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PART I – Conclusions of non-conformity to be discussed orally by the Governmental Committee – 1961 European Social Charter (ESC)

18 March 2016

**GOVERNMENTAL COMMITTEE
OF THE EUROPEAN SOCIAL CHARTER
AND THE EUROPEAN CODE OF SOCIAL SECURITY**

**Conclusions XX-4 (2015)
1961 European Social Charter**

Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Luxembourg,
Poland, Spain and the United Kingdom

Article 7§3 - Prohibition of employment of children subject to compulsory education

1. ESC 7§3 UNITED KINGDOM

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

The Committee notes from the report and from the information available on the Government's website (Child employment) that there are several restrictions on when and where children are allowed to work. Children are not allowed to work in the following situations:

- without an employment permit issued by the education department of the local council, if this is required by local bye – laws;
- during school hours;
- before 7am or after 7pm;
- for more than one hour before school (unless local bye – laws allow it);
- for more than 4 hours without taking a break of at least 1 hour;
- in places like a factory or industrial site; in most jobs in pubs and betting shops and those prohibited in local bye – laws; in any work that may be harmful to their health, well-being or education.

The Committee notes that during term time children can only work a maximum of 12 hours per week. This includes:

- a maximum of 2 hours on school days and Sundays;
- a maximum of 5 hours on Saturdays for 13 to 14-year-olds, or 8 hours for 15 to 16-year-olds.

During school holidays 13 to 14-year-olds are only allowed to work a maximum of 25 hours per week, as follows:

- a maximum of 5 hours on weekdays and Saturdays;
- a maximum of 2 hours on Sunday.

The 15 to 16-year-olds can only work a maximum of 35 hours per week during school holidays, as follows:

- a maximum of 8 hours on weekdays and Saturdays;
- a maximum of 2 hours on Sunday.

The Committee notes from the report that children subject to compulsory education may work up to 8 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.

The report indicates that according to national legislation, 14 is the minimum age at which children can be employed, although local authorities can allow through local bye – laws that children aged 13 do some forms of light work, such as delivering newspapers or working as shop assistants. 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). 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 (Conclusions XVII (2005), Netherlands). In order to assess the situation, the Committee asks how many hours per day, for what duration and in what intervals children may perform light work such as delivering newspapers or working as shop assistants.

The Committee notes that Section 18 (2A) of the Children and Young Persons Act 1933 defines the notion of "light work" as work which, on account of the inherent nature of the tasks which it involves and the particular conditions under which they are performed: (a) is not likely to be harmful to the safety, health or development of children; and (b) is not such as to be harmful to their attendance at school or to their participation in work experience, or their capacity to benefit from the instruction received or, as the case may be, the experience gained.

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 notes, from the information available on the Government's website, that local bye – laws list the jobs that children are not permitted to do. If a job is on this list, a child under the minimum school leaving age must not do this work. Local bye – laws may also contain other restrictions on working hours, conditions of work and the type of employment.

In its previous conclusion (Conclusions XIX-4), the Committee asked whether the possibility was being considered of extending the system, whereby a local authority may revoke an employment permit if it believes that the child's health, welfare or ability to take advantage of education is likely to suffer, to all local authorities or encouraging them to do so. In response to the Committee's question, the Government indicates that all local authorities already operate such a system and the Government is not aware of any local authority that does not use the system described above. The Government points out that it is, in any case, for each local authority to determine how best to ensure compliance with child employment legislation in its area. The Committee wishes to know whether there have been cases where local authorities have forbidden the employment of a child under the school leaving age or have imposed restrictions on the child's employment.

The Committee referred previously to its Statement of Interpretation on Article 7§3 (Conclusions XIX-4) and 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 the rest periods during the other school holidays are. The report indicates that a child must have a 2-week break from any work during the school holidays in each calendar year. The Committee notes that Section 18 (1) of the Children and Young Persons Act 1933 provides that "no child shall be employed at any time in a year unless at that time he has had, or could still have, during a period in the year in which he is not required to attend school, at least two consecutive weeks without employment". The Committee asks for confirmation that children have 2 consecutive weeks free from work during the summer holiday in the United Kingdom.

The Committee asks for more detailed information on how the Labour Inspectorate monitors possible illegal employment of young workers subject to compulsory education. The Committee wishes to know what sanctions are imposed against the employers who do not comply with the restrictions provided by law in relation to employment of young persons subject to compulsory education.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 7§3 of the 1961 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.

Historic elements

The situation is not in conformity on this ground for the first time.

Article 7§5 - Fair pay

2. ESC 7§5 CZECH REPUBLIC

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

Young workers

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee noted that according to Government Regulation No. 567/2006 Coll., an employee under 18 years of age is entitled to at least to 80% of the statutory minimum wage and the lowest level of guaranteed wage.

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 adult's starting or minimum wage. Since Czech Republic has not accepted Article 4§1 of the 1961 Charter, the Committee makes its own assessment on the adequacy of pay. From the information provided in the report, the Committee notes that the net minimum wage corresponds to only 39% of the net average wage, which is too low to secure a decent standard of living. Accordingly, the situation in the Czech Republic is not in conformity with Article 7§5 of the 1961 Charter.

The Committee recalls that 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). Therefore, even if young workers are paid at least 80% of the minimum statutory wage, the Committee considers that the right to a fair pay of young workers is not guaranteed since the reference wage itself is too low to secure a decent standard of living.

Apprentices

The report indicates that the level of remuneration of apprentices amounts to at least 30% of the minimum wage for the prescribed weekly working hours. In case of different working hours or in the event that no productive activities were performed by the young worker, the amount of remuneration is to be adjusted proportionally.

The Committee repeatedly asked information on the minimum amount of the allowances granted to apprentices in their last year of apprenticeship. As the report does not provide the requested information, the Committee considers that the situation is not in conformity with the Article 7§5 of the 1961 Charter on the ground that it has not been established that the apprentices' allowances are adequate.

Conclusion

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 7§5 of the 1961 Charter on the grounds that:

- the minimum wage of young workers is not fair;
- it has not been established that the apprentices' allowances are adequate.

Historic elements

The situation is not in conformity on this ground for the first time.

Article 8§1 Maternity leave

3. ESC 8§1 UNITED KINGDOM

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

Right to maternity leave

The regulations on maternity leave (Maternity and Parental Leave Regulations 1999), as amended, provide for up to 52 consecutive weeks' maternity leave for all employed women. However, only 2 weeks' postnatal leave is compulsory, except as regards factory workers, who are entitled to 4 weeks compulsory postnatal leave.

According to a survey mentioned in the report (research report No.777: Maternity and Paternity Rights and Women Returners Survey 2009/10, published on 6/10/2011 by the Department for Work and Pensions), about 87% of mothers entitled to maternity leave took more than 26 weeks off on maternity leave, and only 13% of them took a shorter leave, up to 26 weeks. The Committee notes from another, more recent, survey (Parental Leave Survey 2014, published in 2014 by the National Childbirth Trust – NCT) that 11.5% of women took less than 12 weeks leave, and 3.8% of women took less than the compulsory 2 weeks leave.

Under Article 8§1 of the 1961 Charter, States Parties have undertaken to ensure the effective right of employed women to protection by providing for women to take leave before and after childbirth up to a total of at least 12 weeks. In particular, the Committee has considered that in all cases there must be a compulsory period of leave of no less than six weeks after childbirth which may not be waived by the woman concerned. Where compulsory leave is less than six weeks, the rights guaranteed under Article 8 may be realised through the existence of adequate legal safeguards that fully protect 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, e.g. 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; and 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 (Conclusions XIX-4, 2011, Statement of interpretation on Article 8§1).

In the light thereof, the Committee reserved its position as to whether in the United Kingdom, in law and in practice, the women concerned are effectively protected against any undue pressure to shorten their maternity leave, and asked for information on the general legal framework surrounding maternity and any relevant agreements.

In reply to this question, the report refers to legislative measures aimed at protecting women from undue pressure from employers for reasons related to the taking of maternity leave and which qualify any dismissal occurring on these grounds as unfair dismissal (Employment Rights (Northern Ireland) Order 1996, as amended; Maternity and Paternity Leave etc. Regulations (Northern Ireland) 1999). The Committee notes that the legislation referred to concerns Northern Ireland, it asks the next report to confirm that similar provisions apply to the rest of the country and to provide any relevant example of case-law. The Committee furthermore notes from the government website that provisions on paternity and parental leave also exist and that further reforms in this area were planned to come into force after the reference period. It asks the next report to provide a comprehensive overview of the measures adopted in the field of maternity, paternity and parental leave, which safeguard the right of

employed women to choose freely when to return to work after childbirth. It reserves in the meantime its position on this issue.

Right to maternity benefits

Women are entitled to either Statutory Maternity Pay (SMP) from their employer or Maternity Allowance (MA) from the State. SMP can sometimes be supplemented by an Occupational Maternity Pay (OMP) from the employer. The Committee notes from the official survey referred to in the report (research report No.777: Maternity and Paternity Rights and Women Returners Survey 2009/10, published on 6/10/2011 by the Department for Work and Pensions) that 42% of mothers received SMP only, 32% received the SMP supplemented by the OMP, 4% received OMP only, 11% received MA and 11% received no maternity benefit.

SMP can be granted, up to a maximum of 39 weeks, to women who have worked for the same employer continuously for at least 26 weeks up to and including the 15th week before the week her baby is due, and have earnings in the last 8 weeks such that they were paying national insurance contributions. The amounts paid correspond, for the first six weeks, to 90% of the woman's average earnings, without any ceiling, while the following 33 weeks are paid at that 90% rate or, if lower, at a standard rate which was GBP 124.88 (€ 141 – rates at mid-April 2010) per week in 2010 and GBP 136.78 (€ 160 – rates at mid-April 2013) per week in 2013. In its last conclusion (Conclusions XIX-4 (2011)), the Committee concluded that during the reference period the rate was inadequate.

Women who do not qualify for SMP may be entitled to MA, up to 39 weeks, if they have been employed or self-employed for at least 26 weeks in the 66 weeks up to and including the week before the baby is due and have average weekly earnings of at least GBP 30 (€ 36 at 31 December 2013) over any 13 weeks period within the abovementioned 66 weeks. The Committee notes that MA is paid at 90% of the woman's average weekly earnings subject to a maximum weekly rate equal to the above-mentioned standard weekly rate of SMP. The report refers to the extension of the eligibility criteria to MA as from 2014; as these changes occurred outside the reference period, the Committee will examine them during its next assessment of the conformity with Article 8§1 of the 1961 Charter.

The report indicates that, in 2013, women in receipt of the minimum wage would receive SMP worth 66% of their wages over the 39-week payment period for SMP. If a worker in receipt of minimum wage received MA, her MA would be worth 62% of her wages over the 39-period. Average female weekly wages were GBP 327.50 (€ 392.2) in 2013, while the hourly rate of the minimum wage for workers aged 21 or more was GBP 6.31 (€ 7.5). With reference to its Statement of Interpretation on Article 8§1 (Conclusions XX-4 (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.

In its previous Conclusion (Conclusions XIX-4 (2011)), the Committee found that the situation was not in conformity with Article 8§1 of the 1961 Charter on the ground that the standard rates of Statutory Maternity Pay (SMP), after six weeks, and Maternity Allowance (MA) were inadequate. It recalls that Article 8§1 of the Charter requires maternity benefit to be at least equal 70% of the employee's previous salary (Latvia, Conclusions XVII-2 (2005)). In view of the set standard rates for Statutory Maternity Pay (SMP) after six weeks and Maternity Allowance (MA), the Committee considers that the level of maternity benefits continues to be too low and therefore inadequate.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 8§1 of the 1961 Charter on the ground that the standard rates of Statutory Maternity Pay, after six weeks, and Maternity Allowance are inadequate.

Historic elements

The situation is not in conformity on this ground since Conclusions XI-1 (1989).

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

4. ESC 16 DENMARK

The Committee takes note of the information contained in the report submitted by Denmark. It also takes note of the information contained in the comments by the Danish Institute for Human Rights of 7 July 2015.

The Committee understands that there have been no changes to the situation as regards childcare facilities, family counselling services, participation of associations representing families, rights and obligations of spouses and mediation services. It previously considered the situation to be in conformity on all these issues.

Social protection of families

Housing for families

Pursuant to the Danish Act on Social Housing, social housing is open to the entire population with a special focus on vulnerable groups with low income. Each tenant who wishes to have access to such housing has to put his/her name on a waiting list. In order to ensure social housing for vulnerable groups local authorities have a right to dispose of 25% of all vacant such dwellings. The waiting lists are then administered by non-profit housing organisations under the inspection of local authorities. The report indicates that there are approximately 600,000 social housing units representing 22% of the total number of dwellings. In 2013, 83,000 households with children with low income had 42% of the rent covered by housing benefit. Between 1 January 2010 and 31 December 2013, approximately 9,000 social housing family dwellings have been constructed or are under construction.

The Committee notes from the comments submitted by Danish Institute for Human Rights' (DIHR) that the policies for improving living conditions in the challenged social housing neighbourhoods have the inverse effect of preventing vulnerable tenants from moving into these neighbourhoods. The Committee therefore asks the next report to indicate what steps are being taken to remedy this situation.

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

The Committee asks the next report to provide detailed information on the legal framework ensuring the protection against unlawful eviction in view of the case law mentioned above.

As regards forced eviction, the report makes reference to several measures adopted by the Government aiming at preventing the eviction of tenants. First, the Ministry of Social Affairs in 2010 launched a very detailed information campaign guiding tenants and municipalities about different options to avoid eviction. Second, on 1 January 2012 the Government increased the financial aid for certain groups to improve the possibilities of paying the rent. Third, in 2011 and 2012 the Government provided financial support in order to hire counsellors on social housing. Fourth, as from 1 January 2013 the Government improved the opportunities for municipalities to provide financial aid for the payment of the rent, if it can prevent eviction.

With regard to Roma families, the report stresses that no special measures are taken to secure their right to housing since pursuant to the Social Housing Act they enjoy equal rights to nationals in accessing social housing. The Committee asks for information in the next report on the situation in practice as regards access to housing for Roma families.

Legal protection of families

Domestic violence against women

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee asked information on the action plan "National Strategy to Combat Violence in Intimate Relations", which had been launched in 2010. The Committee notes in this regard that the action plan aims at tackling the issue of domestic violence by:

- giving priority to prevention and early intervention in order to ensure that fewer children and teenagers grow up in homes touched by violence and if violence starts it will be stopped as quickly as possible;
- fast and effective help for victims of domestic violence followed by a long-term plan for helping the victims so that they can live without fear of further attacks;
- more research and collaboration among professional groups.

The Committee also notes that these activities and services are financed by the national budget, which allocated €4.7 million over a four-year period to more than 30 different initiatives in the frame of this National Strategy. It asks that the next report indicates the outcomes of this action plan.

The Committee notes from the DIHR comments, that in 2012 the regulations on restraining orders, barring orders and eviction were assembled in a single act with the purpose of strengthening the protection of victims exposed to violence and harassment. The act gives the police the authority to remove the aggressor from the shared home not allowing him or her to return in case of a well-founded assumption that the violence will continue. However, the DIHR stresses that each police district uses this instrument differently. The Committee asks the next report to indicate whether steps are taken to ensure a uniform and effective handling of cases about domestic violence in all police districts.

The Committee notes that Denmark ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence on 23 April 2014 (outside the reference period).

Economic protection of families

Family benefits

According to Eurostat data, the monthly median equivalised income in 2013 amounted to €2,238. According to MISSOC, as of 1 July 2014 the amount of the child benefit was for each child of 0-2 years €197 per month; for each child of 3-6 years €156 per month; for each child of 7-14 years €123 per month; and for each child of 15-17 years €123 per month. Child benefit represents a percentage of that income as follows: 8.8% for each child of 0-2 years; 6.9% for each child of 3-6 years; 5.4% for each child of 7-14 years and 5.4% for each child of 15-17 years.

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 median equivalised income. On the basis of the figures indicated, the Committee considers that the above-mentioned amounts of benefits are compatible with the 1961 Charter.

Vulnerable families

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee asked to be provided with up-dated information on the implementation of means to ensure the economic protection of various categories of vulnerable families, including Roma families. The report provides no information in this respect therefore the Committee 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 1961 Charter.

Equal treatment of foreign nationals and stateless persons with regard to family benefits

The Committee previously concluded (Conclusions XIX-4 (2011)) that the situation was not in conformity with the 1961 Charter on the ground that the length of residence requirements for ordinary and special child allowances was excessive. It also noted that the new legislation that was to enter into force on 1 January 2012 whereby entitlement would be "earned" gradually through periods of employment or residence in Denmark did not appear to bring the situation into conformity with the 1961 Charter. The report does not contain any new information on the length of residence requirements despite what was mentioned in the report of the Governmental Committee (Report concerning Conclusions XIX-4 (2011)). On this basis, the Committee considers that the situation remains in breach of 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 Denmark is not in conformity with Article 16 of the 1961 Charter on the ground that the length of residence requirements for ordinary and special child allowances for nationals of States Parties are excessive.

Historic elements

The situation is not in conformity on this ground since Conclusions XVIII-1 2006.

On the previous occasion, the Governmental Committee voted on a Recommendation, which was rejected (0 votes in favour, 27 against). The Governmental Committee then voted on a warning, which was also rejected (5 votes in favour, 19 against).

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

5. ESC 17 CZECH REPUBLIC

The Committee takes note of the information contained in the report submitted by the Czech Republic. It also takes notes of the information contained in the comments by certain NGOs (Liga lidských práv, MDAC, Forum Human Rights, LUMOS, Inclusion Europe, SPMP, QUIP, DownSyndrom CZ, Organizace Pro Pomoc Uprchlíkům) of 31 January 2015, in the additional comments by Forum Human Rights of 27 October 2015 as well as of the Government's complementary observation of 24 November 2015.

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 previous conclusion (Conclusions XIX-4 (2011)) the Committee found that the situation was not in conformity with the Charter as there was no explicit prohibition in legislation of corporal punishment in the home and in institutions.

In its decision on the merits of 12 December 2014 of Complaint No. 96/2013, Association for the Protection of All Children (APPROACH) v. the Czech Republic (§§ 49-51), the Committee noted that the provisions of the domestic law referred to in the context of this complaint prohibit serious acts of violence against children, and that national courts will sanction corporal punishment provided it reaches a specific threshold of gravity. However none of the legislation referred to by the Government sets 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 is no clear and precise case-law prohibiting the practice of corporal punishment in comprehensive terms. The Committee observed in particular that also the revised legal provisions (Act No. 303/2013 Coll.) may be read as separating all forms of corporal punishment from the notion of permitted "educational measures".

The Committee likewise took note of the domestic case-law on corporal punishment (§ 34). It noted that there was nothing in the legislation that would allow it to conclude that all corporal punishment would be automatically prohibited. The Government did not contest this. On the contrary, it stated that bodily harm needed to attain a specific threshold of gravity before it amounted to corporal punishment, and that physical punishment was allowed as long as it did not reach the prohibited level of intensity.

The report refers to Act No. 303/2013 Coll., amending certain acts in connection with the adoption of private-law recodification and provides that any person who uses inadequate educational means or restrictions against a child commits an offence, punishable in the form of a fine of up to CZK 50,000 (€ 1 821).

The Committee considers that the situation which it has previously held to be in violation with the Charter has not changed. It reiterates its previous finding of non-conformity on the ground that all forms of corporal punishment are not prohibited in the home and in institutions.

Rights of children in public care

In its previous conclusion the Committee noted that the number of children placed in institutional care was high despite the measures taken to reduce it and replace institutional care with foster care.

In this connection, the Committee particularly noted from the Observations of the UN Committee on the Rights of the Child (UN-CRC, 2011) that Roma children were

disproportionately represented among children in these institutions and continued to be removed from their families on the sole ground that the latter did not have a suitable and stable home, or that their economic and social conditions were not satisfactory.

The Committee notes from Comments of the Czech Republic on the Report by the Commissioner for Human Rights of the Council of Europe, following his visit to the Czech Republic from 17 to 19 November 2010 that on 7 December 2010 the Government adopted Resolution No. 882 on General Measures of the Execution of the Judgments of the European Court of Human Rights – Prevention of the Removal of Children from Parents' Care for Socio-Economic Reasons.

The measures provided for by the Resolution were based on the following premises:

- It is not permissible to remove children from family care solely on the ground of unsuitable housing or other social and economic reasons (unless the child's life, health or favourable development are at serious risk).
- If there are no doubts as to the parents' child-rearing abilities or their emotional ties to the children, the State has a positive obligation to provide the parents with adequate assistance in child rearing, including assistance to overcome the family's adverse housing and material situation which will make it possible for the children to stay in the family.

In this connection, the Committee notes from the report that the Social and Legal Protection of Children Act (No 359/1999 Coll.) explicitly states that insufficient housing conditions or means of a child's parents or other persons responsible for a child's upbringing may not be a reason for compulsory placement of a child in an institutional care facility if the parents are otherwise capable to ensure proper upbringing of the child.

The Committee further notes from the Resolution CM/ResDH(2013)218 of the Committee of Ministers that legislative measures were taken to execute the judgments of the European Court of Human Rights. The new Article 971(3) of the Civil Code explicitly stipulates that "inadequate housing conditions and material situation of parents of the child cannot **per se** be a reason for the court's decision on institutional care.

Amendment No. 401/2012 also made significant changes to the Family Act No. 94/1963. In particular, it is now explicitly prohibited for a court to order institutional care of a child solely for inadequate housing conditions or financial situation of his/her parents. Furthermore, a court can order institutional care for a maximum of three years with a possibility of extending such a period by a new decision for up to three years.

Amendment No. 134/2006 of 14 March 2006 of the Act on Social and Legal Protection of Children imposed on the competent public authorities a duty to provide parents, after a removal of children from their care, immediate and comprehensive assistance with a view to effectively reunifying the family. This task, **inter alia**, includes a duty to assist parents when applying for financial and other kinds of material benefits they are entitled to within the scheme of State social support.

The Committee notes from the information submitted by several NGOs that the number of children placed in institutional facilities has been on a downward trend from 7397 in 2011 to 6549 in 2014, which is true of both open (with or without school) and closed (for children with behavioural problems) institutional facilities. However, according to the NGOs, number of children placed in children's homes remain very high.

According to the report, the National Strategy to Protect Children's Rights for the period 2012-2018 aims at transforming child protection system into more supportive rather than restrictive, with an emphasis on preventive and remedial services rather than institutional care. However, according to the NGOs, the system fails to ensure adequate, accessible and affordable community-based services which would prevent institutionalisation of children such as family support, housing support, street-work and ambulatory services for children and families at risk.

Moreover, the Committee notes from the information provided by the NGOs that housing support is often not accessible to families in need. More than a half of all children placed in institutions place are still being placed there because their families do not have adequate housing and are not provided with any housing support.

The Committee asks the next report to provide information on the number of children taken into institutional care as opposed to foster care. It wishes to be informed, in particular, of Roma children and asks for evidence that the legislative measures implemented, as well as general awareness raising measures and implementation of the National Strategy have had a positive impact on the situation of Roma children in public care. In the meantime, it reserves its position on this issue.

Young offenders

In reply to the Committee's questions, the report states that Act No. 218/2003 Coll., regulating Liability for Unlawful Act of Youth and Court for Juveniles (Juvenile Justice Act), as amended, stipulates in Section 47 that pre-trial detention in juvenile cases must not take longer than two months. Only in cases of a particularly serious violation it must not last longer than six months. The maximum length of a prison sentence of a juvenile cannot exceed 5 years.

In reply to the Committee's question as to whether young offenders have a statutory right to education, the report states that juveniles are placed in special prisons for juveniles. Basic education is compulsory. The conditions for making it possible for young people serving a sentence to complete their compulsory education are stipulated in Act No. 169/1999 Coll., on Imprisonment and on the amendment to some related acts.

The Committee notes from the NGOs information that the juvenile system does not provide children below the age of criminal responsibility (15 years) with individualised treatment and restorative measures. Cases of children younger than 15 years (1371 children in 2012) are allegedly always brought before a juvenile court even for petty offences which is, according to the NGOs, unnecessary and harmful to a child. The Committee asks the next report to provide information in this regard.

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 that the UN-CRC remains seriously concerned about the continuing practice of detaining asylum-seekers, including children. While noting the ongoing efforts to improve the situation, the UN-CRC is concerned at the situation of detained asylum-seeking families and guardians with minors at the specialised detention centre in Bělá Jezová which does not meet the required standard for asylum-seeking children's well-being and their best interests.

The UN-CRC reiterates its recommendation to the Czech Republic to avoid any form of detention of asylum-seekers under 18 years of age. The UN-CRC further recommends that all possible alternatives are considered, including unconditional release, prior to detention and

emphasizes that this should not be limited to unaccompanied or separated minors, but extended to all cases involving children.

The Committee notes from the information provided by NGOs that the Czech Republic routinely detains families with underage children for immigration purposes and detention of such families is not used as a measure of last resort. Moreover, the conditions of detention are not adequate for accommodating families with children.

The Committee further notes from the additional information submitted by Forum Human Rights that the conditions in the detention centres (such as the detention centres in Běla-Jezová and Běla-Jezováfor) for unlawfully present families and children are very poor, in terms of environment, food, hygiene etc). The Committee notes in this respect from the Observation of the Government that in 2015 the public defender has acknowledged that the conditions of foreigners detained in Běla Jezová had improved in accordance with the recommendations made by the public defender of rights.

The Committee wishes to be informed of measures taken to protect the children in irregular situation from negligence, violence or exploitation.

Conclusion

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 17 of the 1961 Charter on the ground that all forms of corporal punishment are not prohibited in the home and in institutions.

Historic elements

The situation is not in conformity on this ground since Conclusions 2005.

On the previous occasion, the delegate of the Czech Republic did not indicate any steps to remedy the violation (Detailed Report concerning Conclusions XIX-4, §107).

In accordance with its Rules of Procedure, the Committee voted on a Recommendation, which was rejected (7 votes in favour, 23 against). The Committee then voted on a Warning on the same grounds, which was also rejected (10 votes in favour, 20 against).

6. ESC 17 UNITED KINGDOM

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

The legal status of the child

The Committee takes note of the Disclosure of Adoption Information Regulations 2005 No. 924 which set out the new framework for managing adoption information in respect of any adoption when an adoption order is made on or after 30 December 2005. The adoption agency became the main gateway for access to information, including birth record information.

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 not all forms of corporal punishment were explicitly prohibited in the home.

According to the report, the Government's position is unchanged. The Government takes the view that it should not be a crime for parents to give their children a mild smack. The law in Northern Ireland on the physical punishment of children is based on the concept of 'reasonable chastisement'. If a parent or adult smacks a child and is prosecuted, they can defend themselves in terms of reasonable chastisement but only if the harm is minor.

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 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 (*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 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 of children are prohibited in the home.

Rights of children in public care

In its previous conclusion the Committee asked whether there were procedural safeguards to ensure that children were removed from their families only in exceptional circumstances and whether the national law provided for a possibility to lodge an appeal against a decision to restrict parental rights.

The Committee notes from the report in this respect that there is a general presumption that children should remain with their families unless they are at risk of significant harm or neglect. Local authorities are required to consider a hierarchy of placement options, starting with rehabilitation with parents. The next option would be to seek placement with a relative, friend or connection person. Only if these options are not possible does a local authority seek a placement with a foster carer who is not a relative, or in a children’s home or other setting.

In reply to the Committee’s question, the report states that of the 28,830 children who started to be looked after in 2013, only 50 entered care due to low parental income.

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.

Young offenders

In its previous conclusion the Committee asked what was the maximum possible duration of remand for young offenders, including any extension that could apply.

The report states that the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act of 2012 introduced a new youth remand framework. Remands are a last resort. All 10 to 17 year- olds are treated as children for the purposes of remand by the criminal courts in England and Wales.

According to the Criminal Justice Act 2003 there is a statutory requirement that young people under 18 may not be sentenced to custody except as a last resort and then only for the shortest appropriate period. Overarching Principles – Sentencing Youths were published in 2009 which sets guidelines for the judiciary to follow.

The Committee notes that the time spent in custody is limited to a total of 182 days but may be extended by the court on application. Any time spent by a defendant remanded in custody is also subject to regular reviews. The Magistrates' Courts Act 1980 Sections 128 and 128A provide that the first review of a court decision to remand in custody must be made within 8 days. After this the decision to detain on remand must be reviewed no later than every 28 days. In addition to this the court is required to have regard to the remand status of the defendant at every court appearance and to hear any application for release on bail which includes new information that had not been presented to the court previously.

According to the report, when considering applications to extend custody time limits the court must have regard to Section 44 of the Children and Young Persons Act 1933: "Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training".

The Committee asks to be informed of the average length of remand for young offenders after the entry into force of the new youth remand framework.

In its previous conclusion the Committee asked what measures were taken to reduce the number of children in custody and ensuring that the control-punishment model is replaced with a child-centred approach and that custody is only used as a last resort for children. It also asked what was the proportion of minors who receive non-custodial intervention orders as opposed to those in custody.

In reply the report describes the existing procedures/systems relating to detention of 17 year-olds, including community sanctions and penalties. The Committee takes note of the youth rehabilitation with fostering as a high intensity alternative to custody as well as a referral order which is the primary community sentence for first time offenders aged 10-17 years. It also takes note of the custodial measures available in respect of young offenders under 18, such as detention in a place approved by the secretary of State, young offender institutions, security training centres, secure children homes etc.

The great majority of penalties imposed on young offenders do not involve the deprivation of liberty. In a small minority of cases (about 6% of those who admit or are found guilty of an offence), courts decide that only a custodial penalty is sufficient to meet the circumstances of the case.

The Committee takes note of a specialised assessment tool, known as ASSET, which can provide all relevant information about a young person being dealt with by the criminal justice system for those making decisions and having duties of care.

As regards the right to education, according to the report, in 2013 the Government published a consultation paper on transforming youth custody and putting education at the heart of detention. The document highlights how the Government is setting out plan to introduce a pathfinder Secure College, a new secure educational establishment which will put education at the heart of youth custody.

At present 15-17 year- olds in young offender institutions receive an average of only 12 hours contracted education a week. In Secure Children's Homes the educational ethos is to provide an individualised education for young people that does not allow the child to repeat the failures of their previous educational placements. Depending on their size and resources, these homes offer a range of educational interventions which have at their heart a commitment to ensuring that all the young people are furnished with numeracy and literacy skills. By providing 30 hours of education per week, the education provision is able to wrap around the child's needs.

In its previous conclusion the Committee found that the age of criminal responsibility was low and therefore, the situation was not in conformity with the Charter. In this regard, the Government's position remains unchanged. The age of criminal responsibility in England and Wales is 10 and 8 in Scotland. According to the report, it is believed that at the age of 10 children are old enough to differentiate between bad behaviour and serious wrong doing.

The Committee notes 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.

Right to assistance

In its previous conclusion the Committee asked whether unlawfully present children had access to shelter and medical care for as long as they were in the jurisdiction of the state party and if so, what was the legal basis.

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 children in irregular situation do have access to humanitarian assistance, including shelter and medical care in the United Kingdom.

The Committee further notes from the Fifth Periodic Report of the United Kingdom to the UN Committee on the Rights of the Child that in England, local authorities have a statutory duty to safeguard and promote the welfare of all children regardless of their immigration status or nationality. Unaccompanied asylum seekers and migrant children have the same status and benefits as children in care and have access to an independent advocate who can represent their wishes and feelings.

Conclusion

The Committee concludes that the situation in United Kingdom is not in conformity with Article 17 of the 1961 Charter on the grounds that:

- not all forms of corporal punishment are prohibited in the home;
- the age of criminal responsibility is manifestly low.

Historic elements

1st ground of non-conformity

The situation is not in conformity on this ground since Conclusions 2005.

On the previous occasion, the delegate of the United Kingdom did not indicate any steps to remedy the violation (Detailed Report concerning Conclusions XIX-4, §137).

2nd ground of non-conformity

The situation is not in conformity on this ground since Conclusions 2005.

On the previous occasion, the delegate of the United Kingdom did not indicate any steps to remedy the violation (Detailed Report concerning Conclusions XIX-4, §142).

In accordance with its Rules of Procedure, the Committee voted on a Recommendation, which was rejected (9 votes in favour, 11 against). The Committee then voted on a Warning on the same grounds, which was adopted (21 votes in favour, 6 against) (ibidem §146).

Article 19§6 - Family reunion

7. ESC 19§6 GERMANY

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

Scope

In 2011 the Act to combat forced marriages introduced an increase from two to three years of the minimum period for which a marriage must exist before a spouse can obtain his or her own residence title following their subsequent immigration (immigration for spousal reunion).

The Committee notes the addition of the possibility of a dependent minor child joining a parent provided the other parent consents, or a binding decision has been supplied by a competent authority. Furthermore, the Committee notes that for minor children over the age of 16 who do not relocate the focus of their life to Germany together with the parents or parent possessing sole right of care, they may only be granted a residence permit if it appears that they will be able to integrate into the way of life prevailing in Germany (except where the migrant is granted asylum or the migrant or his/her spouse possess an EU Blue Card or a settlement permit granted through the Blue Card system).

The Committee notes that children of majority age are entitled to family reunion if the authorities consider that a rejection of their application would place them in hardship (Residence Act, Section 36). Accordingly, the Committee notes that there has been a break from the past and children of majority age are no longer excluded from family reunion procedures, and finds that the situation with regard to the scope of family reunion is now in conformity with the 1961 Charter. Nevertheless in the absence of statistical data, the Committee requests that the next report provide examples of any guidance, including official guidelines and/or case-law, which defines or demonstrates the meaning of hardship, and which applies within the context of children of majority age.

The report further confirms that there is no distinction drawn between the spouses of first or second generation foreign nationals. In considering all the information available to it, the Committee determines that the situation in this regard is now in conformity with the Charter.

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). With regard to the expulsion of family members, the report describes the rights of family members of EU citizens to remain. The Committee notes that under Section 12 of the Freedom of Movement Act family members are afforded the same protection from expulsion as EU citizens provided they are deemed dependents within the meaning of the Act.

The Committee requests information concerning the guarantees against expulsion of family members of non-EEA migrant workers, particularly in the event that the migrant worker is expelled. In the meantime, it reserves its position on this issue.

Conditions governing family reunion

With regards to the length of residence required of migrants for family reunion, the report states that "it is only in the case of new marriages that the principal person with residence entitlement needs to be in possession of a residence permit for two years before arranging for a spouse to join him or her. If the principal person entitled is already married... this minimum period does not apply." The Committee notes that the requirement of having held a residence permit for two years applies in restricted cases, however, 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. Thus it maintains its previous conclusion (Conclusions XIX-4 (2011)) that the situation in Germany is not in conformity with the Charter because the requirement to hold a temporary residence title for two years in certain circumstances is too restrictive.

With respect to housing requirements, the Committee acknowledges Section 2 (4) of the Residence Act (AufenthG) which states that the space which is required to accommodate a person in need of accommodation in state-subsidised welfare housing shall constitute sufficient living space. Living space which does not comply with the statutory provisions for Germans with regard to condition and occupancy shall not be adequate for foreigners. Children up to the age of two shall not be included in calculation of the sufficient living space for the accommodation of families.

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 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 report states that the purpose of the requirement in Germany is to prevent a social gap between nationals and migrants, and to ensure that the living conditions meet generally applicable health and safety standards. The Committee asks for further information on the process of determining whether there is sufficient accommodation for migrants' families, and for examples of any guidelines or standards followed.

With regards to means requirements, the report states that not all state benefits are excluded from the appraisal of “secured subsistence” for the purposes of residence titles relevant to family reunion. The Committee notes Section 2 (3) of the Residence Act, which provides that:

The report states that a foreigner’s subsistence shall be secure when he or she is able to earn a living, including adequate health insurance coverage, without recourse to public funds. Drawing the following benefits shall not constitute recourse to public funds:

1. child benefits,
2. children’s allowances,
3. child-raising benefits,
4. parental allowances,
5. educational and training assistance in accordance with Book Three of the Social Code, the Federal Education Assistance Act or the Upgrading Training Assistance Act, or
6. public funds based on own contributions or granted in order to enable residence in Germany.

The Committee notes from the report that public funds under item (6) above include, for example, unemployment benefit. Furthermore, Section 2 (3) states that “other family members’ contributions to household income shall be taken into account when issuing or renewing residence permits allowing the subsequent immigration of dependants.” The Committee asks which family members’ contributions may be taken into account, and whether this legislation allows for inclusion of the earning capacity of the dependent who wishes to join the migrant in Germany in such calculations.

With respect to language requirements, the Committee notes that the requirement to speak German “at least on a basic level” (Residence Act Section 30(1)(2)) is disapplied under section 30 of the same Act in certain circumstances, e.g. where the foreigner is in possession of a residence title on the basis of a highly-qualified worker permit (Section 19) or an EU Blue Card (Section 19a), is engaged in research (Section 20) or self-employment (Section 21), or where:

1. the foreigner holds a residence title pursuant to Section 25 (1) or (2) or Section 26 (3) and the marriage already existed at the time when the foreigner established his or her main ordinary residence in the federal territory,
2. the spouse is unable to provide evidence of a basic knowledge of German on account of a physical, mental or psychological illness,
3. the spouse’s need for integration is discernibly minimal within the meaning of a statutory instrument issued pursuant to Section 43 (4) or the spouse would, for other reasons, not be eligible for an integration course pursuant to Section 44 after entering the federal territory,
4. by virtue of his or her nationality, the foreigner may enter and stay in the federal territory without requiring a visa for a period of residence which does not constitute a short stay, or
5. the foreigner holds an EU Blue Card.

Section 25 regards asylum seekers and those with refugee status; Section 26 also regards asylum seekers who have acquired settlement permits. The Committee understands that the language requirement therefore continues to apply to the spouses of non-EEA migrants, including nationals of the States party to the Charter.

From the information provided in the report and the government website, the Committee understands that the Residence Act Section 32 provides that children over the age of 16 wishing to move to Germany to live with one parent (not being the sole legal custodian) without

the consent of the other, or the order of a competent authority, must prove that they speak German and it must be apparent that they will be able to integrate into the German way of life.

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 XX-4 (2015)).

Consequently the Committee finds that the requirements to prove language proficiency for family reunion of spouses and children over 16 are not in conformity with the Charter because they present an obstacle to family reunion.

Conclusion

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

- **the requirement for migrant workers to hold a temporary residence title for two years in certain circumstances before being entitled to family reunion is too restrictive;**
- **the requirements to prove language proficiency for family reunion of spouses and children over 16 present an obstacle to family reunion.**

Historic elements

With respect to Article 19§6, Germany is not in conformity since 2000, however not necessarily on the same grounds. The second ground is a case of non-conformity since Conclusions 2011. I

8. ESC 19§6 SPAIN

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

Scope

The Committee recalls from its previous conclusions (Conclusions XIX-4 (2011)) that Organic Law No. 4/2000 grants foreign residents the right to family reunion with the following persons in particular: spouses (provided that they are not separated in practice or in law and that the wedding was not illegal); children (of the resident or the spouse) including adopted children, provided that they are under the age of 18 (the age of majority in Spain) or that they have a disability and clearly require the assistance of a third party because of their state of health; minors under the age of 18 and adults clearly requiring the assistance of a third party because of their state of health where the foreign resident is their legal representative and the legal document setting out their powers of representation complies with the principles of the Spanish legal system.

The Committee recalls that for the purpose of this provision, the term "family of a foreign worker" is understood to mean at least his wife and dependent children under the age of 21 years (Appendix to the 1961 European Social Charter).

With regard to adult children (within the meaning of Spanish law), the previous report, submitted on 2 November 2010, emphasised that no other exceptions were provided for by

the law than that of “disability” and hence that in practice it was impossible to arrange reunion for children who had reached majority in Spain, but were considered as being minors in countries of origin. It was also asserted in the same report that Spanish legislation was in line with the EU rules on this point. The Committee is aware of Article 4 of Council Directive 2003/86/EC on the right to family reunification, as referred to in the previous report and in the written information provided to the Governmental Committee (Report concerning Conclusions XIX-4(2011)). With respect to this, it would point out that Article 3 (2) (b) of the same directive states that the directive is without prejudice to more favourable provisions of instruments including the European Social Charter of 18 October 1961 and that this principle was recently upheld by the European Court of Justice (Case C-540/03, Parliament v. Council (2006) ECR, I-576).

In view of the foregoing, the Committee considers that dependent adult children (within the meaning of Spanish law), who are not disabled and do not require the assistance of a third party because of their state of health are excluded in law and in practice from the scope of the right to family reunion enshrined in Article 19§6 of the 1961 Charter. It asks again for detailed information in the next report, including figures, on any rejections of applications for family reunion by dependent adult children under 21 finding themselves in the situation described above. In the meantime, it reiterates its conclusion that in this regard the situation in Spain is not in conformity with the Charter.

The Committee requests that the next report provide complete and updated information concerning the scope of family reunion.

Conditions governing family reunion

The Committee notes that foreign residents who apply for family reunion are required to demonstrate that they have a job and/or sufficient economic resources to provide for their family's needs including medical assistance if they are not covered by social security. The required level of resources is determined in accordance with the number of people who would depend on the applicant. In this respect, the Committee repeats its question regarding whether the family members for whom family reunion is requested are entitled access to the public health care system.

The previous report presented by Spain states that during the evaluation of income for the purpose of reunion, income derived from the system of social assistance will not be recognised, while other revenue provided by the spouse who resides in Spain and cohabits with the requesting party will be taken into account. The Committee notes the information provided to the Governmental Committee (Report on Conclusions XIX-4 (2011)) according to which "neither contributive benefits nor non-contributive benefits have the character of social assistance, and therefore they may be taken into account in the requirement to show sufficient economic means at the time of application for authorisation of a temporary residence permit for the purpose of family reunion." 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. Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions XIX-4 (2011), Statement of Interpretation on Article 19§6). The Committee requests further information on which benefits are considered within social assistance and thus not recognised as income for the purposes of family reunion, and those which are not considered social assistance and therefore can be taken into account. In the meantime, it concludes that it has not been established that social welfare benefits are not excluded from the calculation of the worker's income for the purposes of family reunion.

Foreign nationals applying for family reunion must also prove that they have suitable accommodation to provide for their own needs and those of their family members. Certification that applicants fulfil this requirement must be provided by the local authority in which they reside within fifteen days of the filing of the application. Certification by the local authority may

be replaced by notarised deeds containing a document authorising the occupation of the dwelling and stating the number of rooms available, the purpose for which each room is designed, the number of persons living in the dwelling and the type of living conditions and amenities provided.

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 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§6 should in any case take account of the need to fulfil this obligation” (Conclusions VIII (1984), Statement of interpretation on Article 19§6).

Bearing in mind the foregoing, the Committee asks that the next report provide specific information, including figures, on any rejections of applications for family reunion based on the criteria relating to available means and housing. The Committee underlines that if this information is not provided in the next report, there will be nothing to show that the situation is in conformity with Article 19§6 of 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 that the next report provide a complete and up-to-date description of the legal framework for family reunion, including any requirements or restrictions such as language or health, and a description of the administrative process of consideration and appeal.

Conclusion

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

- **no provision is made in law or in practice for the family reunion of dependent children of migrant workers aged between 18 and 21 who do not have a disability and do not require the assistance of a third party because of their state of health;**
- **it has not been established that social welfare benefits are not excluded from the calculation of the worker’s income for the purposes of family reunion**

Historic elements

With respect to Article 19§6, Spain is not in conformity since 2002, however not necessarily on the same grounds.

In 2011, the negative Conclusion was based on the same two grounds as in 2015.

9. ESC 19§6 UNITED KINGDOM

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

Scope

The Committee takes note of the possibility of dependent children over the age of 18 to apply, with the prospect of favourable consideration, for reunification with their migrant parent. It asks for statistical information on accepted applications of children of migrants over the age of 18. In the meantime, it finds the situation in this respect to be in conformity with the 1961 Charter.

With regard to the deportation of the families of migrant workers, the Committee notes that where a migrant worker is expelled, a family member can make an application for leave to remain in the UK in their own right. The Committee asks whether this requirement to make an application gives rise to a presumption that the migrant's family will be removed, if they do not apply or their application does not succeed.

The report states that a family member of a non-EEA national may acquire a permanent right of residence after 5 years of continuous residence, or in accordance with EU law following Case C-310/08 Ibrahim and Case C-480/08 Teixeira (right of residence of the primary caring parent of a child of an EU national currently in education). The Committee considers that the protection of the families of migrant workers must be afforded to all migrant workers and their families on an equal basis.

The Committee recalls that the guarantees against expulsion contained in this paragraph apply to a migrant worker and his or her family members if these persons "should be able to reside lawfully within the territory of the state within the protection of the Charter". The right to family reunion provided for in Article 19§6 must be regarded as conferring on each of its beneficiaries a personal right of residence distinct from the original right held by the migrant worker (Conclusions XVI-1 (2002), Netherlands, Article 19§8).

The Committee recalls that decisions to expel migrants and/or their family members must be based on all the circumstances, and on an individual consideration of each case.

Therefore, the expulsion of a family member of an expelled migrant worker, without proof that in their own right they are a threat to national security, or offend against public interest or morality, is not in conformity with the 1961 Charter.

Conditions governing family reunion

The Committee notes from the Government website that a requirement has been introduced that family members seeking to join permanently settled migrants in the United Kingdom must demonstrate language competence at level B1. The Committee considers that these requirements are likely to hinder rather than facilitate family reunion and therefore are not in conformity with the 1961 Charter.

The Committee notes from the report that migrants from non-EEA countries must be able to show that they can support themselves and any family members without relying on public funds. While permitted to work in the United Kingdom under a temporary 'Tier system' visa, in order to satisfy the requirements for family reunification, "each dependant must have a certain amount of money available to them – this is in addition to the £945 (€ 1132) [the migrant] must have to support [him/herself]."

According to information published on the Government website, the amount depends on migrants' circumstances. A migrant must have £1,890 (€ 2 264) for each dependant if they are applying from outside the UK or have been in the UK for less than 12 months. If they have been in the UK for more than 12 months, they must have £630 (€ 755) for each dependant. The figures vary slightly between 'Tiers', i.e. for different categories of worker.

The Committee considers that migrant workers having gained permanent residence are still entitled to the protection of Article 19§6 (cf. Conclusions XIX-4 (2011) Germany). Therefore the more strict rules for settled immigrants in the United Kingdom also merit scrutiny. In 2012

the government introduced minimum income thresholds for settled migrants wishing to sponsor their relatives to join them in the UK, of:

- £18,600 (€25 470) per year for a spouse
- £22,400 (€30 840) per year for a spouse and one child
- £2,400 (€3 304) per year for each additional child

The Committee wishes to know to what extent the calculation of whether a migrant meets these thresholds may include entitlements to income from social assistance. The Committee considers that the existence of such a threshold, which it considers does not merely reflect the levels of income necessary to support a family, but is intended to prevent migrant families needing to claim benefits from the state, directly controverts the previous statement of the Government (30th report (2010)) that “applications for family reunion are not systematically refused on the grounds that such reunion could entail an increase on social benefits financed from public funds paid to the migrant worker”. A Home Office impact assessment published in June 2012 estimated that the chosen income threshold would prevent 17,800 family visas being granted every year.

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 XIII-1, Netherlands). It finds that the threshold of £18,600 (or more) in income is manifestly too high and is an undue hindrance to family reunion, given that, according to data collected by the Office for National Statistics, almost 50% of British workers do not earn this sum. Therefore it concludes that the threshold is not in conformity with Article 19§6 of the Charter.

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 asks what appeal mechanisms exist to challenge decisions against the grant of family reunion.

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 United Kingdom is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:

- **family members may be expelled following the deportation of their sponsor, without proof that they are a threat to national security, or offend against public interest or morals;**
- **the language requirements imposed on the family members of migrant workers are likely to hinder family reunion;**
- **the income requirement for migrants who wish their families to join them is too high and is likely to hinder family reunion.**

Historic elements

With respect to Article 19§6, the Conclusion was deferred in 2000 and 2011. The Conclusion was negative in 2002, 2004 and 2006, however not necessarily on the same grounds.

Article 19§8 - Guarantees concerning deportation

10. ESC 19§8 GERMANY

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

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 XX-4 (2015)).

The report states that the Residence Act (AufenthG) is currently being revised and is about to be comprehensively amended. The rules governing expulsion will also be revised as part of this amendment of the Act. The Committee notes that long term homelessness and claims for social assistance will no longer be grounds for expulsion from Germany. The Committee asks to be informed about these reforms and provided with specific details on the new provisions.

As to the situation during the reference period, the Committee acknowledges the information provided in the report. It notes, however, that the situation had not changed during this period. The Committee finds, notwithstanding that the individual's circumstances are taken into account, that the grounds for expulsion are overly broad. It recalls that it has consistently held that recourse to social welfare, homelessness and substance abuse, cannot be considered as grounds for expulsion permitted by Article 19§8.

The information provided concerning the exercise of these discretionary grounds is not sufficient to change the Committee's previous conclusion of non-conformity (Conclusions XIX-4 (2011)).

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 19§8 of the 1961 Charter on the ground that recourse to social welfare, homelessness and substance abuse remain grounds for expulsion.

Historic elements

With respect to Article 19§8, Germany is not in conformity on this ground since conclusions 2000.