely necessary for their vocational training, young workers may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary. The Labour Inspectorate must monitor these arrangements. The Committee asked for detailed information on possible arrangements for performing hazardous work during vocational training and how was the monitoring ensured (Conclusions 2011).

The report indicates that pursuant to the Regulation on vocational training for under-aged persons in professions related to harmful or hazardous work conditions approved by the Order No. 130/1994 of the State Committee for Occupational Health and Safety Surveillance, under-aged persons shall be enrolled at the educational institutions which train under-aged persons in professions related to harmful or hazardous work conditions.

The Committee notes from another source that under Section 2(3) of the Order of the Ministry of Health of Ukraine No. 46/1994, persons under the age of 18 years pursuing vocational training may perform hazardous types of work for not more than four hours a day on condition that existing sanitary and health norms on labour protection are strictly observed. (Observation (CEACR) – adopted 2013, published 103rd ILC session (2014) Minimum Age Convention 1973 (No. 138)). The report does not indicate how the Labour Inspectorate monitors the above mentioned conditions. The Committee reiterates its question.

The Committee recalled that the Appendix to Article 7§2 of the Charter also permits exceptions in cases where young persons under the age of 18 have completed their training for performing dangerous tasks and, thus, received the necessary information. The Committee asked whether there are any exceptions under Ukrainian legislation permitting for employment of young workers in such a case and if so, what are the rules governing the employment in such case (Conclusions 2011).

The report indicates that a permanent professional board for occupational health and safety at the enterprise provides permit for works performance and operation of objects, machinery and mechanisms, hazardous equipment (the hazardous works) to the under-aged trainees who demonstrate needed knowledge and skills. The works have to be done under surveillance of an experienced worker-trainer (foreman of vocational training). Only qualified specialists with work experience at least three (3) years in the profession may be appointed as worker-trainers for training persons under 18 years of age. A trainee under 18 is obliged to perform any works during his/her practice or on-the-job training only upon request and under the direct supervision of his/her worker-trainer (foreman of vocational training).

The report adds that trainees under 18 years of age, who have completed their training but failed to pass examination on occupational health and safety skills and safe methods of work and to get a permit for hazardous works, shall continue their on-the-job practice as alternate trainees. A new examination of their knowledge shall be carried out not earlier than two weeks after.

The Committee takes note of the information on the monitoring activity of the Labour Inspectorate with regard to employment of young workers under 18 in dangerous or unhealthy activities as provided in the report. It notes that the number of violations detected has decreased during the reference period, namely: 19 violations in 2010, 17 violations in

2011, 13 violations in 2012 and 11 violations in 2013. As regards the measures taken by the Labour Inspectorate, the report indicates that during the reference period, a total number of 60 instructions to remedy the breaches were issued and 35 administrative protocols were drawn up against the employers. The Committee asks whether fines were imposed on employers who did not comply with the regulations.

The Committee recalls that the situation in practice should be regularly monitored. It therefore asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment of young workers under 18 in dangerous or unhealthy activities.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine 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 Ukraine.

The Committee previously noted that children of 14 years of age in secondary, vocational and specialized secondary schools are allowed to perform light work with the consent of one parent or a guardian. Light work was defined as work which is not harmful to health and which does not interfere with the educational process, carried out in free time from studies (Conclusions 2011). The Committee refers to its findings regarding light work in its conclusion on Article 7§1, according to which the definition of light work provided for in the national legislation is not sufficiently precise. It recalls that States are required to define the types of work which may be considered light, or at least to draw up a list of those who are not. The Committee considers that the situation in Ukraine is not in conformity with Article 7§3 of the Charter on the ground that the definition of light work is not sufficiently precise.

The Committee wished to know the number of hours that may be worked per day both during the holidays and in the course of the school year. It also asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday (Conclusions 2011).

The report indicates that according to Article 51 of the Labour Code, young persons aged from 15 to 16 years as well as pupils aged from 14 to 15 years are allowed to work 24 hours per week during holidays. Young employees aged from 16 to 18 years may work up to 36 hours per week.

Further, the report indicates that working hours for pupils working during academic year in their free time may not exceed the half of maximum working hours prescribed above for persons of the respective age. Thus, the duration of working hours during the school year for pupils of secondary schools aged from 14 to 16 years shall be of 12 hours per week, and for pupils aged 16-18 shall be of 18 hours per week. Based on a five-day working week, the working hours for pupils from these age groups shall be 2.4 hours per day (for 14 to 16 years of age) and 3.6 hours per day (for 16 to 18 years of age).

The Committee refers to its Statement of Interpretation in the General Introduction of these Conclusions. It recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only "light" work. Work considered to be "light" in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education.

The Committee notes that young employees aged from 16 to 18 years old may work up to 36 hours per week. The Committee notes from the reply of the Government to its supplementary question that the total duration of the general secondary education is 11 years and it starts at the age of six or seven. Therefore, the Committee considers that the situation is not in conformity with the Charter as on the ground that the duration of working time for children aged 16-18 who are still subject to compulsory education is excessive and therefore cannot be qualified as light work.

The report indicates that according to Law No. 504/1996 employees under the age of 18 benefit of 31 calendar days of leave. A person under the age of 18 is entitled to use his/her annual leave at any time or use it in parts, but not less than 14 consecutive days at once (Section 12 of the Law No. 504/1996). The Committee asks whether the Labour Inspectorate supervises if young employees under the age of 18 are granted 14 consecutive days of leave in practice and which are the measures/sanctions applied in cases of non-compliance.

As regards supervision, the Committee takes note of the information on the monitoring activity of the Labour Inspectorate provided in the report. It notes the number of violations of the regulations providing short working hours for children subject to compulsory education during the reference period, namely: 80 in 2010, 48 in 2011, 52 in 2012 and 63 in 2013. As regards the measures taken by the Labour Inspectorate, the report indicates that a total of 236 instructions to remedy the violations were issued and 179 administrative protocols were drawn up against the employers. The Committee asks whether fines were imposed on employers who did not comply with the regulations providing short working hours for children who are still subject to compulsory education.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 7§3 of the Charter on the grounds that:

- the definition of light work is not sufficiently precise;
- the duration of working time for children aged 16-18 who are still subject to compulsory education is excessive and therefore cannot be qualified as light work.

## **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 Ukraine.

The Committee previously concluded that the situation in Ukraine was in conformity with Article 7§4 of the Charter. It asked what was the percentage of the enterprises, out of the total number of enterprises, which are inspected annually by the Labour Inspectorate with regard to working time of young workers (Conclusions 2011).

The report indicates that 2% of the total number of enterprises are inspected annually by the Labour Inspectorate with regard to working time of young workers.

The Committee recalls that the situation in practice should be regularly monitored. It therefore asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed on employers for breach of the regulations regarding the working time for young workers under the age of 18.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 7§4 of the Charter.

## **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 Ukraine.

### **Young workers**

In its previous conclusion, the Committee asked whether young workers receive the "same hourly wage" or "same monthly wage" in comparison to adult workers (Conclusions 2011). The report indicates that young workers under 18 are paid for their reduced working hours at the same wage rate (the same salary) as the standard (normal) work time of adult employee of the same profession.

Since Ukraine has not accepted Article 4§1 of the Charter, the Committee makes its own assessment of the adequacy of young workers wage under Article 7§5. For this purpose, the ratio between net minimum wage and net average wage is taken into account. Thus, the Committee asked in its previous conclusion for the information on the net values of minimum wage and average wage in order to assess the situation (Conclusions 2011). The report indicates that in 2014 the monthly minimum wage amounted to 1,218 Ukrainian Hryvnia (UAH) (€49.11) and the average monthly wage was 3,537 UAH (€142.62).

From the information provided in the report, the Committee notes that the minimum wage corresponds to only 34.44% of the net average wage, which is too low to secure a decent standard of living for young workers. Accordingly, the situation in Ukraine is not in conformity with Article 7§5 of the Charter.

### **Apprentices**

The Committee previously asked information with regard to the allowances paid to apprentices (Conclusions 2011).

The report indicates that according to the Regulation on payment for labour during apprenticeship, retraining or training to other professions approved through the Decree No. 700 dated 28 June 1997 of the Cabinet of Ministers of Ukraine, the apprentices are paid in case of individual training for worker professions with piece rate wage system as follows: for the first month of apprenticeship at the rate of 75%, for the second – 60%, for the third – 40%, for the fourth and subsequent months till the end of the apprenticeship as envisaged in the program – 20% of the first class grade rate for appropriate profession at the enterprise.

Apprentices are paid in case of individual training for worker professions with time-based wage system as follows: for the first and second months of apprenticeship at the rate of 75%, for the third and fourth months – 80%, for the subsequent months till the end of the apprenticeship as envisaged in the program – 90% of the first class grade rate for appropriate profession at the enterprise.

In the case of training immediately at production site for worker professions where monthly rate is envisaged, apprentices are paid on the basis of minimum monthly rate for the enterprise in accordance with the procedure envisaged for apprentices training for worker professions with time-based wage system (Para. 6 of the Regulation).

The Committee asks how the Labour Inspectorate monitors the actual allowances paid to apprentices in practice. Pending receipt of the information requested, the Committee reserves its position on this point.

### **Questions:**

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 7§5 of the Charter on the ground that the young workers' wages are not fair.



## **Article 7 - Right of children and young persons to protection**

### *Paragraph 6 - Inclusion of time spent on vocational training in the normal working time*

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee previously examined the situation and found it to be in conformity with Article 7§6 of the Charter (Conclusions 2011). The report indicates that during the reference period the Law on Professional Development of Employees of 21 January 2012, which provides rules of organising employees' professional training, was adopted.

The Committee previously noted that according to Article 122 of the Labour Code, the job position of an employee is preserved for the time of "resident professional development training", with reimbursement stipulated by legislation. It asked what was meant by "resident professional development training" and what the levels of reimbursement were.

The report indicates that the "resident professional development training" represents a professional development training which is organised at the cost of the employer for its employees and it is carried out within conventional business hours. During the training the employee is not present at his/her workplace and does not fulfill his/her professional assignments and responsibilities. The training may take place for example in skills upgrade centers at educational institutions.

The report indicates that workers who carry out off-the-job skills upgrade training, primary training, retraining, vocational training for another profession, are granted their average wage at their principal place of work during the whole training period, travel expenses, accommodation expenses for the whole period of training (Decree No. 695/1997 of the Cabinet of Ministers).

The report adds that students from universities and vocational institutions have the right to undertake an internship in the profession they were prepared for at the employers' site and according to the conditions established by the internship contract. If the student performs professional work during the internship, the employer shall pay for all works performed (Decree No. 20/2013 of Cabinet of Ministers).

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. It therefore asks the next report to provide information on the monitoring activity of the authorities, on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding the inclusion of time spent on vocational training by young workers in the normal working time.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine 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 Ukraine.

The Committee noted previously that young workers under 18 were granted an annual leave of 31 calendar days (Conclusions 2011).

The Committee asked whether Ukrainian law allows for young workers to relinquish their annual leave in return for paid work and whether in the event of illness or accident during the holidays, they have the right to take the leave lost at some other time (Conclusions 2011). The report indicates that in case of temporary incapacity to work, the annual leave may be taken after the reasons causing the interruption of the leave have disappeared or at some other time that will be mutually agreed.

The report indicates that employees under the age of 18 are not allowed to waive any of their leave for monetary compensation (Section 83 of the Labour Code).

The Committee asked what is the percentage of the enterprises, out of the total of the enterprises, that are inspected annually by the Labour Inspectorate with regard to the paid annual holidays of young workers.

The report indicates that 40-50% of the total number of enterprises are inspected annually by the Labour Inspectorate with regard to the paid annual holidays of young workers. The Committee takes note of the information on the monitoring activity of the Labour Inspectorate provided in the report. It notes the number of violations detected by the Labour Inspectorate during the reference period, namely: 203 in 2010, 183 in 2011, 121 in 2012 and 295 in 2013. As regards the measures taken by the Labour Inspectorate, the report indicates that during the reference period a total number of 783 instructions to remedy the violations were issued and 290 administrative protocols were drawn up against the employers. The Committee asks whether fines were imposed on employers who did not comply with the regulations concerning paid annual holidays of young workers under 18.

### *Conclusion*

The Committee concludes that the situation in Ukraine 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 Ukraine.

The Committee noted previously that, according to Section 192 of the Labour Code, young workers under 18 may not be employed in night work, overtime work and work on days off. The Committee asked whether there are any exceptions from this rule for certain occupations (Conclusions 2011). The report indicates that there are no exceptions. The Committee notes from the report that the draft of the Labour Code has not been adopted yet. The Committee wishes to be informed on any future developments in the next report.

The Committee takes note of the information on the monitoring activity of the Labour Inspectorate provided in the report. It notes that the number of violations detected has decreased during the reference period, namely: 53 in 2010, 37 in 2011, 21 in 2012 and 8 in 2013. As regards the measures taken by the Labour Inspectorate, the report indicates that during the reference period, a total number of 119 instructions to remedy the violations were issued and 68 administrative protocols were drawn up against the employers. The Committee asks whether fines were imposed on employers who did not comply with the prohibition of night work for young workers under 18.

The Committee recalls that the situation in practice should be regularly monitored. It therefore asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of night work for young workers under the age of 18.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine 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 Ukraine.

The Committee noted previously that according to Article 191 of the Labour Code, all persons under 18 years are employed only after a medical examination is carried out, and they must undergo mandatory annual medical examination until they reach 21 years of age (Conclusions 2011).

The Committee asked what do the initial and periodic medical check-ups consisted in and whether they took into account the specific situation of young workers and the particular risks to which they are exposed (Conclusions 2011).

The report indicates that according to the Section 17 of the Law of Ukraine "On occupational health and safety" a procedure for conducting medical examinations was developed for preliminary (at recruitment) and regular (during employment) medical examinations of workers employed in heavy works, works with hazardous or dangerous conditions, as well as annual compulsory medical examination of persons under the age of 21 years.

The Committee notes from the report that the draft of the new Labour Code providing for mandatory medical examination prior to practical training or industrial training for persons under 18 years of age has not been adopted yet. The Committee wishes to be informed of any future developments in the next report.

The Committee asked what was the percentage of the enterprises, out of the total number of enterprises, that are inspected annually by the Labour Inspectorate with regard to medical examinations of young workers (Conclusions 2011).

The report indicates that only 2% of the total number of enterprises is inspected annually by the Labour Inspectorate in respect to the mandatory medical examinations of young workers under the age of 18. The Committee takes note of the information on the monitoring activity of the Labour Inspectorate provided in the report. It notes that the Labour Inspectorate identified 98 violations of the regulations regarding medical examination of young workers in 2012, respectively 167 in 2013. As regards the measures taken by the Labour Inspectorate, the report indicates that in 2012, 98 instructions to remedy the violations were issued and 64 administrative protocols were drawn up against the employers. The Committee notes that in 2013 there were 167 instructions to remedy the violations and 107 administrative protocols were drawn up against the employers. The Committee asks whether fines were imposed on employers who did not comply with the prohibition of night work for young workers under 18.

The Committee recalls that the situation in practice should be regularly monitored. It therefore asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding the mandatory medical examinations of young workers under 18 years of age.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 7§9 of the Charter.

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 10 - Special protection against physical and moral dangers*

The Committee takes note of the information contained in the report submitted by Ukraine.

#### ***Protection against sexual exploitation***

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as the legislation only criminalised child prostitution when the victim was under 16 years of age, while using the sexual services of a child over 16 years of age or of a child that had reached the age of puberty was not considered a crime.

In its previous conclusion the Committee found that the situation was not in conformity with the Charter on the ground that all children until the age of 18 were not effectively protected against child pornography. In particular, the Committee noted that Article 301 of the Criminal Code only assigned responsibility for coercing children into producing pornographic material and did not assign criminal responsibility if it could be proved that the child was paid for the services or was voluntarily involved in production of pornographic materials.

The Committee notes from the report that the Ministry of Social Policy by its Order of February 2013 established an Interagency Working Group to examine the violation of the Charter on these grounds. The Work Group includes, among others, representatives of the Ministry of Justice, International Affairs, Commissioner for Children's Rights. This group has initiated the preparation of proposals concerning the definition of 'child prostitution'. According to the report, the Action Plan for the Implementation of the Social Charter also envisages amending the legislation to bring it into conformity with the Charter as regards the provisions concerning sexual exploitation of children. The Committee wishes to be kept informed of these developments.

The Committee recalls that under Article 7§10 of the Charter, 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. The following are the minimum obligations:

- as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised. In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts.
- a national action plan combating the sexual exploitation of children should be adopted.

An effective policy against commercial sexual exploitation of children should cover primary and interrelated forms: child prostitution, child pornography and trafficking in children.

- child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration;
- child pornography is given an extensive definition and takes account of the fact that new technologies have changed the nature of child pornography. It includes the procurement, production, distribution, making available and simple possession of material that visually depicts a child engaged in sexually explicit conduct.
- trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.

States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.

The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not changed. Therefore, the Committee reiterates its findings

of non-conformity on the grounds that using sexual services of a child is only criminalised until the age of 16 and child pornography is not criminalised until the age of 18.

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as Article 301 of the Criminal Code only criminalised the storage of pornographic material and not a simple possession of child pornography that was not intended for sale or distribution.

The Committee notes that the Law of 20 January 2010 No 1819-IV amended some legal acts in regard to child pornography. Article 7 of the Law on Protection of Public Morality No 1236/IV, as amended, provides that manufacturing, storage, advertising, distribution and purchase of products containing child pornography is prohibited.

The Committee considers that the situation which it has previously found not to be in conformity with the Charter on this point has not changed. The Committee therefore reiterates its previous finding of non-conformity on the ground that simple possession of child pornography is not a criminal offence.

In its previous conclusion the Committee noted that the status of the victim was not well defined in the Criminal Code, and the legislation did not provide clear and sufficient sanctions for physical and psychological pressure during interrogations of child victims, and the sanctions, even where adequate, were not enforced.

It notes in this respect that the Criminal Code contains provisions that provide safeguards aimed to protect children's rights in criminal proceedings. The so called 'green room' methodology has been developed to uphold children's rights in the criminal process, keeping atmosphere of trust and mutual understanding during the interrogation.

### ***Protection against the misuse of information technologies***

In reply to the Committee question in the previous conclusion the report states that the Law on Telecommunications as amended, envisages that telecommunications operators may be required by the court decision to restrict access of their subscribers to the resources used for distribution of child pornography.

According to the report, on February 20, 2012 Ukrainian internet service providers signed the Code on protecting children from abuse on Internet.

The Code stipulates the principles of IT companies' activity in various areas, such as interaction with Internet users, development of services and software, personal information and other materials posted on the web by users.

The aim of the document is to combat the spread of child pornography, as well as to promote the rules of Internet safety and parental control.

The Cybercrime Department of the Ministry of Internal Affairs has developed recommendations for parents to help them protect children from negative effects of illegal content.

### ***Protection from other forms of exploitation***

In its previous conclusion the Committee found that the measures taken address the problem of street children were insufficient and disproportionate in the circumstances.

It notes from the report that in accordance with the Law on Childhood Protection the term street children means children who have been abandoned by their parents, or have wilfully left their family or child care facility and have no fixed abode. The law distinguishes two categories in this respect – children in difficult life circumstances (whose parents fail to fulfil parental responsibilities) and children left without parental care. According to the report, more than 33,000 preventive activities were carried out in 2013 during which 13,285 street children were revealed and 2,469 were removed from streets. According to the report, the

number of street children has significantly decreased since 2008. The report states that the reduction in the number of street children is also explained by the fact that the number of children in difficult life circumstances has gone down (by 65% in 2013 as compared to 2006).

The Committee takes note of measures taken to combat the phenomenon of street and neglected children, such as the State Programme to Combat Child homelessness and Neglect as well as the annual National Programmes for the implementation of the UN Convention on the Rights of the Child.

The Committee takes note of the information regarding trafficking of human beings. The Law on Combating Human Trafficking of 13 April 2012 defines the organisational and legal framework. According to Article 23 the State shall provide assistance to the child from the moment it has seemed likely that he/she has been a victim of trafficking, until rehabilitation of the child is completed. The identity of the child shall be established as well as the priority measures to help him/her. Children who acquire the status of human trafficking victim are eligible for a one-off material assistance. The Committee takes note of the statistics relating to trafficking of human beings and the numbers of identified child victims.

The Committee notes from the Report of the Group of Experts on Action against Trafficking in Human Beings (GRETA) concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine (2014) that GRETA urges the Ukrainian authorities to take further steps to ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity and the status of related legal proceedings. This implies risk assessment before a person is sent back to his/her country, protection from retaliation and re-trafficking and, in the case of children, fully respecting the principle of the best interests of the child.

GRETA further considers that the authorities should improve the identification of victims of trafficking among unaccompanied foreign minors and take steps to address the problem of disappearance of unaccompanied foreign children by providing suitable and safe accommodation and assigning adequately trained legal guardians. The Committee wishes to be informed of measures taken in this respect.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 7§10 of the Charter on the grounds that:

- child prostitution is only criminalised until the age of 16;
- child pornography is not criminalised until the age of 18.
- simple possession of child pornography is not a criminal offence.

## **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 Ukraine.

### ***Right to maternity leave***

The Committee previously noted that Article 179 of the Labour Code provides that, based on a medical advice, women employees are entitled to a paid maternity leave of 70 days before birth and 56 days after birth (which can be increased to 70 days in case of multiple birth or complications at birth) and that the same regime also applies to women employed in the public sector. If a shorter period of leave is taken before birth, the unused days of leave cannot be taken after birth.

The Committee recalls its caselaw, according to which national law may permit women to opt for a maternity leave shorter than 14 weeks but in all cases there must be a compulsory period of postnatal leave of no less than six weeks which may not be waived by the woman concerned. Where compulsory leave is less than six weeks, there must be adequate legal safeguards fully protecting the right of employed women to choose freely when to return to work after childbirth – in particular, an adequate level of protection for women having recently given birth who wish to take the full maternity leave period. In the light thereof, the Committee previously asked (Conclusions 2011) what legal safeguards exist to avoid any undue pressure on employees to shorten their maternity leave: for example, whether there is legislation against discrimination at work based on gender and family responsibilities; whether there is an agreement with social partners on the question of postnatal leave that protects the free choice of women, and whether collective agreements offer additional protection. In addition, it asked for information on the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave).

The report refers to some draft legislation aimed at introducing paid paternity leave as well as a paid parental leave which might be shared by the parents, however it does not provide evidence that there is a six-week compulsory postnatal leave that can not be shortened, not even at the employee's request, or that there are in law and in practice adequate safeguards to protect employees from pressures to take less than six weeks postnatal leave. Accordingly, the Committee finds that the situation is not in conformity with Article 8§1 of the Charter on this point.

### ***Right to maternity benefits***

The Committee previously noted that, according to Section 38 of the Act on Mandatory State Social Insurance against Temporary Disability and Expenses Caused by Birth and Burial, benefits are provided during maternity leave to compensate for the loss of wages. Pursuant to Section 39 of the aforementioned Act, benefits represent 100% of the employee's average salary and do not depend on insurance record. This regime also applies to women employed in the public sector.

The Committee refers to its Statement of Interpretation on Article 8§1 (Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 8§1 of the Charter on the ground that it has not been established that there are in law and in practice adequate safeguards to protect employees from undue pressure to take less than six weeks postnatal leave.



## **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 Ukraine.

#### ***Prohibition of dismissal***

According to the report, the relevant legislation has not changed during the reference period: pursuant to Article 184 of the Labour Code, employers cannot dismiss pregnant women, women with children under the age of three and single mothers with children who are under 14 years of age or are with a disability. As an exception, dismissal is possible if the undertaking ceases to operate, on the condition that placement on another job be provided. Dismissal at the end of the period prescribed in the employment contract is also possible, on the condition that the employee's average salary is preserved during job search for a duration of three months after the end of the employment contract. The same regime also applies to women employed in the public sector.

#### ***Redress in case of unlawful dismissal***

In response to the Committee's question, the report indicates that victims of illegal dismissals can lodge an appeal with a court. In particular, Article 235 of the Labour Code provides that the employee illegally dismissed or reassigned must be reinstated at his/her previous work. The competent court shall also assess the compensation to be paid for the loss of salary during the relevant period until the reinstatement takes place (Article 236 of the Labour Code). Pursuant to Article 237-1 of the Labour Code, the court can also award moral damages if the violation of the employee's rights has caused mental suffering, loss of normal life connections and requires extra efforts from the employee to reorganise his/her life. Article 23 of the Civil Code provides that the amount of pecuniary compensation for moral damages shall be determined by the court, taking into account the nature of the offense, level of physical and mental suffering, the deterioration of the victim's abilities or the fact of depriving him/her the possibility to use them, degree of guilt of the offender if guilt is the basis of the reimbursement, as well as other important circumstances, in light of the criteria of reasonableness and fairness. The report indicates that there had been 41 violations of Article 184 of the Labour Code in 2010, 34 in 2011, 45 in 2012 and 51 in 2013. The Committee asks the next report to confirm, in the light of any relevant examples of case law, that no ceiling applies to the award of moral damages in cases of illegal dismissal of employees during pregnancy or maternity leave.

#### ***Conclusion***

The Committee concludes that the situation in Ukraine is in conformity with Article 8§2 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

The Committee takes note of the information contained in the report submitted by Ukraine.

It notes from the report that there have been no changes to the situation which it has previously found to be in conformity with Article 8§3 of the Charter: according to Article 183 of the Labour Code, employed women with children under 18 months are entitled to take nursing breaks of at least 30 minutes (60 minutes in case of two or more children) at intervals of three hours, which are included in the working hours and paid according to their average salary. The schedule and modalities for these breaks are defined by the employer or an organisation authorised by the employer, in cooperation with trade union representatives of the enterprise concerned, and taking into consideration the mother's wishes. The same regime also applies to women employed in the public sector.

### *Conclusion*

The Committee concludes that the situation in Ukraine 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 Ukraine.

It previously noted that, under Article 176 of the Labour Code, night work is prohibited for pregnant women and women with children aged less than 3 years. The report confirms that this provision applies without exceptions to all enterprises, institutions and organisations regardless of their ownership form, type of activity, way of business and to physical persons using hired labour, as well as to the work of physical persons employed in the public sector. The Committee asks the next report to clarify whether the employed women concerned are transferred to daytime work until their child is three years old and what rules apply if such transfer is not possible.

### *Conclusion*

The Committee concludes that the situation in Ukraine is in conformity with Article 8§4 of the Charter.

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

The Committee takes note of the information contained in the report submitted by Ukraine.

It previously noted that, under Article 178 of the Labour Code, pregnant women must have their workload ("production rates, service rates") reduced or must be transferred to a post involving lighter work, not involving health risks to them, without loss of salary. Until they are reassigned to lighter work, they must be relieved from work, while keeping their average salary. If, after the birth and until the child reaches the age of three, they cannot perform their previous tasks, they must also be reassigned to a different post, without loss of salary. The same rules apply to women employed in the public sector.

The Committee requested more detailed information on the dangerous activities which are prohibited or strictly regulated for the categories of women concerned (in particular as regards activities involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents) and on whether the women concerned retained the right to return to their previous post at the end of the protected period. It stressed that, in the absence of the information requested, there would be nothing to establish that the situation is in conformity with Article 8§5.

The Committee takes note of the information provided in the report, according to which the list of heavy and hazardous activities for which the employment of women is prohibited includes foundry work, work involving exposure to lead, general professions in ferrous and non-ferrous metallurgy, electrical production, electronic engineering, chemical industry, manufacture of rubber compounds and their processing, logging, cement production, general professions in textile production, food production, bakery, tobacco and fermentation production, works associated with the use of lead alloys (Order of Ministry of Health No. 256 of 29 December 1993, registered with the Ministry of Justice of Ukraine on 30 March 1994 under No. 51/260). The Committee recalls however that, under Article 8§5 of the Charter, dangerous activities, such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents, must be prohibited or strictly regulated for pregnant women, women who have recently given birth and women nursing their infants depending on the risks posed by the work. National law must ensure a high level of protection against all known hazards to the health and safety of women who come within the scope of this provision. The Committee reiterates its question as to whether and how activities involving exposure to benzene, ionizing radiation, high temperatures, vibration or viral agents are prohibited or strictly regulated for pregnant women as well as women who have recently given birth and/or are nursing their infant. It furthermore asks whether underground work in mining is prohibited for these categories of women. In the meantime, it does not find it established that the regulations on dangerous, unhealthy and arduous work ensure adequate protection of pregnant women as well as women who have recently given birth or are nursing their child.

As regards women's right to return to their employment, the Committee takes note of the information provided in the report concerning protection against dismissal during pregnancy and maternity leave. It considers however that this information does not answer the question of whether women who have been transferred to a lighter work or to a different post in order not to be exposed to dangerous factors retain a right to return to their initial post at the end of the protected period. It accordingly reiterates this question and considers in the meantime that it has not been established that the women's right to return to their post after a temporary reassignment is ensured at the end of the protected period.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 8§5 of the Charter on the grounds that:

- it has not been established that pregnant women as well as women who have recently given birth or are nursing their child are adequately protected in respect of dangerous, unhealthy and arduous work, and
- it has not been established that, in case of reassignment to a different post, they retain the right to return to their initial employment at the end of the protected period.

## **Article 11 - Right to protection of health**

### *Paragraph 2 - Advisory and educational facilities*

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Ukraine in response to the conclusion that it had not been established that public information and awareness raising was a public health priority and that prevention through screening was used as a contribution to the health of the population (Conclusions 2013, Ukraine).

With respect to public information and awareness raising the Committee recalls that informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned (Conclusions 2007, Albania). Measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as a healthy diet, sexuality and the environment (International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, complaint No. 45/2007, decision on the merits of 30 March 2009, §43).

The report states that according to the Action Plan for Implementation of the Programme of Government and the Strategy for Sustainable Development "Ukraine-2020" in 2015, approved by Government Decree No. 213/2015, the following measures are foreseen:

- to develop and to submit to the Government proposals on the National Strategy for healthy physical activity for the period up to 2025;
- to conduct the All-Ukrainian awareness and preventive action "Responsibility begins with me";
- to ensure the use of "social advertising" in the media to promote a healthy lifestyle;
- to develop the National action plan for implementation of the policy Health — 2020: based on European policy actions to support the state and society in the interests of health and well-being as regards noncommunicable diseases for the period up to 2020"; and
- to create the National (Ukrainian) Centre for public health.

In the light of this information the Committee considers it established that public information and awareness raising is a public health priority. It nevertheless asks that the next report contain information on the implementation of the different measures.

As regards screening the Committee recalls that there should be screening, preferably systematic, for all the diseases that constitute the principal causes of death (Conclusions 2005, Republic of Moldova). The Committee has ruled that "where it has proved to be an effective means of prevention, screening must be used to the full" (Conclusions XV-2 (2001), Belgium).

The report provides no specific information on screening and the Committee therefore reiterates that it has not been established that prevention through screening is used as a contribution to the health of the population. It again asks what mass screening programmes are available to the population.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 11§2 of the Charter on the ground that it has not been established that prevention through screening is used as a contribution to the health of the population.

## **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 Ukraine.

### ***Social protection of families***

#### ***Housing for families***

Ukraine has accepted Article 31 of the Charter on the right to housing. As all aspects of housing of families covered by Article 16 are also covered by Article 31, for states that have accepted both articles, the Committee refers to Article 31 on matters relating to the housing of families.

#### ***Childcare facilities***

The Committee recalls that as Ukraine has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

#### ***Family counselling services***

The report indicates that family counselling services are provided by Centers for Social Services to Family, Children and Youth, whose statutes were approved by the Decree of the Cabinet of Ministers No. 573 dated 8 January 2013. The Centers provide information, psychological, social, medical, legal and economic services to families facing difficulties.

#### ***Participation of associations representing families***

The report states that the Ministry of Social Policy cooperates regularly with community-based organisations for the framing of family policies. It provides examples of such organisations involved in the development of standards on services to families.

### ***Legal protection of families***

#### ***Rights and obligations of spouses***

The Committee refers to its previous conclusion (Conclusions 2011) for a description of the rights and obligations of spouses, in which it found the situation to be in conformity with the Charter.

#### ***Mediation services***

The report indicates that pursuant to the Order of the Ministry of Social Policy No. 537 dated of 3 September 2012 "On approval of the list of social services to be provided to persons in difficult life circumstances and unable to overcome them by their own efforts", mediation services are included in the list of social services. The national standards for mediation services are set by the Ministry of Social Policy.

The Committee notes that mediation services are provided free of charge. In accordance with the Law No. 2558 on social work with families mediation services are provided in cities, districts, townships and village centres.

#### ***Domestic violence against women***

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with the Charter on the ground that measures implemented to address the problem of domestic violence had not been sufficient.

The Committee takes note of several actions, projects and programmes taken to combat domestic violence such as the Action Plan for the National Campaign "Stop violence" up to 2015 and the annual action plan "16 days against violence".

It also notes that the Ministry of Social Policy has prepared a new draft law "On preventing and combating domestic violence", which has not entered into force yet. On 7 November 2011, Ukraine has signed the Council of Europe Convention on preventing and combating violence against women and domestic violence but has not ratified it yet.

The report indicates that in 2013 there were 126,498 women who lodged a complaint for domestic violence.

The Committee asks the next report to provide detailed information on the new legislation "On preventing and combating domestic violence". In the meantime, it considers that the situation is not in conformity with the Charter on the ground that it has not been established that there is an adequate legislation on domestic violence against women.

### ***Economic protection of families***

#### ***Family benefits***

According to the Law "On State Social Standards and State Social Guarantees" dated 5 October 2000, the minimum wage is a basic social standard used for determining social guarantees in Ukraine.

The Committee notes from MISSCEO, that child benefit amounts to 50% of the minimum wage for each child aged up to 16 years (18 if they are still at school) if the aggregate average monthly income per member of the family in the previous quarter did not exceed three times the amount of the minimum wage. If the family has more than three children the child benefit amounts to 100% of the minimum wage for three children and 200% of the minimum wage for four or more children. The Committee asks the next report to indicate the amount of the minimum wage.

The Committee considers that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of the median equivalised income. The Committee considers that *prima facie* child benefit could constitute an adequate income supplement. However, in view of the absence of the median equivalised income the Committee reserves its position on this issue. It asks the next report to provide the median equivalised income or similar indicators, such as the national subsistence level, average income or the national poverty threshold, etc.

The Committee wishes the next report to indicate the percentage of families receiving child benefit.

#### ***Vulnerable families***

In its previous conclusion (Conclusions 2011) the Committee asked what measures were taken to ensure the economic protection of Roma families.

The report states that the state social assistance to low-income families is provided also to Roma families who fulfil the required criteria.

#### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

In its previous conclusion (Conclusions 2011) the Committee noted that foreign nationals and stateless persons residing permanently in Ukraine and persons with refugee status have the same rights as Ukrainian citizens with regard to family benefits. In this regard, it asked



whether the granting of permanent residence was subject to a length-of-residence requirement.

The report indicates that the granting of permanent residence is subject to a length-of-residence requirement of three years from the date a person has been assigned the status of human trafficking victim. The Committee asks whether this condition applies with regard to family benefits. More generally, it also asks the next report to indicate the criteria to receive family benefits for foreign nationals, stateless persons and refugees and, if relevant, the criteria to get permanent residence. In the meantime, it considers that the situation is not in conformity with the Charter on the ground that it has not been established that there is equal treatment of nationals of other States Parties and stateless persons with regard to family benefits.

The Committee asks the next report to indicate whether refugees are treated equally with regard to family benefits.

### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 16 of the Charter on the grounds that it has not been established that:

- there is an adequate legislation on domestic violence against women;
- there is equal treatment of nationals of other States Parties and stateless persons with regard to family benefits.

## **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 Ukraine.

### ***The legal status of the child***

The Committee notes that the Law of 15 March 2012 on amendments to the Family Code has amended Article 22 of the Family Code and set the equal minimum legal age of marriage at 18 for both genders.

Pursuant to the Article 226 of the Family Code any adopted person is entitled to obtain information about his/her adoption after reaching 14 years of age.

### ***Protection from ill-treatment and abuse***

The Committee notes from the Global Initiative to End Corporal Punishment that corporal punishment is prohibited in all settings – in the home, in schools and in institutions.

### ***Rights of children in public care***

In its previous conclusion (Conclusions 2011) the Committee asked what were the criteria for the restriction of custody or parental rights and what procedural safeguards existed to ensure that children were removed from their families only in exceptional circumstances.

The Committee notes from the report that Article 164 of the Family Code defines grounds for restriction of parental rights, such as, among others, failure to fulfil child-rearing obligations, abuse of the child, engaging child into beggary or vagrancy etc. A parent deprived of parental rights, has the right to apply to the court for restoration of parental rights.

When deciding the case on restoration of parental rights of one parent, the court shall take into account opinion of the other parent and the other persons whom the child lives with.

Pursuant to the Article 170 of the Family Code a court may render a decision or a judgement to remove the child from both parents or from one of them, without depriving them of parental rights. In exceptional cases, if there is an immediate threat to the child's life or health, the guardianship and custody authority or the prosecutor have the right to decide the immediate removal of the child from the parents. Should the reasons that prevented proper child-rearing by his/her parents disappear, the court at the parents request may take a decision to return their child.

The Committee further recalls that placement must be an exceptional measure and is only justified when it is based on the needs of the child. The financial conditions or material circumstances of the family should not be the sole reason for placement (Conclusions 2011, Statement of Interpretation on Articles 16 and 17). The Committee also refers to the judgements of the European Court of Human Rights where the latter held that separating the family completely on the sole grounds of their material difficulties has been an unduly drastic measure and amounted to a violation of Article 8 (Wallová and Walla v. Czech Republic, application No. 23848/04, judgment of 26 October 2006, final on 26 March 2007).

The Committee notes that the information is still awaited on the outcome of the proceedings before the domestic courts in execution of the ECHR ruling in the case Saviny v. Ukraine. The Committee wishes to be kept informed about the execution of this judgment and asks whether children can be removed due to financial conditions or material circumstances of the family.

In its previous conclusion the Committee wished to be informed of the development of family-type care. It notes in this regard that the Governmental targeted social programme of reforming institutions for orphans and children deprived of parental care approved by the

Decree No 1242 of the Cabinet of Ministers of October 17, 2007 envisages establishment of conditions for placement of children in families or family-type facilities.

Due to the decrease in number of orphans and children deprived of parental care and implementation of family-type forms of care, oblast state administrations approved and implemented regional programmes to help reform and improve the residential institutions network of all types and to optimise their use.

In 2011-2013 Ministry of Education and Science approved reorganisation of 86 residential institutions into educational institutions of various types.

As a result of work carried out over the past three years, network of orphanages decreased by 49 units, from 113 in 2010 to 64 in 2013.

Decree of the President of Ukraine No 609 of 22/10/2012 approved the National Strategy for Prevention of Child Abandonment for the period until 2020. In the framework of this Strategy, the Ministry continues its work with local education authorities to reduce the number of children placed in institutions. Residential institutions for orphans and children deprived of parental care are intended for placement children who it is not possible to place in family forms (guardianship, custody, foster care, family type homes) for certain reasons.

The goal of the Strategy is to create duly conditions to exercise the right of every child to be cared in family, and to prevent child abandonment.

According to the report the Government implements a range of activities to ensure children's right to care in family environment and protect interests of orphans and children deprived of parental care. As of December 31, 2013, there were 881 small family type homes where 5890 children lived and 4199 foster families, where 7579 children lived. During 2013, 2488 children were placed in foster families and small family-type homes that is more than in all previous years.

As of December 31, 2013 family-type care (guardianship, custody, foster care, family type homes) covered 77,156 orphans and children without parental care, that is 85% of the total number of orphans and children without parental care.

Education authorities together with the heads of educational institutions establish conditions for education and care of orphans and children deprived of parental care, close to family-type ones, applying the principle of family living and childcare, and take steps to strengthen logistics of educational institutions.

The Committee wishes to be kept informed of the situation regarding foster care. As regards institutions, it asks what is the average size of a single institution.

### ***Right to education***

As regards the right to accessible and effective education, the Committee refers to its conclusion under Article 17§2.

### ***Young offenders***

The Committee notes the entry into force of the Code of Criminal Procedural on 20 November 2012.

The Committee also takes note of measures taken to improve the juvenile justice, such as preventive measures, the development of restorative justice programmes, establishment of an efficient system for rehabilitation of delinquents with the view to their re-education and re-socialisation. The Committee notes that in 2013 there were 726 young offenders serving a prison sentence.

The Committee asked in its previous conclusion whether young offenders were always separated from adults both in prisons as well as in pre-trial detention facilities. It notes that the report does not provide this information.

The Committee notes from the reply to its supplementary question to the Government that minors in detention are kept separately from adults. Pursuant to Article 197 of the Criminal Code the maximum duration of a pre-trial detention is six months for crimes of small or medium gravity and 12 months in respect of grave or especially grave crimes. The Committee asks whether young offenders can be detained for 12 months pending trial.

As regards whether young offenders serving prison sentence have the statutory right to education, the Committee notes from the report that to guarantee the right to education for juvenile prisoners the Department of Secondary and Preschool Education in cooperation with the State Penitentiary Service of Ukraine has prepared the Joint Order ( No. 691/897/5 of 10/06/2014) of the Ministry of Education and Science and the Ministry of Justice On approval of Procedure for organisation of teaching process in secondary schools at correction facilities and detention centers subordinated to the State Penitentiary Service.

According to the report, this legal act is innovative and was developed to implement principle of equal access to education for persons isolated from society. The Order has expanded powers of local educational bodies and local offices of SPSU for the establishment of secondary schools, delineated responsibilities of correctional facilities administrators and secondary schools administrations.

Moreover, the Committee notes that to organise vocational training for convicted juveniles in correctional institutions, 6 vocational schools and 1 branch of a vocational educational institution have been established, where 216 persons acquire a profession and training is provided for 19 licensed professions.

### ***Right to assistance***

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect that against negligence, violence or exploitation.

### ***Conclusion***

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 17 - Right of children and young persons to social, legal and economic protection**

### *Paragraph 2 - Free primary and secondary education - regular attendance at school*

The Committee takes note of the information contained in the report submitted by Ukraine.

In its previous conclusion (Conclusions 2011) the Committee asked for updated data regarding enrolment rates, absenteeism and drop out rates in compulsory education and measures introduced to improve school attendance, in particular in rural areas, and the results obtained.

The Committee notes from UNESCO Institute of Statistics that gross enrolment rate in secondary education stood at 98.9% in 2013. The Committee also notes from the report that as of September 2013, 624 children were not enrolled with the secondary educational institutions, while in December 2013 their number fell to 435.

In its previous conclusion the Committee asked for information regarding the situation of Roma children with regard to access and conditions of education.

It notes from the report that Roma children at the wish of their parents may attend preschool facilities at no cost or on privileged conditions. This also applies to secondary schools where Roma students are taught together with students of other nationalities and have the same right to quality education as others.

In September 2013 the Cabinet of Ministers approved the Action Plan on implementing Strategy of Roma Protection and integration into Ukrainian society for the period until 2020.

According to the report, education authorities representatives of local state administrations and local governments implement awareness raising measures with the Roma minority on the importance of education. Parents are invited to parent meetings, individual conversations where relevant specialists are involved. Permanent control is exercised over systematic school attendance by all students, including Roma students. School psychologists constantly provide psychological assistance to Roma students aimed at their successful adaptation in the educational process.

In order to ensure psycho-pedagogical support of Roma pupils who have difficulties with socio-psychological adaptation, psychological service specialists carry out correctional and developmental activities to enhance self-esteem of such students, reduce aggression and anxiety and develop tolerance. The Ministry of Education and Science has developed and published curricula in the Romani language for secondary schools.

The Ministry of Education and Science, the Institute of Postgraduate Pedagogical Education in cooperation with Roma community organisations carry out workshops, trainings, round tables for teachers from secondary schools, where Roma students are taught.

All regions provide vocational guidance to students of advanced school age on issues of vocational and higher education, including students from Roma minority.

According to Article 6 of the Law On General Secondary Education foreigners and stateless persons who are lawfully in Ukraine have access to the complete secondary education in the manner prescribed for the citizens of Ukraine.

The Ministry of Education and Science has also instructed (letter of 08/05/2012) the educational administrators to give access to unlawfully present children to general secondary education.

The Committee asks what assistance is provided to families in financial difficulties to cover hidden costs of education, such as school textbooks, transport etc.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Ukraine is in conformity with Article 17§2 of the Charter.

## **Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

### *Paragraph 1 - Participation in working life*

The Committee takes note of the information contained in the report submitted by Ukraine.

### ***Employment, vocational guidance and training***

In its previous conclusion (Conclusions 2011) the Committee wished to be informed of placement, counselling or training programmes for workers with family responsibilities. It notes from the report that pursuant to Article 7 of the Law of Ukraine On Employment everyone has the right to free vocational guidance and training.

Vocational guidance services are provided by educational institutions, healthcare facilities, rehabilitation facilities, medical and social expert commissions, territorial government bodies responsible for implementing the State policy on employment as well as by centres of vocational guidance for the population. Availability of up-to-date and high quality vocational guidance services for all segments of the population is ensured through the implementation of the Action Plan on implementation of the Concept of State vocational Guidance System of 2012.

The Committee also notes that the All-Ukrainian NGO "League of Social Workers of Ukraine" implements EU-funded project "Back to work: the reintegration of mothers and fathers in professional life after parental leave". Guidelines on the implementation of mechanisms for parents' reintegration have been developed which contain 15 chapters, each referring to implementation of a specific mechanism for reintegration after parental leave, such as professional training for staff, flexible time schedule, additional leave etc.

### ***Conditions of employment, social security***

In its previous conclusion the Committee asked whether workers with family responsibilities were entitled to social security benefits, in particular health care, during periods of parental/childcare leave. It also asked to what extent periods of leave were taken into account for determining the right to pension and for calculating the amount of pension.

The Committee notes from the report that pursuant to 13 of Article 11 of the Law of Ukraine On Compulsory State Pension Insurance the persons that are subject to mandatory state pension insurance include persons that obtain nursing aid for children under age of three. Therefore persons (mother or father) nursing a child under age of three will have their nursing leave included in their pensionable service period.

### ***Child day care services and other childcare arrangements***

In its previous conclusion the Committee asked if there was provision for other forms of financial assistance for the parents of children attending childcare facilities.

The Decree of the Cabinet of Ministers No. 1243/2002 on urgent issues of pre-school and residential educational institutions activity envisages that payment for child nutrition pursuant to the Law of Ukraine "On Preschool Education" shall not be made by parents in families where the total income per person in the previous quarter does not exceed the level of the subsistence minimum (guaranteed minimum) set annually by the Law on the State Budget. The Committee notes that reduced fees (50%) are charged to certain categories of families.

### *Conclusion*

The Committee concludes that the situation in Ukraine is in conformity with Article 27§1 of the Charter.

## **Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

### *Paragraph 2 - Parental leave*

The Committee takes note of the information contained in the report submitted by Ukraine.

In its previous conclusion (Conclusions 2011) the Committee asked what financial compensation or benefits were provided during the period of parental leave.

The Law On State Support to Families with Children provides for a nursing aid for children under age of three. The above aid is paid to one of the parents, adoptive parents, guardian, grandfather, grandmother or other relative who actually nursed the child. Since 2010, the amount of the aid was equal to the difference between 100% of the subsistence minimum and the average total family income per person in the previous six months, but it could not be less than 130 UAH (around € 13 in 2010). The Committee asks what is the average amount of parental benefit and how the average total family income is calculated. The Committee understands that if the family income is above the subsistence minimum, no benefit will be paid. It asks whether this understanding is correct.

The Committee recalls that under Article 27§2 of the Charter the States are under a positive obligation to encourage the use of parental leave by either parent. The States shall ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave.

The modality of compensation is within the margin of appreciation of the States Parties and may be either paid leave (continued payment of wages by the employer), a social security benefit, any alternative benefit from public funds or a combination of such compensations. Regardless of the modality of payment, the level shall be adequate (Statement of Interpretation on Article 27§2, General Introduction to Conclusions 2015).

The Committee notes that the amount of childcare aid (allowance) was modified in 2014, outside the reference period. It wishes to be informed of the latest amount in the next reference period.

According to the report, pursuant to the Article 2 of the Law of Ukraine On Leaves the right to leave is ensured by way of granting a leave of defined duration with retaining the job (position) and wages (benefits).

The Committee recalls that with a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided to each parent and at least some part of it should be non-transferable. The Committee understands that T at the request of a woman employee, leave for childcare may be granted until the child reaches the age of three. During this period aid is provided in accordance with relevant national legislation. This leave may also be taken by the father of the child, grandparents or other relatives taking care of the child (Article 179 of the Labour Code). The Committee asks whether there is a part that is individual and non-transferable for each parent.

### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

### *Paragraph 3 - Illegality of dismissal on the ground of family responsibilities*

The Committee takes note of the information contained in the report submitted by Ukraine.

### ***Protection against dismissal***

In its previous conclusion (Conclusions 2011) the Committee considered that the situation was in conformity with the Charter on this point.

The Committee notes from the report that Article 42 of the Labour Code envisages that in case of reducing the number of employees or staff in view of changes in organisation of production and labour, the preferential right to remain employed is provided to workers with higher qualification and productivity.

If the qualification and productivity are equal, an advantage in keeping employment is provided, in particular, to employees with family responsibilities who have two or more dependants and persons whose family has no other person with independent income.

### ***Effective remedies***

In its previous conclusion the Committee asked whether there is a ceiling to the amount that can be awarded as compensation. If so, it asks whether this upper limit covers compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation).

The Resolution of the Supreme Court "On judicial practice in cases of moral (non-pecuniary) damage" of 1995 provides that the court determines reimbursement of moral (non-proprietary) damages depending on the nature and extent of suffering (physical, emotional, mental, etc.), which the plaintiff experienced.

When determining the amount of the compensation for moral (non-pecuniary) damages, the court shall provide reasons for the decision. Cases of reinstatement and compensation of moral damages in connection with the unlawful dismissal shall be considered by one court.

### ***Conclusion***

The Committee concludes that the situation in Ukraine is in conformity with Article 27§3 of the Charter.



### **Article 30 - Right to be protected against poverty and social exclusion**

In application of the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, States were invited to report by 31 October 2014 on conclusions of non-conformity for repeated lack of information in Conclusions 2013.

The Committee takes note of the information submitted by Ukraine in response to the conclusion that it had not been established that there was an effective overall and coordinated approach to combat poverty and social exclusion (Conclusions 2013, Ukraine).

The Committee recalls that with a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. There should also exist monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. The measures taken to combat poverty and social exclusion must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance. It should be noted that this is not an exhaustive list of the areas in which measures must be taken to address the multidimensional phenomena of poverty and social exclusion. The measures should strengthen access to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions (Conclusions 2003, France).

Positive measures for groups generally acknowledged to be socially excluded or disadvantaged must be adopted by States Parties (International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 75/2011, decision on the merits of 18 March 2013, §197). Access to fundamental social rights is assessed by taking into consideration the effectiveness of policies, measures and actions undertaken (Conclusions 2005, Norway).

As long as poverty and social exclusion persist, alongside the measures there should also be an increase in the resources deployed to make social rights possible. Adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty, and should consequently be allocated to attain the objectives of the strategy (Conclusions 2005, Slovenia). Moreover, adequate resources are an essential element to enable people to become self-sufficient.

Finally, the measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned (Conclusions 2003, France).

The report provides no new substantive information, but merely states that a draft strategy on overcoming poverty is being prepared by an intergovernmental working group set up by Order No. 288/2015 of the Ministry for Social Policy and that the Committee's previous conclusion of non-conformity will be taken into account.

On this basis the Committee considers that there is no effective overall and coordinated approach to combat poverty and social exclusion. It reiterates the questions raised in the previous conclusion, in particular on measures taken to combat poverty and social exclusion, on any progress achieved, on resource allocations for these measures and on rights relating to civic and citizens' participation, such as the right to vote, which constitute a necessary dimension in achieving social integration and inclusion.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 30 of the Charter on the ground that there is no effective overall and coordinated approach to combating poverty and social exclusion.

## **Article 31 - Right to housing**

### *Paragraph 1 - Adequate housing*

The Committee takes note of the information contained in the report submitted by Ukraine.

### ***Criteria for adequate housing***

The Committee recalls that the notion of adequate housing must be defined in law. It must be applied not only to new constructions, but also gradually to the existing housing stock. It must also be applied to housing available for rent as well as to owner occupied housing (Conclusions 2003, France).

It also recalls that “adequate housing” means a dwelling which is safe from a sanitary and health point of view, i.e. it must possess all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity and must also be structurally secure, not overcrowded and with secure tenure supported by the law (Conclusions 2003, France; Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 43).

Despite the Committee’s request in its previous conclusion (Conclusions 2011) concerning the above mentioned issues the report provides no information. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that the right to adequate housing is not guaranteed.

### ***Responsibility for adequate housing***

The Committee recalls that it is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also take measures to avoid the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

Despite the Committee’s request in its previous conclusion (Conclusions 2011), the report still does not provide information in this regard. Once again, the Committee asks how adequacy of housing is monitored. It also asks whether rules exist imposing obligations on landlords to ensure that dwellings they let are of an adequate standard and to maintain them and how public authorities supervise such rules.

The Committee considers that the situation is not in conformity with the Charter on the ground that it has not been established that there is sufficient supervision for adequate housing.

### ***Legal protection***

The report states that Article 16 of the Civil Code provides that everyone has the right to apply to the court to protect his/her property or non-property rights and interests.

The Committee recalls that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial judicial or other remedies (administrative review, etc.) (Conclusions 2003, France). Any appeal procedure must be effective (European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81).

The Committee asks the next report to provide detailed information on legal protection in view of its case-law.

### ***Measures in favour of vulnerable groups***

The Committee concluded in its previous conclusion (Conclusions 2011) that insufficient measures were taken by the public authorities to improve the substandard housing conditions of vulnerable groups among them Roma and Crimean Tatars.

Concerning Roma, the Committee notes from the European Commission against Racism and Intolerance's (ECRI) fourth report on Ukraine adopted on 8 December 2011 that the access to adequate housing is still a matter of urgency for Roma. In this regard, ECRI underlines that measures are needed to facilitate the registering of Roma housing, to improve the infrastructure in and around Roma settlements and to assist in improving the quality of Roma housing. It also takes note of the Strategy of Roma national minority protection and integration into Ukrainian society for the period till 2020, which was approved by the Decree of the President on 8 April 2013 and the Action Plan implementing the Strategy, which was approved by the Decree of the Cabinet of Ministers on 11 September 2013 as well as other initiatives mentioned in the report. The Committee asks the next report to provide information on the implementation of the Strategy in order to assess the protection accorded to Roma. Meanwhile, it considers that the situation remains in breach of the Charter on the ground that it has not been established that measures are taken by public authorities to improve the substandard housing conditions of Roma.

The Committee asks the next report to indicate the measures that are taken on adequate housing in favour of internally displaced persons.

### ***Conclusion***

The Committee concludes that the situation in Ukraine is not in conformity with Article 31§1 of the Charter on the grounds that:

- the right to adequate housing is not guaranteed;
- it has not been established that there is sufficient supervision for adequate housing;
- it has not been established that measures are taken by public authorities to improve the substandard housing conditions of Roma.

## **Article 31 - Right to housing**

### *Paragraph 2 - Reduction of homelessness*

The Committee takes note of the information contained in the report submitted by Ukraine.

### **Preventing homelessness**

The report indicates that Guidelines for Preventing Homelessness till 2017 have been approved by the Cabinet of Ministers' Decree No. 162 on 13 March 2013. This Decree contains a list of measures on homelessness prevention and reintegration of homeless persons. The coordination of the actions of central executive authorities and other shareholders involved in resolving the issue of homelessness is performed by a permanent advisory body of the Government – the Council on Social Protection of homeless persons and persons released from prison – which was established in 2010. In order to improve the operation of facilities for homeless persons and increase the quality and accessibility of social services for these persons, the Ministry of Social Policy's Order No. 135 of 19 April 2011 approved the Typical Statute of a Registration Center for Homeless Persons. This Center is notably in charge of identifying and registering homeless persons, issuing a registration certificate, organising temporary shelters, delivering legal services, etc. The homeless person, including the one with children, foreigner and stateless person lawfully residing in Ukraine, in need of the services provided by the Center has to submit a written application and be over 18 years old. The network of facilities for homeless persons increased by 12% as compared with 2010, and as of 2014 consists of 102 facilities, including 92 facilities being in municipal ownership. It serviced about 24,000 persons in 2013 (17,000 persons in 2010; 21,000 in 2012).

The Committee takes note of all these measures. It asks the next report to indicate the number of homeless persons and whether the demand for emergency solutions corresponds to the offer.

On the issue of street children, the Committee refers to its conclusion under Article 7§10.

Concerning dormitory residents, the report indicates that on 21 June 2014 (outside the reference period) the National Targeted Program to transfer dormitories into ownership of local communities for 2012-2015 was approved. The Program will be funded out of the state and local budgets and other sources envisaged by law. The Committee asks the next report to provide information on the implementation of the National Targeted Programme.

### **Forced eviction**

Forced eviction is the deprivation of housing which a person occupied due to insolvency or wrongful occupation (Conclusions 2003, France). Under Article 31§2 States Parties must set up procedures to limit the risk of eviction (Conclusions 2005, Sweden).

In view of the importance of the right to housing, which is an aspect of individuals' personal security and well-being, the Committee attaches great importance to the relevant procedural safeguards (see Conclusions 2005, Sweden; see *mutatis mutandis* Eur. Court HR, *Connors v. United Kingdom*, judgment of 27 May 2004, §92). The Committee recalls that in order to comply with Article 31§2 of the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- a prohibition to carry out evictions at night or during winter;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction.

Furthermore, when evictions do take place, they must be:

- carried out under conditions which respect the dignity of the persons concerned;
- governed by rules of procedure sufficiently protective of the rights of the persons.

The Committee also recalls that when an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.

Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However, the criteria of illegal occupation must not be unduly wide. The eviction should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules (European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 51). Furthermore, the Committee observes that a person or a group of persons, who cannot effectively benefit from the rights provided by the legislation, may be forced to adopt reprehensible behaviour in order to satisfy their needs. However, this circumstance can neither be held to justify any sanction or measure towards these persons, nor be held to continue depriving them of benefiting from their rights (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18/10/2006, § 53).

The report states that according to part 3 of Article 47 of the Constitution a person may be evicted from his/her housing only on the basis of a court decision and in accordance with the law. Article 109 of the Housing Code provides that eviction from residential premises is permitted on grounds established by law. Eviction may be carried out voluntarily or by judicial procedure. Evictions by administrative procedure with the prosecutor's authorization is possible only with regard to squatters or persons living in homes with threat of collapse.

The Committee notes that in case of eviction due to insolvency or wrongful occupation, the person has the obligation of leaving the premises within the month when he/she receives a written request from the owner. If the person refuses to leave the premises during this period, compulsory eviction is carried out by judicial procedure. Eviction does not give rise to an alternative solution.

In view of the information provided, the Committee considers that the notice period before eviction of a month is not reasonable and the obligation to find alternative solutions to eviction is not fulfilled. It further notes that there is a lack of information on the other points relating to the legal protection of persons threatened by eviction. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that the legal protection for persons threatened by eviction is not adequate.

### ***Right to shelter***

In its previous conclusion (Conclusions 2011) the Committee concluded that the right to shelter was not guaranteed to persons unlawfully present in Ukraine, including children, for as long as they are in its jurisdiction.

The report indicates that the Decree of the Cabinet of Ministers No.1 110 of 17 July 2003 approved the Typical statutes of temporary shelter for foreigners and stateless persons who illegally reside in Ukraine. A temporary shelter for foreigners and stateless persons who illegally reside in Ukraine (hereinafter – temporary shelter) is a state-owned institution that is designed for temporary detention of foreigners and stateless persons. The temporary shelter aims at providing individual beds, 3 meals a day, utility services and health care. The Committee asks about the situation of those unlawfully present foreigners who are outside these detention centers.

In its previous conclusion (Conclusions 2011) the Committee asked clarifications on whether:

- shelters/emergency accommodation satisfy security requirements (including in the immediate surroundings) and health and hygiene standards (in particular

- whether they are equipped with basic amenities such as access to water and heating and sufficient lighting);
- the law prohibits eviction from shelters or emergency accommodation.

Furthermore, the Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited.

The report provides no information on the points mentioned above. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that it has not been established that the right to shelter is adequately guaranteed.

#### *Conclusion*

The Committee concludes that the situation in Ukraine is not in conformity with Article 31§2 of the Charter on the grounds that:

- the legal protection for persons threatened by eviction is not adequate;
- it has not been established that the right to shelter is adequately guaranteed.