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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

REPUBLIC OF MOLDOVA

This text may be subject to editorial revision.

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

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

The European Social Charter (revised) was ratified by the Republic of Moldova on 8 November 2001. The time limit for submitting the 15th report on the application of this treaty to the Council of Europe was 31 October 2018 and the Republic of Moldova submitted it on 12 February 2019.

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

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

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 2014 to 31 December 2017.

The present chapter on the Republic of Moldova concerns 19 situations and contains:

- 3 conclusions of conformity: Articles 7§2, 7§4 and 8§3;
- 8 conclusions of non-conformity: Articles 7§1, 7§3, 8§1, 8§4, 8§5, 16, 17§2 and 19§8.

In respect of the other 8 situations concerning Articles 7§7, 7§8, 7§9, 7§10, 8§2, 17§1, 19§7 and 27§2, the Committee needs further information in order to assess the situation.

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

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

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

The deadline for the report was 31 December 2019.

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

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

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

The Committee noted previously that under Article 46(2) of the Labour Code (Law No. 154/2003), the minimum age of admission to employment is 16. It noted however that, under 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 legal representatives and provided that the respective work will not cause harm to his health, development, education and vocational training (Conclusions 2015).

The report indicates that under Article 46 (4) of the Labour Code, the employment of persons under the age of 15 is forbidden. In its previous conclusion, the Committee asked whether the legal provisions prohibiting the employment of children under the age of 15 also applied to family businesses and private households, domestic work as well as to self-employed (Conclusions 2015). The report does not address this question. The Committee notes in the Report of the Governmental Committee concerning Conclusions 2015 (GC(2016)22) that according to the representative of the Republic of Moldova, employing children under 15 is prohibited by law with no exceptions. The representative of the Republic of Moldova mentioned that Section 46 of the Labour Code concerning the minimum age for admission to employment applies to all sectors of the national economy, including farms. She added that the prohibition to employ children under the age of 15 applies to all persons exercising a work activity, that meant all those for which the law prescribed the obligation to conclude an individual labour contract.

The Committee noted previously 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 the informal economy. The Committee also asked what were 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 (Conclusions 2015). It also recalled 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) and asked how work performed at home by children was monitored (Conclusions 2015).

The report indicates that it is prohibited to involve children in autumn agricultural work as it affects the educational process (Order of the Ministry of Education No. 393/2014). The report also mentions that during the reference period, activities for awareness-raising, informing and consulting the public on the most effective methods of applying the Labour Code and the Law on Health and Safety at Work have been carried out.

The report does not provide information on 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 Committee notes from a Direct Request of ILO CEACR that the Government stated that neither the Labour Code nor Law No. 140-XV of 2001 on State Labour Inspectorate exclude from their application enterprises from the informal economy or persons employed in the informal economy. The Government also stated that due to the hidden character of the work in the informal economy, the control and monitoring of the activities of persons employed in this sector presents certain difficulties. The same source indicates that according to data provided by the Child Labour Monitoring Unit (CLMU), in 2014, 142 children and young persons under the age of 18 years were identified as performing activities such as cooks and waiters, tailors, taking care of animals, washing cars and in agricultural works. The Committee also notes the Government's indication that following the inspections carried out in peasant households from 2012 to 2015, 20 minors, including 12 children aged up to 15 years, were found

working who were subsequently withdrawn. (Direct Request (CEACR) – adopted 2018, published 108th ILC session (2019), [Minimum Age Convention, 1973 \(No. 138\)](#) – Republic of Moldova (Ratification: 1999).

The Committee reiterates its request for information on the measures taken by the authorities, including by the labour inspection services, to detect cases of children under the age of 15 working on a self-employed basis or an unpaid basis in family enterprises or the informal economy.

In its previous conclusion (Conclusions 2015), 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 is not sufficiently precise in the national legislation. It noted that there was no list of light works that could be performed by children under the age of 15. In the absence of any new information in the report, the Committee reiterates its conclusion of non-conformity on this point.

The Committee notes from a Direct Request ILO CEACR 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 2018, published 108th ILC session (2019), 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.

With regard to monitoring, the Committee previously asked for 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 the prohibition of employment of children under the age of 15 (Conclusions 2015). 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 persons under the age of 18 (e.g. the standards regarding the reduced working time and minimum wage were not observed; no medical examination at recruitment, employment of children under the age of 15). The report states that the labour inspectors notified the employers to withdraw the persons under the age of 18 from work carried out in breach of the law.

The Committee notes in the Report of the Governmental Committee concerning Conclusions 2015 (GC(2016)22) that supervision of child labour was not ensured only by the Labour Inspectorate, but also by all institutions involved in education, health, social assistance, public order which shall cooperate in detecting situations when children were at risk. Any institution may inform/notify the Labour Inspectorate in case child labour was detected. In 2014, a toll-free telephone service for children was established by the Ministry of Labour, Social Protection and Family and implemented by the International Centre LA STRADA. The service would be available 24/24 hours, confidential and anonymous. During 2015, the operators of this telephone service received only three cases of potential exploitation of child labour.

The Committee takes note of the Concluding observations on the combined fourth and fifth periodic report of the Republic of Moldova 2017 of the Committee of the Rights of the Child by which the latter has recommended to the Republic of Moldova to (i) take measures to prevent children, in particular boys and children from rural areas, from being exploited, especially in the agricultural sector, by ensuring that the relevant legislation, including the Labour Code and the Criminal Code, are enforced; (ii) implement the National Action Plan on the Prevention and Elimination of the Most Serious Forms of Child Labour; (iii) strengthen the labour inspectorates and monitoring mechanisms, in particular, the Child Labour Monitoring Unit, and make data on the number of inspections and violations publicly available. The Committee asks that the next report provide information on the activities of authorities to monitor and prevent child labour, cases identified, and measures taken.

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

Conclusion

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 grounds that:

- the definition of light work is not sufficiently precise;
- the legislation on the prohibition of employment under the age of 15 is not effectively enforced.

Article 7 - Right of children and young persons to protection

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

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

The Committee noted previously 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). It also took note of the list of dangerous activities prohibited to young workers under 18, as established by the Government Decision No. 541 of 7 July 2014 (Conclusions 2015).

The report indicates that minors are not allowed to lift and manually carry the weights that exceed the maximum standards established for them (Article 255 of the Labour Code).

The report adds that the Collective Agreement on the Elimination of the Worst Forms of Child Labour (No 8 of July 12, 2007, amended by No 14 of November 22, 2013), signed by all social partners, states that employers should avoid employing children in activities which are mentioned in the list of dangerous activities prohibited to young workers, keep records of working children and ensure that all working children are under medical supervision.

The report provides information on the monitoring activities of the Labour Inspectorate, namely that one employer attracted a minor employee to hard work as a porter (in violation of Article 255 (1) of the Labour Code). The report indicates that the labour inspectors notified the employers to remove the minors from performing such activities.

The report further indicates that during the years 2014-2017, activities for awareness-raising, informing and consulting the public on the most effective methods of applying the Labour Code (Labour Code, Law No 54/2003) and the Law on Health and Safety at Work (Law No 186/2008) have been carried out. In order to increase awareness, inform and advise the legal and natural persons on the correct and efficient application of the legislation, as well as to ensure the transparency of the inspection activity, the State Labour Inspectorate published 58 articles in the local press, participated in 23 TV and 21 radio programmes broadcast by local media.

The Committee asks that the next report continue to provide information on the violations detected and sanctions imposed in practice 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 the Republic of Moldova

In its previous conclusion (Conclusions 2015), the Committee considered that the situation was 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 it cannot be qualified as light work.

The Committee noted previously that according to Articles 96 (2) and 100 (2)-(3) of the Labour Code, 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 (Conclusions 2015). The current report reiterates the same duration of working time for children.

The Committee notes from the Report of the Governmental Committee concerning Conclusions 2015 (GC (2016)22) that the representative of the Republic of Moldova mentioned that even if children aged 15-17 were subject to the following working time limits: 15-16 years – 24 hours per week and 5 hours per day, 16-18 years old – 35 hours per week and 7 hours per day, cases where students have been working 7 hours per day have not been registered (moreover that the course lasted about 5 hours a day, plus homework required at least few hours). She mentioned that child labor in general was not a widespread practice in the country. Since 2014, due to a Decision of the Ministry of Education, it is forbidden to involve students in agricultural work.

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 (Statement of Interpretation, General Introduction, Conclusions 2015).

The Committee notes that there have been no changes to the legal framework. In the absence of any evidence to show that the situation in practice fulfills the requirements of Article 7§3 of the Charter, the Committee maintains its conclusion of non-conformity 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 it has not been established that children subject to compulsory education are guaranteed two consecutive weeks of rest during the summer holiday (Conclusions 2015 and Conclusions 2017 – repeated lack of information).

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 notes that the report submitted by the Republic of Moldova contains no information in this respect. In the absence of any information on this point, the Committee reiterates its findings of non-conformity. It asks that the next report clarifies whether in the

Republic of Moldova, children who are still subject to compulsory education benefit of two consecutive weeks of rest during the summer holidays.

With regard to the monitoring, the Committee previously asked for 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 (Conclusions 2015). The Committee notes from the report that information was provided with regard to the violations identified by the labour inspectors in relation to work performed by persons under 18 years of age in general. The report however does not provide specific information on whether breaches were found in cases where children who are still subject to compulsory education perform work. The Committee therefore asks that the next report provide disaggregated data concerning violations found and measures taken by the Labour Inspectorate in relation to work performed by children who are still 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 duration of work permitted to children subject to compulsory education is excessive and therefore such work cannot be qualified as light;
- 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 the Republic of Moldova.

The Committee concluded previously that the situation was in conformity with Article 7§4 of the Charter (Conclusions 2015). The Committee noted 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 (Conclusions 2015).

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 the labour inspector has identified one case where the employer has established the working time of 8 hours for a young person under 18 in violation with Article 96 (2) of the Labour Code and another case of breach of the legislation related to reduced working time for young workers under 18 (in violation of Article 254 (1) of the Labour Code).

The Committee asks that the next report continue to provide information on the violations detected 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

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 the 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.

The Committee requested in its previous conclusion 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.

The Committee notes that the report submitted by the Republic of Moldova contains no information on Article 7§7. In the absence of any information, the Committee asks that the next report contains 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 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 the 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)

The Committee in its previous Conclusion (2015) asked 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.

The Committee notes that the report submitted by the Republic of Moldova contains no information on Article 7§8. In the absence of any information, the Committee asks that the next report contains information 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 defers its conclusion.

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 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 its previous Conclusion (2015) the Committee asked 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. The Committee notes that the report submitted by the Republic of Moldova contains no information on Article 7§9. In the absence of any information, the Committee defers its conclusion. It asks that the next report contains 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

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 notes that the report submitted by the Republic of Moldova does not provide information on the situation under Article 7§10 of the Charter.

Protection against sexual exploitation

The Committee previously asked the next report to indicate whether the amended legislation criminalises all acts of sexual exploitation, including grooming through the use of internet technologies, in respect of all children under the age 18. The Committee also asked whether children, victims of sexual exploitation whether or not linked to trafficking, can be held criminally liable (Conclusions 2015). The report provides no information on these issues.

The Committee notes from the Concluding Observations on the combined fourth and fifth periodic report of the Republic of Moldova [CRC/MDA/CO/4-5 (2017)] of the UN Committee on the Rights of the Child that the Republic of Moldova adopted new laws and measures to reinforce the protection of children, in particular the Law No. 315 on social benefits for children (2016), Law No. 140 on the Special Protection of Children at Risk and Those Separated from their Parents (2013), the establishment in 2016 of the National Agency for Social Assistance, the 2014 National Strategy on Child and Family Protection and its corresponding Action Plan, with a particular focus on deinstitutionalisation and prevention of violence against children.

The Committee further notes from the UN Committee's Concluding observations the increase in the number of cases of sexual abuse and exploitation of children, including within the family, and in particular among girls. It also noted reports of inaction by law enforcement officials in investigating cases and even their direct involvement as perpetrators of such abuses.

According to the Concluding observations 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 of the UN Committee on the Rights of the Child (CRC/C/OPSC/MDA/CO/1), there is a lack of reliable statistics on the number of children trafficked for sexual purposes internationally and domestically.

The Committee notes from the same source that the Republic of Moldova is becoming a popular destination for child sex tourism and that the measures taken by the authorities to counteract the sexual exploitation of children in tourism and the involvement of tourism agencies in recruiting and involving children in commercial sex for tourists have so far been insufficient.

The Committee recalls that in order to guarantee the right provided by Article 7§10, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in the sex industry. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions. The Committee requests that the next report indicate whether legislation criminalises all acts of sexual exploitation against children under 18 years of age and the number of child victims. The Committee also asks if child victim of sexual exploitation, whether or not related to trafficking, can be held criminally liable. It also requests information on measures taken to address the problem of child sex tourism. It considers that should the next report not contain this information there will be nothing to establish that the situation is in conformity with the Charter.

Protection against the misuse of information technologies

The Committee recalls that with a view to combating sexual exploitation of children through the use of internet technologies States Parties must adopt measures in law and in practice, 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 previously noted that draft legislation was under preparation to improve the protection of children sexual against exploitation on-line and asked to be kept informed of developments in this respect. The report provides no information. The Committee repeats its request for this information. It considers that should the next report not contain this information there will be nothing to establish that the situation is in conformity with the Charter.

Protection from other forms of exploitation

The Committee previously wished to be informed of measures taken to combat corruption in the specific field of trafficking. In the meantime it reserved its position as regards enforcement of anti-trafficking legislation. The Committee also asked 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 (Conclusions 2015).

The report provides no information on this issue.

The Committee notes from UN Concluding Observations of 2017 mentioned above that the Republic of Moldova remains one of the main countries of origin of child victims of trafficking abroad and that the number of such children continues to increase.

The Committee notes from GRETA's 2016 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Republic of Moldova, that child trafficking is criminalised in Article 206 of the Criminal Code. Paragraph 4 of this Article provides that a child victim of trafficking is exempted from criminal liability for actions committed by him/her in relation to his/her status as a victim. Article 32 of the Anti-Trafficking Law confirms this provision.

The Committee therefore reiterates its request that the next report provide updated information regarding the number of children victims of trafficking and measures taken to combat the trafficking of children.

The Committee notes from the UN Committee on the Rights of the child in its Concluding Observations of 2017 mentioned above expressed concern that that a large number of children are in streets situations.

According to the Qualitative Study on Children in Street Situations in the Republic of Moldova carried out in 2017 by Terre des hommes Moldova with the support of the Ministry of Health, Labour and Social Protection for many children, the first experiences with the street take place at a very early age, when they are of three or four years old. The main reasons children leave their homes are: parents' alcohol abuse, domestic violence, child abuse and lack of child supervision. Most of the children constantly run away from placement centres and from their families where they are taken by representatives of social services and/or police. At the same time, professionals have little knowledge about the specifics of children in street situations.

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

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

The Committee considers that should the next report not contain the information requested above 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 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

In its previous conclusion (Conclusions 2017), the Committee 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' prenatal maternity leave and 56 days of postnatal leave (which can be extended to 70 days in case of complicated or multiple births). Employers are required to grant maternity leave under the conditions set out in Article 124 of the Labour Code and, as a result, the women concerned may not waive this right, all the more so as Article 64§2 of the code provides that employees cannot decline any of the rights prescribed therein.

Right to maternity benefits

In its previous conclusion (Conclusions 2017), the Committee found that the situation was in conformity in this respect. According to the report, maternity benefit is awarded in full from the 30th week of pregnancy onwards for a period of 126 days (140 days in case of complicated or multiple births). Maternity benefit is equal to 100% of the average monthly wage for which contributions were paid in the 12 months prior to the manifestation of the risk insured. Under Article 16, paragraph 6, of Law No. 289 of 22 July 2004 on temporary disability benefits and other social insurance benefits, unemployed women registered with the health institutions are also entitled to maternity leave and benefits irrespective of the period for which they have contributed.

According to MISSCEO database, if during the period of these 12 months, the employee did not receive an income due to: sick leave, maternity leave, child care leave for children up to age 3, unemployment with right to an unemployment benefit, these months shall be included in the calculation with a monthly insured income equal to tariff wage quantum for the I wage category in the public sector or equal to the minimum guaranteed wage quantum in the real sector, applicable at the date of insured risk occurrence, or shall be substituted with the same number of calendar months immediately preceding the period included in the calculation, provided this would lead to an indemnity quantum increase.

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

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

In the absence of the EUROSTAT median equivalised income indicator, the Committee notes from official national statistics that, in 2017, the average disposable income was MDL 2,244.90 (€108.60 at the rate of 31 December 2017) and that the subsistence level was estimated to be MDL 1,862.40 (€90). In addition, the Committee notes that in 2017, average gross nominal earnings were MDL 5,671.10 (€275.70). The ILO report on wage regulations and practices in the Republic of Moldova states that, on 1 May 2017, the minimum wage was MDL 2,380 (€115.20) for private sector workers and MDL 1,000 (€46) for public sector workers.

The Committee notes that since the minimum wage in the public sector is lower than the national subsistence level, the situation is not in conformity with Article 8§1 of the Charter on the ground that the amount of maternity benefits is manifestly too low in the public sector.

The Committee asks for information on the median equivalised income and the minimum amount of maternity benefits during the reference period to be systematically included in all reports concerning Article 8§1.

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 the amount of maternity benefits is manifestly too low in the public sector.

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 Republic of Moldova.

Due to a lack of information in the previous report (Conclusions 2015), the Committee asked for detailed, up-to-date information on the implementation of Article 8§2 of the Charter, in law and practice. It pointed out that, should the next report fail to provide information on these aspects, there would be nothing to establish that the situation was in conformity with Article 8§2.

Prohibition of dismissal

The report states that Article 251 of the Labour Code prohibits the dismissal of women who are pregnant, with children under the age of four, and persons who are on childcare leave, except where the dismissal is the result of the liquidation of the undertaking or a disciplinary measure.

The Committee asks for confirmation that the prohibition on the dismissal of women who are pregnant or on maternity leave also applies to public sector employees.

Redress in case of unlawful dismissal

The report does not contain any information on redress in the event of unlawful dismissal. However, the Committee noted previously (Conclusions 2011) that in the event 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 action and compensation for the non-pecuniary damage incurred. Compensation for non-pecuniary damage is determined by the courts in view of the acts attributable to the employer. When reinstatement is not possible, or the employee does not wish to be reinstated, increased compensation is due, the amount of which cannot be less than three months of average salary (Article 90 of the Labour Code).

The Committee asks that the next report confirm the above information on the remedies available to women unlawfully dismissed for reasons related to their pregnancy or during maternity leave, to contest their dismissal. It also asks that the next report contain updated information on the number of requests for reinstatement made by employees dismissed during pregnancy or maternity leave. It asks for confirmation that the same rules apply to public sector employees. In the meantime, it reserves its position on this point.

Conclusion

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

Article 8 - Right of employed women to protection of maternity

Paragraph 3 - Time off for nursing mothers

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

The report indicates that under Article 108 of the Labour Code, in addition to standard rest and meal breaks, an employee is entitled to a leave of absence of at least 30 minutes every three hours until the child is three years old. A break of at least one hour every three hours is granted for women who feed two or more children. These breaks are counted as working time and remunerated based on the average salary. The same rules apply both to women employed in the private as in the public sector.

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

Conclusion

The Committee concludes that the situation in the Republic of Moldova 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 Republic of Moldova.

In its previous conclusions (Conclusions 2015 and 2011), the Committee 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 who are on maternity leave or have children below the age of three years old. It asked whether there were exceptions to this rule, whether the employed women concerned had the right to be transferred to a daytime work until their child was three years old and what rules applied if such a transfer was not possible. The Committee also pointed out that should the next report fail to provide the requested information, there would be nothing to show that the situation was in conformity with Article 8§4 of the Charter.

As the report does not contain any new information, the Committee reiterates its questions. It concludes that the situation 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 employed women who are pregnant, have recently given birth or are nursing their infant.

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

Conclusion

The Committee concludes that the situation in the Republic of Moldova 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 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 the Republic of Moldova.

The Committee deferred its previous conclusion (Conclusions 2015) and asked for comprehensive and up-to-date information on the implementation of Article 8§5 of the Charter, in law and practice; it also stated that should the next report fail to provide the requested information, there would be nothing to establish that the situation is in conformity with Article 8§5 of the Charter.

In response, the report states that Article 248 of the Labour Code prohibits employers from assigning women who are pregnant, have recently given birth or are nursing their infant to underground mining or any other work, which would pose a risk to their health and safety or could have an adverse impact on their pregnancy or breastfeeding. Government Resolution No. 1408/2016 adopted to apply these provisions, sets out the minimum health and safety requirements for women who are pregnant, have recently given birth or are nursing their infant. The Committee notes from the report that the number of complaints filed by women who are pregnant or on maternity or childcare leave decreased during the reference period (from 32 in 2014 to 7 in 2017).

In its previous conclusion, the Committee asked whether, when no reassignment was possible, the women concerned were entitled to be temporarily exempted from work and what their remuneration was in that case. It also asked whether in all cases they retained their right to be reinstated in their post when their condition permitted it.

However, the report does not contain all the information requested. Consequently, the Committee finds that the situation is not in conformity with Article 8§5 of the Charter on the ground that it has not been established that pregnant women, women who have recently given birth and who are breastfeeding are entitled to paid leave if it is impossible to transfer them to lighter duties. It further observes that the situation is not in conformity with Article 8§5 of the Charter on the ground that it has not been established that in case of reassignment to a different post, the law guarantees the employees' right to return to their previous employment at the end of their maternity/nursing period.

The Committee points out that Article 8 of the Charter provides specific rights protecting employed women during pregnancy and maternity (Statement of Interpretation on Articles 8§4 and 8§5, Conclusions 2019). Since pregnancy and maternity are gender-specific, any less favourable treatment due to pregnancy or maternity is to be considered as direct gender discrimination. Consequently, the non-provision of specific rights aimed at protecting the health and safety of a mother and a child during pregnancy and maternity, or the erosion of their rights due to special protection during such a period are also direct gender discrimination. It follows that, in order to ensure non-discrimination on the grounds of gender, employed women during the protected period may not be placed in a less advantageous situation, also with regard to their income, if an adjustment of their working conditions is necessary in order to ensure the required level of the protection of health. It follows that, in the case a woman cannot be employed in her workplace due to health and safety concerns and as a result, she is transferred to another post or, should such transfer not be possible, she is granted leave instead, States must ensure that during the protected period, she is entitled to her average previous pay or provided with a social security benefit corresponding to 100% of her previous average pay. Further, she should have the right to return to her previous post.

Conclusion

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 8§5 of the Charter on the grounds that it has not been established that:

- pregnant women, women who have recently given birth and who are breastfeeding their infants are entitled to paid leave if it is impossible to transfer them to lighter duties;
- in case of reassignment to a different post, the law guarantees the employees' right to return to their previous employment at the end of the maternity/nursing period.

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.

Legal protection of families

Rights and obligations, dispute settlement

The Committee previously examined the legal framework concerning **rights and obligations of spouses** and **settlement of disputes** (Conclusions 2011) and considered that it was in conformity with Article 16 of the Charter. The report does not provide any further information on these issues, nor does it provide the information requested (Conclusions 2015) about **mediation services** (availability in terms of geographical distribution, costs and conditions for access). The Committee accordingly asks the next report to provide comprehensive and updated information on all these points.

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

Domestic violence against women

The Committee recalls that States Parties are required to ensure an adequate protection with respect to women, both in law and in practice, in the light of the principles laid down in Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe to member States on the protection of women against violence and Parliamentary Assembly Recommendation 1681 (2004) on a campaign to combat domestic violence against women in Europe. It notes that these instruments have been superseded in 2011 by the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which is legally binding for the States which have ratified it. However, the Republic of Moldova has not ratified it yet.

The Committee previously took note of the adoption of a Law on Preventing and Combating Domestic Violence, which entered into force in 2008 (see Conclusions 2011) and asked for additional information on its implementation in practice. In view of the lack of evidence in this respect, the Committee concluded that it had not been established that there was adequate protection for women victims of domestic violence (Conclusions 2015 and 2017).

The report provides no new information, whether on prevention or protection measures, the setting up of integrated policies against domestic violence against women or the prosecution of such violence. The Committee notes the concerns expressed by the United Nations Human Rights Committee (HRC) in its Concluding Observations 2016 about reports of an increasing number of cases of domestic violence in the State party and the lack of prompt and effective investigation and prosecution of such cases. It furthermore notes that the European Court of Human Rights (ECtHR) has found several cases of violation of the European Convention on Human Rights (notably of Article 3, and 14 in conjunction with 3) on account of the authorities' failure to provide protection from domestic violence and their discriminatory attitude displayed towards the victims based on their gender. In particular, the ECtHR, considered that the combination of shortcomings noted in the way the authorities dealt with domestic violence clearly demonstrated "that the authorities' actions were not a simple failure or delay in dealing with violence against the first applicant, but amounted to condoning such violence and reflected a discriminatory attitude towards her as a woman. The findings of the United Nations Special rapporteur on violence against women, its causes and consequences (...), as well as statistical data gathered by the National Bureau of Statistics (...) only support the impression that the authorities do not fully appreciate the seriousness and extent of the problem of domestic violence in Moldova and its discriminatory effect on women" (case *T.M. and C.M. v. the Republic of Moldova*, application

No. 26608/11, Judgement of 28/01/2014). The Committee notes that the implementation of the measures required to prevent new similar violations is still under way.

In light of the foregoing, the Committee asks the next report to provide comprehensive and updated information on all aspects of domestic violence, including relevant statistical data and examples of case-law in order to assess in particular how the relevant legislation is interpreted and applied and its impact in preventing and reducing domestic violence. It considers in the meantime that the situation remains not in conformity with the Charter on the ground that there is no adequate protection for women victims of domestic violence, in law and in practice.

Social and economic protection of families

Family counselling services

In its previous conclusion (Conclusions 2015), the Committee noted that in 2013 a “Family welfare support service for families with children” was set up in 13 regional units and asked whether the relevant services were available throughout the country. As the report does not provide information in this respect, the Committee reiterates its question.

Childcare facilities

The Committee refers to its previous conclusions (Conclusions 2011 and 2015) for a general description of childcare facilities, which it considered to be in conformity with the Charter. It asks nevertheless the next report to provide updated information on the organisation of childcare, notably the distribution of childcare facilities across the country, the coverage with respect to the number and proportion of children aged 0-6 and the cost of childcare to parents.

Family benefits

Equal access to family benefits

With regard to equal treatment of foreign nationals and stateless persons regarding family benefits, the Committee concluded previously that the situation was not in conformity with Article 16 of the Charter on the ground that equal treatment with regard to access to family allowances is not guaranteed with respect to nationals of all the other States Parties (see Conclusions 2017). The report does not provide any information on this point. The Committee reiterates therefore its conclusion of non-conformity.

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 with respect to family benefits. The Committee asks for comprehensive information concerning the access to family benefits of foreign nationals of States Parties to the Charter.

Level of family benefits

The Committee previously asked for information on 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 (Conclusions 2015). The report does not provide the requested information.

The Committee recalls that under Article 16 the State must 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 level of family benefits, the report states that the monthly amount of the child-raising allowance is 30% of the average monthly insured income achieved during the last 12 calendar months, but not less than the fixed amount established for each child (see the national report on Article 8, paragraph 1). The Committee notes from MISSCEO that the monthly amount of child benefit for insured persons is 30% of previous average wage for 12 months, but not less than 540 lei per month [€27.75] and 540 lei [€27.75] per month for uninsured persons. In order to determine whether child benefit constitutes an adequate income supplement, the Committee asks for information on the level of median equivalised income or a similar indicator, such as the average income.

The Committee notes from MISSCEO that child raising allowance is awarded from birth till the age of 2 for uninsured persons and 3 years for insured persons. The Committee considers in this respect that the benefit in question does not cover a significant number of families and a significant number of children. It considers therefore that the family benefit does not ensure economic protection of a significant number of families by appropriate means and, thus, the situation is not in conformity with the Charter. The Committee asks the next report to indicate the percentage of families who receive the child raising allowance.

Measures in favour of vulnerable families

The Committee recalls that under Article 16, States Parties are required to ensure protection of vulnerable families, single parent families, Roma families, in accordance with the principle of equality of treatment. The Committee asks that the next report provide information on measures taken to ensure the economic protection of Roma families and other vulnerable families, such as single parent families.

Housing for families

In its previous conclusion (Conclusions 2015), the Committee asked for information about the application of the Housing Act adopted on 17 July 2014 and the results of a housing construction project for socially vulnerable groups (Phase II), which was due to be completed in 2018.

The current report provides information on the completion of this project, including the number of social apartments built and the financial resources allocated each year from the state budget to the project during the reference period. It states that a new law regarding housing has been adopted (Law No. 75/2015).

The Committee wishes to be provided in the next report with figures on the overall availability of social housing (number of applicants for social housing and number of those granted social housing). It notes in this connection the concerns expressed by the United Nations Committee on Economic, Social and Cultural Rights about the insufficient provision of social housing to marginalized groups and individuals (Concluding observations on the third periodic report of the Republic of Moldova, 6 October 2017, §§ 54-55). The Committee also asks the next report to provide information on Law No.75/2015, in particular as regards the existence of any remedies (judicial or non-judicial) concerning the right to adequate housing.

The Committee previously asked (Conclusions 2015) for information concerning the legal protection for persons threatened by eviction, in the light of the principles established in its case-law on this point. The Committee recalls that States must set up procedures to limit the risk of eviction. In order to comply with the Charter, legal protection for persons threatened by eviction must include (European Roma and Travellers Forum (ERTF) v. the Czech Republic, Complaint No. 104/2014, decision on the merits of 17 May 2016, §§ 81-82):

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to adopt measures to re-house or financially assist the persons evicted in case of eviction justified by the public interest;
- an obligation to fix a reasonable notice period before eviction;
- prohibition to carry out evictions at night or during winter;
- access to legal remedies;
- access 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 notes that the current report provides no information on these points. To determine whether the situation concerning families' access to housing is compatible with Article 16 of the Charter, the Committee asks for detailed information in the next report on all the aspects considered above. If the next report does not provide the necessary information, there will be nothing to show that the situation in the Republic of Moldova is in conformity with Article 16 in this respect.

As regards access to housing for Roma families, the Committee previously deferred its position on this point and asked for information in the next report on the steps taken to deal with the difficulty Roma have in finding housing. The current report provides no information on this point.

The Committee notes from the latest ECRI report on the Republic of Moldova (adopted on 20 June 2018, outside the reference period) that concerns continue to be expressed about the poor housing conditions of Roma, in particular in some Roma settlements (§ 82 of the report). The ECRI delegation visited *in situ* Hîncești, with limited access to drinking water, canalisation and a regular power supply, affecting children in particular. ECRI also noted that although the Law on Housing enacted in 2015 recognised Roma as one of the beneficiaries of social housing, its application was questionable due to the severe lack of financial resources. Other monitoring bodies have also expressed concerns about the housing situation of Roma during the reference period (Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth opinion on the Republic of Moldova, 25 May 2016, §§ 104 and 106). The Committee notes from the ECRI report that a new Action Plan for Roma for 2016-2020, which includes *inter alia* measures in the area of housing, was adopted.

The Committee therefore requests that the next report provide detailed information on the impact of the Action Plan for Roma on the improvement of housing conditions of Roma families, as well as on the funding allocated for its implementation. In the meantime, it considers that it has not been established that Roma families are adequately protected with respect of housing.

Finally, the Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015). In this connection, it notes from the latest ECRI report on the Republic of Moldova that the Government approved an Action Plan for 2016-2020 on the capacity of non-nationals such as migrants and refugees to have access without discrimination to education, employment, housing, health care and basic services. The Committee accordingly asks for information in the next report on the housing situation of refugee families and the impact of such Action Plan in this respect.

Participation of associations representing families

The Committee refers to its previous conclusion (Conclusions 2015), in which it noted that the relevant government departments hold public consultations with civil society.

Conclusion

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

- there is no adequate protection for women victims of domestic violence, in law and in practice;
- equal treatment with regard to access to family allowances is not guaranteed with respect to nationals of all the other States Parties;
- family benefits do not ensure economic protection of a significant number of families by appropriate means;
- it has not been established that Roma families are adequately protected with respect to housing.

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

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

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

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

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

Protection from ill-treatment and abuse

The Committee previously found the situation in conformity in this respect (Conclusions 2015). It recalls that all forms of corporal punishment are prohibited in all settings.

The report refers to a new definition of violence within the family introduced into the Penal Code in 2016, which will further strengthen the protection of children

Rights of children in public care

The National Strategy for Child Protection 2014-2020, contains several objectives strengthening the rights of children at risk including preventing the separation of children from their family, abolishing the institutionalization of children under 3 years of age, further de-institutionalising children and assisting children whose parents have migrated.

The Committee previously considered that the situation of the Republic of Moldova was not in conformity with the Charter as children can be taken into care due to the financial circumstances of the family (Conclusions 2015). The report provides updated information on the situation.

According to the report family support services are provided in 2 forms; primary family support and secondary family support. Primary family support includes information and awareness raising activities, support groups for parents and children, and community activities with children. Secondary family support measures include financial aid.

The Committee notes that the report provides information on the number of cases in 2016 and 2017 in which the Commission for Children in Difficulty issued directions for the provision of financial support of families in difficulty. In 2017, 1400 children benefited from financial aid. Further day care centres have been established for the care of young children of families with low income, in order to ensure that families can continue to work and care for their children.

The Committee asks whether the above mentioned measures have resulted in children not being separated from their families on grounds of financial resources alone and asks whether there is a prohibition in law on children being removed from their family on the grounds of financial resources. Meanwhile it defers its conclusion on this point.

The Committee previously asked the next report to provide information on the development of foster care or similar types of care in a family environment and on the number of children placed in foster care as opposed to institutions (Conclusions 2015).

No information was provided in the report.

The Committee notes from other sources [Opening Doors for Europe's Children Republic of Moldova: Country Fact Sheet 2018 (outside the reference period)] that the number of children living in institutions in Moldova has decreased by 90%: from 11,500 in 2006 to less than 1,100 in 2017. The number of children in family-based care increased two-fold between 2006 and 2017; the number of professional foster care families increased 9 times, and the number of children placed in a protective family environment increased 15 times (from 47 children in 2006 to 1,017 in 2017). During 2017, more than 800 children were successfully reintegrated in their birth or extended families.

In 2016, there were 32 institutions for children in the Republic of Moldova. In 2017, the number of institutions for children dropped to 27, with a total of 815 children. However the number of institutions for children with disabilities has remained the same. There is still no moratorium on the institutionalisation of children under 3 years of age (there were 127 children under 3 in institutions in 2017). There were also 1,071 children in Centres for Temporary Placement,

The Committee asks to be provided with information on trends in the field as well as information on the de-institutionalisation of children under the age of three years of age and children with disabilities.

It also asks for information on the monitoring of care in institutions and other types of alternative care. In this respect it notes that UN Committee on the Rights of the Child Concluding Observations on the combined fourth and fifth periodic report of the Republic of Moldova [CRC/C/MDA/CO/4-5, October 2017] expressed concern about the inadequate monitoring of the institutional placement of children.

As regards the number of children left behind in the state following their parents' migration abroad, the Committee notes that according to the report there are more than 30,000 children whose parents (or the only parent) have gone abroad for work, and guardianship has been established for only 10,900 children. The Committee notes the Government's intention to improve the situation of these children and it therefore asks what measures have been taken to ensure that such children receive adequate care and support.

Right to education

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

Children in conflict with the law

The Committee notes that the age of criminal responsibility is 14 years of age.

Concerning the maximum length of prison sentence that can be imposed on a child the Committee notes that, according to Article 70 of the Criminal Code in no case can a sentence longer than 10 years be imposed on a child.

According to the report 81 children are serving a prison sentence (79 males and 2 females).

The Committee notes that only children over the age of 16 years may be sentenced to prison, although for certain criminal offences children from the age of 14 may be subject to a prison sentence.

The Committee recalls that any period of detention imposed on a child must be exceptional and a measure of last resort, further it must be subject to regular review. The Committee asks whether prison sentences are regularly reviewed.

The report states that children convicted of a minor criminal offence may be exonerated from punishment (including imprisonment) and may be given a warning, be subject to educational measures, obliged to undergo psychological measures or participate in a probationary programme (Article 93 and 104 of the Penal Code). The Committee also asks how many children are on average subject to non punitive measures.

The Committee asks the next report to provide updated information on children in conflict with the law, including information on the maximum length of pre trial detention.

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

The Committee notes that children serving a period of detention are held in young offender institutions, they may also be also held in adult facilities but are separated from adult prisoners.

Right to assistance

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

The Committee previously asked what assistance is given to children in an irregular situation to protect them against negligence, violence or exploitation. The report does not provide this information. If this information is not provided in the next report, there will be nothing to show that the situation is in conformity with the Charter.

The Committee considers that the detention of children on the basis of their immigration status or that of their parents is contrary to the best interests of the child. Likewise, unaccompanied minors should not be deprived of their liberty, and detention cannot be justified solely on the grounds that they are unaccompanied or separated, or on their migratory or residence status, or lack thereof.

The Committee requests information on accommodation facilities for migrant children whether accompanied or unaccompanied, including measures taken to ensure that children are accommodated in appropriate settings and have access to healthcare. It also requests further information on the assistance given to unaccompanied children, in particular to protect them from exploitation and abuse. If this information is not provided in the next report there will be nothing to show that the situation is in conformity with the Charter. Lastly the Committee requests information as to whether children who are irregularly present in the State accompanied by their parents or not, may be detained and if so under what circumstances.

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

Child poverty

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

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

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

Conclusion

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 Republic of Moldova.

Enrolment rates, absenteeism and drop out rates

In its previous conclusion (Conclusions 2015) the Committee considered that the enrolment rate was too low (89.3% in 2008-2009, 87% in 2013-2014 in *gymnasium* (lower secondary) and 93,1% in primary schools and therefore, the situation was not in conformity with the Charter.

The Committee asked the next report to provide information about drop-out rates (Conclusions 2015).

The Committee notes from the report that the gross enrolment rate in primary education in 2016/2017 was 91.3% falling to 90.6% in 2017/2018. The corresponding rates for lower secondary education were 86.6% and 86.6%.

According to UNESCO in 2017 the net enrolment rate for primary education for both sexes was 86,31% the corresponding rate for secondary education was 82.07%.

The Committee asks for information as to why the enrolment rates seem to be decreasing. In the meantime it concludes that the situation remains not conformity with the Charter.

According to the report the number of children dropping out of school increased by 86 children (from 220 children, at the end of 2015-2016, to 306 children at the end of 2016-2017).

The Committee notes in this respect that the UN Committee on Economic Social and Cultural Rights [Concluding Observations on the third periodic report of the republic of Moldova [E/c.12/MDA/CO/3, October 2017] expressed concern at the low level of enrolment among young people in rural areas and Roma children and the high drop out rates including among children of Moldovan migrant workers abroad, at all levels of education

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

Costs associated with education

According to the report between 2014-2017, resources were allocated to provide school transport to certain pupils and improve access to schools.

The Committee asks whether assistance to help with the costs of school such as books and uniforms is available. In addition the Committee asks what measures have been taken to ensure that parents are not obliged to participate in the costs of public education by seeking contributions from them.

Vulnerable groups

The Committee previously noted 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 it noted that there was still a large number of Roma children who did not attend primary and secondary school education. According to a survey, the proportion of Roma children enrolled in pre-school education (age 3-6) was only 21% and the gross enrolment rate of children aged 6–15 in compulsory education was only 54%. 76% of Roma have only three or four years of school education. Therefore, the Committee found that the situation was not in conformity with the Charter in this respect (Conclusions 2015).

The Committee also previously asked to be informed about the measures taken to end the segregation of Roma children in education. It asked in particular whether there were Roma-only schools (Conclusions 2015).

The report provides no information on the situation. Therefore the Committee concludes that the situation remains not in conformity with the Charter in this respect. It asks again that the next report provide comprehensive information on the situation of Roma children.

The Committee notes that ECRI noted several reports pointing to an increase in the educational inclusion of Roma children, particularly at primary school level, owing mainly to Roma community mediators and civil society. However, ECRI noted that no recent data had been provided by the state authorities on the educational attainment of Roma children. According to the earlier data available from other sources, enrolment rates for Roma children are still lower than for non-Roma at all stages of education [ECRI report on the Republic of Moldova fifth monitoring cycle 2018, CRI(2018)34] (outside the reference period).

The Committee previously asked whether children in an irregular situation have a right to education (Conclusions 2015).

The report provides no information on the situation. If the information is not provided in the next report there will be nothing to demonstrate that the situation is in conformity in this respect.

The Committee notes from the report (see Conclusion under Article 17§1) that according to statistical data, in 2017 there were more than 30,000 children whose parents (or the only parent) have gone abroad for work, out of whom only 10,900 children have a guardian. The Committee asks what measures have been taken to ensure that these children access and continue in education.

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

Anti-bullying measures

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

The voice of the child in education

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

Conclusion

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;
- the measures taken to ensure that Roma children are enrolled in mainstream education are insufficient.

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

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

The Committee has assessed the access to legal aid for migrant workers in its previous conclusion ([Conclusions 2015](#)) and found the situation to be in conformity with the requirements of the Charter, pending receipt of the information concerning interpretation in cases where the defendant does not speak or understand the language of the proceedings. The report does not provide the requested information on who covers the costs of the interpretation in such cases.

Finally, the report does not reply to the Committee's request for further information, including any available data, on the use in practice of legal aid funded counsel and interpretation services by foreign nationals. The Committee thus renews its request.

The Committee underlines that should the next report not provide comprehensive replies to the Committee's questions, there will be nothing to show 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 8 - Guarantees concerning deportation

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

General principles

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

Guarantees concerning deportation

In its previous conclusion ([Conclusions 2015](#)), the Committee found that the grounds for expulsion were not in conformity with the Charter, in that they included situations in which migrant workers did not pose a threat to national security or offend against public interest or morality.

The report states that the reasons for expulsion of a foreigner are clearly delineated in the national law and apply after an analysis of all relevant circumstances. The Committee understands that the above mentioned offences which are not sufficiently related to public interest or morality, and as such do not constitute acceptable grounds for expulsion, continue to apply. It notes from the report of the Governmental Committee concerning conclusions 2015 ([GC\(2016\)22](#)) that the government considered a revision of certain criteria currently applied in the case of expulsion of foreign citizens. It asks the next report to provide information on any developments. Meanwhile, it considers that the situation continues to be in non-conformity with the Charter in this respect.

The report submits that the protection of migrants from expulsion was strengthened by the amendments of 2016 to the Law on the Regime of Foreigners, in that an appeal to a court against an expulsion decision was introduced. When examining the case, the court shall take into account the individual circumstances of the case.

Decisions issued with respect to a foreigner do not affect the members of his/ her family, who enjoy their individual right of residence. No expulsion may be ordered for reasons of public health.

The report also provides statistics on the number of expulsions in 2016-2017, stating that the violations of residence rules, followed by illegal work were the most frequent grounds for expulsion decisions.

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 law permits the expulsion of migrant workers in situations where they neither pose a threat to national security nor constitute a threat to 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.

The Committee deferred its previous conclusion (Conclusions 2015) and asked what financial compensation or benefits were provided during parental leave periods.

The Committee notes that the report provides information on paternity leave only. Therefore, the Committee recalls that the focus of Article 27§2 of the Charter is parental leave and its modalities which are distinct from maternity leave and come into play after the latter. Regulatory provisions related to maternity or paternity leave fall under the scope of Article 8§1 of the Charter and are examined under that provision.

As it cannot find an answer to its question, the Committee reiterates it. It asks for a full update on information on parental leave in the next report. It also asks whether fathers have a right to non-transferable leave and if so, for how long. The Committee points out that, should the necessary information not be provided in the next report, nothing will enable the Committee to establish that the situation in the Republic of Moldova is in conformity with Article 27§2 of the Charter in this respect.

Conclusion

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