



March 2020

# **EUROPEAN SOCIAL CHARTER**

European Committee of Social Rights

Conclusions 2019

**NORTH MACEDONIA**

*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.<sup>1</sup>

The European Social Charter (revised) was ratified by North Macedonia on 6 January 2012. The time limit for submitting the 6th report on the application of this treaty to the Council of Europe was 31 October 2018 and North Macedonia submitted it on 14 December 2018.

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

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

North Macedonia has accepted all the Articles from this group except articles 7§5, 19§§2 to 4, 19§7, 19§§9 à 12, 27§1 and §2 and 31.

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

The present chapter on North Macedonia concerns 22 situations and contains:

– 12 conclusions of conformity: Articles 7§2, 7§4, 7§6, 7§7, 7§8, 8§1, 8§2, 8§3, 8§4, 8§5, 19§5 and 27§3;

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

In respect of the other 4 situations concerning Articles 7§10, 17§1, 19§1 and 19§8, 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 North Macedonia under the Revised Charter. The Government consequently has an obligation to provide this information in the next report from North Macedonia on the articles in question.

The next report from North Macedonia 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.

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<sup>1</sup> The conclusions as well as state reports can be consulted on the Council of Europe's Internet site ([www.coe.int/socialcharter](http://www.coe.int/socialcharter)).

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

### *Paragraph 1 - Prohibition of employment under the age of 15*

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

The Committee noted previously that according to Section 18 (2) of the Law on Labour Relations, work of a child under the age of 15 or a child who is still subject to compulsory education is prohibited with the exception of participation in activities that do not have a harmful influence on the health, safety, development and education of children such as cultural and artistic activities, sport events and advertising activities (Conclusions 2015).

In its previous conclusion (Conclusions 2015), noting that children under 15 may be involved in light work for up to four hours per day, the Committee considered that the situation in North Macedonia was not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 was excessive and therefore could not be qualified as light work.

The report indicates that the Law on Labour Relations was amended in 2018 (outside the reference period) published in the Official Gazette No. 120/2018 in respect of the duration of working hours of light work and holidays for children. Article 18 (2) of the Law on Labour Relations now reads as follows: *“This Law shall forbid the work of a child under the age of 15 or a child who has not completed compulsory schooling, except for participation in activities allowed by law, but no longer than two hours a day and or 12 hours a week, and during the school holidays no longer than six hours a day or 30 hours a week, and during this period, the child is entitled to a two-week holiday.”*

The Committee welcomes this positive development in North Macedonia which brings the situation in conformity with the Charter on this point. However, noting that the legislation has been amended outside the reference period, the Committee concludes that during the reference period (2014-2017) the situation was still not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.

The report indicates that the amounts of fines established by the Law on Labour Relations have been amended. Section 265 provides that a fine in the amount of EUR 3,000 shall be imposed on an employer – legal entity if an employment contract with a person under the age of 15, who does not have a general health capacity, is concluded and work is performed contrary to Section 18 of the Law on Labour Relations. A fine in the amount of 30% of the actual fine shall be imposed on the authorised person of the legal entity for the same offences, and a fine in the amount of EUR 300 to 450 shall be imposed on an employer – natural person.

With regard to monitoring the situation in practice by the Labour Inspectorate, the report indicates that the State Labour Inspectorate conducts regular supervision of employers in all spheres, in accordance with their work program, and checks the employment contracts. The report mentions that there are no inspectors specialised in the protection of child labour, but all inspectors, at the beginning of the employment, receive appropriate training and they also attend other training activities for further education and improvement.

The report further mentions that during their work, inspectors conduct inspections, some of which – on the grounds of received complaints, and some are unannounced, and they have not established the existence and abuse of child labour, i.e. they have not detected employees younger than 15. The State Labour Inspectorate conducts inspections in risky sectors and critical geographical areas as well, not only upon received complaints.

During inspections in family undertakings, labour inspectors also detect children who, as family members, help in the work of the elderly, but they are not registered as employees. This phenomenon is most common in crafts and trade. The State Labour Inspectorate has

been aware that there are children who, as family members, occasionally work (help) in individual agricultural households.

The report further mentions that there is a call-centre within the Ministry of Labour and Social Policy, where abuse of child labour can be reported. Most of the calls and reports to this number refer precisely to the appearance of children on the street, and the cases are further processed by a competent Social Work Centre.

The Committee refers to its Conclusion on Article 7§10 of the Charter in respect of the situation of street children.

The Committee asks that the next report provide information on the measures taken or envisaged to ensure that children involved in the house chores /work done at home are protected against labour exploitation and how their situation is monitored by the authorities, including accurate data on the breaches identified.

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

### *Conclusion*

The Committee concludes that the situation in North Macedonia is not in conformity with Article 7§1 of the Charter on the ground that during the reference period the daily and weekly working time for children under the age of 15 was excessive and therefore the work could not be qualified as light.

## **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 North Macedonia.

The Committee refers to its previous conclusion where it found the situation to be in conformity with Article 7§2 of the Charter (Conclusions 2015).

The Committee took note previously that according to Section 173 of the Law on Labour Relations, young workers under 18 cannot perform hard physical work, work carried out underground or under water, work with sources of ionising radiation and other work that can have detrimental and increased influence on their health (Conclusions 2011).

The report indicates that the Law Amending the Law on Labour Relations (published in the "Official Gazette of the Republic of Macedonia" No. 129/15) amended the amount of fines. Under Article 265, a fine in the amount of € 3 000 shall be imposed on an employer – legal entity for failure to provide special protection to workers under the age of 18 years in accordance with the Law (prohibition of performing heavy physical activities, work under water, work with sources of ionizing radiation and other works that can harmfully affect health etc). For the same offences, the authorised person of the legal entity shall be fined in the amount of 30% of the actual fine for the legal entity, while a fine in the amount of € 300 to 450 shall be imposed on an employer-natural person.

In reply to the Committee's request for information on the activity of the Labour Inspection, the report indicates that during the regular inspections, inspectors have not detected workers younger than 15 years. The report further mentions that there have not been any complaints filed to the Inspectorate about workers younger than 15 years; therefore, no measures were taken on that issue.

The Committee asks that the next report provide information on the findings of labour inspectors with regard to the prohibition of employment of young workers under 18 in dangerous and unhealthy activities such as heavy physical activities, work under water, work with sources of ionizing radiation and other works that can harmfully affect health.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in North Macedonia is in conformity with Article 7§2 of the Charter.

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

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

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

The Committee noted previously that primary education is compulsory and starts at the age of 6 and lasts 9 years. It noted that secondary education is also compulsory which brings the age of young persons subject to compulsory education up to 18 or 19 (Conclusions 2011).

In its previous conclusion (Conclusions 2015), noting that according to section 18 (2) of the Labour Relations Law, a person under the age of 15 who has not completed compulsory school may work for a maximum of four hours a day in activities determined by law, the Committee concluded that the situation is not in conformity with Article 7§3 of the Charter on the ground that the duration of working time for children who are still subject to compulsory education is excessive and therefore cannot be qualified as light work.

The report indicates that the Law on Labour Relations was amended in 2018 (outside the reference period) published in the Official Gazette No. 120/2018 in respect of duration of working hours of light work and holidays for children. Article 18 (2) of the Law on Labour Relations now reads as follows: *“This Law shall forbid the work of a child under the age of 15 or a child who has not completed compulsory education, except for participation in activities allowed by law, but not longer than two hours a day, and not longer than 12 hours a week, and during the school holidays not longer than six hours a day, i.e. no longer than 30 hours a week, and during this period the child is entitled to a two-week holiday.”*

The Committee welcomes this positive development in North Macedonia which brings the situation in conformity with the Charter on this point. However, noting that the legislation has been amended outside the reference period, the Committee concludes that during the reference period (2014-2017) the situation was still not in conformity with Article 7§3 of the Charter on the ground that the duration of working time for young persons still subject to compulsory education is excessive and therefore cannot be qualified as light work.

The Committee took note previously the summer holiday lasts from 11 of June until 1 of September and asked how the authorities ensure that children who are still in compulsory education benefit of two consecutive weeks free from any work during the summer holidays (Conclusions 2015). The report indicates that the State Labour Inspectorate conducts inspections of employers whose work activities are performed by children younger than 18 years of age, according to the Law, in order to determine whether they use two consecutive weeks of rest during the summer vacation.

The Committee refers to its Conclusion on Article 7§1 where it took note of the new amounts of fines applicable under Section 265 of the Law on Labour Relations.

As regards supervision, the Committee asked for information on the activities and findings of the Labour Inspection or other authorities, including on violations detected and sanctions applied, in relation to light work performed by children who are still subject to compulsory education (Conclusions 2015). The report indicates that the State Labour Inspectorate has not found breaches regarding the work of children in compulsory education at employers in the formal sector. The Committee asks that the next report provide updated information in this sense.

### *Conclusion*

The Committee concludes that the situation in North Macedonia is not in conformity with Article 7§3 of the Charter on the ground that during the reference period the duration of working time for children subject to compulsory education was excessive and therefore the work could not be qualified as light.

## **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 North Macedonia.

The Committee noted previously that Section 18 of the Law on Labour Relations provides that young persons who are not subject to compulsory education (who have left secondary education) can work 30 hours per week if they are under 16 years of age and 37 hours and 45 minutes in case they are over 16 years of age. The same limits apply when the young person works for several employers at once (Conclusions 2015).

The Committee previously requested updated information on the rules applicable to rest periods for young persons under 18 years of age. The report indicates that under Section 174 (2) of the Law on Labour Relations, an employee who has not yet reached 18 years of age and works at least four and a half hours a day, is entitled to a break during working hours of at least 30 minutes. An employee under the age of 18 has the right to rest for 16 consecutive hours over a period of 24 hours.

With regard to the rest periods provided for young persons under 16 years of age who are not subject to compulsory education, the report indicates that Section 18 (7) provides that the maximum number of working hours for a young person under the age of 16 is 30 hours per week, including when the young person works for several employers at the same time. According to paragraph 9 of the same article, the working hours for a young person must not exceed eight hours in a 24-hour period.

Regarding the Committee's request for information on the Labour Inspection activities, its findings and sanctions that apply in case of violation of the applicable rules for reducing the working hours of young workers who are no longer subject to compulsory education, the report indicates that during their regular inspection supervisions, the labour inspectors did not detect violations of these provisions, nor did the inspectorate receive a complaint for violation of these provisions. The Committee asks that the next report provide updated information in this sense.

### *Conclusion*

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

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

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

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

The Committee finds that the situation, which was deemed to be compatible with Article 7§6 of the Charter in its last conclusion, is unchanged. In that conclusion (Conclusions 2015), the Committee asked how the Labour Inspectorate ensured that time spent on vocational training was included in normal working hours.

The report provides that the Inspectorate has not established violations of the provisions of the law.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation, if this is not effectively applied and rigorously supervised. Having noted that the Labour Inspectorate did not find any violations, the Committee asks that the next report contains information on the activities of the Labour Inspectorate concerning time spent on vocational training in normal working hours and on whether staffing levels and qualifications of Labour Inspectors are sufficient.

### *Conclusion*

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

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

### *Paragraph 7 - Paid annual holidays*

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

The Committee considered the situation in its last conclusion and found it to be consistent with Article 7§7 of the Charter.

According to the report, The Law Amending the Law on Labour Relations, published in the "Official Gazette of the Republic of Macedonia" No.129/15, changed the amount of fines, and according to Article 265, a fine in the amount of 3,000 euros in denar counter-value shall be imposed on an employer-legal entity if he/she fails to provide longer annual leave to employees who have not yet reached the age of 18 in accordance with the Law. For the same misdemeanour, the authorized person of the legal entity shall be fined in the amount of 30% of the determined fine for the legal entity, while a fine in the amount of 300 to 450 euros in denar counter-value shall be imposed on an employer natural person.

In its previous conclusion the Committee asked for information on the labour inspectorate's activities and notes that the situation in practice should be regularly monitored.

According to the report, the State Labour Inspectorate did not receive any complaints from younger workers about non-provision of these rights stipulated in the law.

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

### *Conclusion*

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

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

### *Paragraph 8 - Prohibition of night work*

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

In its last conclusion, it found that the situation in North Macedonia was compatible with Article 7§8 of the Charter (Conclusions 2011).

According to the report, the Law Amending the Law on Labour Relations, published in the "Official Gazette of the Republic of Macedonia" No.129/15 changed the amount of fines. Pursuant to Article 265, a fine in the amount of 3,000 euros in denar counter-value shall be imposed on an employer-legal entity if he/she employs workers under the age of 18 in night work. For the same misdemeanour, the authorized person of the legal entity shall be fined in the amount of 30% of the determined fine for the legal entity, while a fine in the amount of 300 to 450 euros in denar counter-value shall be imposed on an employer being a natural person.

The Committee in its previous Conclusion asked the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of night work for young workers under the age of 18.

According to the report, during inspections, labour inspectors have not detected workers under the age of 18 in night work.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation, if this is not effectively applied and rigorously supervised. Having noted that the Labour Inspectorate did not identify any violations, the Committee asks that the next report contains information on the activities of the Labour Inspectorate concerning possible illegal involvement of young workers under 18 in night work as well as on whether the staffing levels and qualifications of labour inspectors are sufficient.

### *Conclusion*

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

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

### *Paragraph 9 - Regular medical examination*

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

In its previous Conclusion, the Committee noted that young workers under 18 years of age are not subject to a mandatory medical examination at recruitment. The Committee considered that the situation is not in conformity with the 7§9 Charter on this point on the ground that a mandatory medical examination of young workers under 18 at recruitment is not guaranteed by national laws or regulations.

The Committee also in its previous Conclusion indicated that in the application of Article 7§9 of the Charter, domestic law must provide for compulsory regular medical check-ups for under-eighteen-year olds employed in occupations specified by national laws or regulations. These check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed. The obligation entails a full medical examination on recruitment and regular check-ups thereafter (Conclusions XIII-1 (1993), Sweden). The intervals between check-ups must not be too long. In this regard, an interval of two years has been considered to be too long by the Committee (Conclusions 2011, Estonia). Noting that the employers are under the obligation to provide medical checks of the employees at least every 24 months, the Committee considers that North Macedonia not in conformity with Article 7§9 of the Charter on the ground that the interval between the medical examinations for young workers during employment is too long.

According to the report, no legislative changes were made with regard to Article 7§9 of the Charter.

### *Conclusion*

The Committee concludes that the situation in North Macedonia is not in conformity with Article 7§9 of the Charter on the grounds that:

- a full medical examination of young workers under 18 at recruitment is not guaranteed by national laws or regulations;
- the interval between the medical examinations for young workers during employment is too long.

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

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

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

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

According to the report, a National Coordinating Body for the Protection of Children against Abuse and Neglect has been established under the chairmanship of the Minister of Labour and Social Policy to monitor and coordinate the implementation of activities for the protection of children against abuse and neglect. It is composed of representatives of all relevant ministries, as well as civil and international organisations.

The Committee notes from the report that the Ministry of Labour and Social Policy, with the support of UNICEF and the European Commission, and with the participation of civil society organisations, has carried out several activities to protect children from violence and abuse, including a study on violence against children and the comparative analysis of legislation on the protection of children from violence. A data collection system on violence against children has been developed.

The Committee also notes that in June 2012 a Special Register of Persons Convicted by Final Verdict of Sexual Abuse of Minors and Paedophilia was established,

With regard to the request for information on the legislative framework to protect children from sexual exploitation and sexual abuse, the report refers to the Appendix to the fourth report on the implementation of the European Social Charter (revised), which was submitted in January 2017.

The Committee notes from the Appendix to the fourth report submitted in 2017 that the Criminal Code criminalises all acts of sexual exploitation of children, including child pornography (and simple possession) and child prostitution where the child is under the age of 18 (Conclusions 2017).

The Committee asks the next report to provide updated information on measures taken to combat the sexual exploitation of children including information on a National Action Plan to combat sexual exploitation of children.

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

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

In response, the report refers to Article 193-a of the Criminal Code which criminalises the production of child pornography for the purpose of distribution, transfer or supply, or in any other way to make it available (§1), the purchase of child pornography for oneself or others, as well as the possession child pornography (§2). The penalty is aggravated if the offence was committed through Internet technologies (§3).

The Committee notes from the Report of GRETA concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by “the former Yugoslav Republic of Macedonia” (2017) that the Ministry of the Interior has created an application, “Red Button”, for reporting crimes, including child pornography and child abuse. Information about suspected offences can also be submitted by e-mail to the Sector for Cybercrime and Digital Forensics at the Ministry of the Interior. In order to detect criminal offences in the area of child pornography, the Sector for Cybercrime and Digital Forensics carries out proactive investigations on the Internet, in particular of social networks, in order

to detect perpetrators, places where child sexual abuse images and materials is exchanged and cases of child abuse.

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

In view of the constantly growing impact of the Internet on the lives of children, the Committee requests information on any new measures adopted in law and practice to combat sexual exploitation of children through the use of Internet technologies.

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

The Committee previously asked to be kept informed about the implementation of the national action plans on child trafficking as well as the statistics regarding the identification of victims and prosecution of perpetrators.

In response to this question, the report states that trafficking in children is a criminal offence under Article 418d of the Criminal Code. Pursuant to the 2015 amendments to the Criminal Code, the list of exploitative purposes in Article 418d has been expanded to include exploitation for the purposes of begging and exploitation for illegal activities. The penalties have been increased when the victims are under 14 years of age.

The Committee notes from the Report of GRETA mentioned above that, according to the statistical data provided by the national authorities, 33 victims of trafficking were officially identified in the period 2013-2016, including 21 children.

The Committee requests 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 further notes from the GRETA report that the existence of children in street situations is a persistent phenomenon in North Macedonia. The 2015 report of the State Statistical Office on "Social Welfare for Children, Juveniles and Adults" mentions 161 registered children in street situations.

The Committee recalls that under Article 7§10 of the Charter, States must prohibit the use of children in forms of exploitation such as domestic/labour exploitation, including trafficking for the purposes of labour exploitation and begging. States must also take measures to prevent and assist street children. In all these cases, States Parties must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that this legislation is effective in practice.

It requests to be informed of the measures taken to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas.

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

### ***Conclusion***

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

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

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

***Right to maternity leave***

In its previous conclusion (Conclusions 2015), the Committee noted that the situation was in conformity with Article 8§1 of the Charter with regard to the length of leave and compulsory maternity leave: women are entitled to 9 months' paid maternity leave, including 28 days' compulsory leave before the birth and 45 days' postnatal leave. The report confirms that these rules also apply to public sector employees.

The report states that, following amendments to the Law on Labour Relations during the reference period (Official Gazette No. 72/15), paid maternity leave for multiple births was extended from 12 to 15 months.

***Right to maternity benefits***

In its previous conclusion (Conclusions 2015), the Committee asked whether the same rules applied to public sector employees. The report explains that the legislation makes no distinction between the two sectors, with the result that women working in the public or the private sectors have the same rights to maternity benefit.

As to the question on the required conditions to be entitled to maternity benefit, the report states that they are set out in the Law on Health Insurance and are as follows: employees are required to have contributed to the compulsory health insurance scheme for at least six months before childbirth, to have paid contributions regularly and on time (with no more than 60 days' delay) and to produce a certificate of temporary incapacity to work issued by their general practitioner. According to the report the same provisions apply to public sector employees. The Committee notes that under Article 17§1 of the Law on Health Insurance, benefits amounting to 100% of the average net monthly wage of the mother in the twelve months prior to maternity leave are paid throughout the leave period.

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

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

According to Eurostat data, the median equivalised annual income was €2,439 in 2017, or €203 per month. 50% of the median equivalised income was €1,220 per annum, or €102 per month. 40% of the median equivalised income was €81 per month.

The report states that in 2017, the minimum amount of monthly maternity benefit was MKD 5 854 (€95). The Committee notes that the level of maternity benefits (€95 [46.8%]) falls between 50% and 40% of the median equivalised income.

However, the Committee notes that according to the report, under Article 36 of the Law on Child Protection adopted on 12 February 2013, a one-off first-born baby allowance of MKD 4,829 (€78) was introduced for one of the parents, under certain conditions (citizenship, permanent place of residence, place of birth). Given that this one-off allowance may be

combined with the minimum monthly maternity benefits, the ultimate minimum amount is higher than 50% of the median equivalised income in the case of a first-born baby (51.1%).

However, the Committee asks whether maternity benefits may also be combined with other benefits. In the meantime, it reserves its position on this matter.

In its previous conclusion, the Committee also asked whether interruptions in employment records were taken into account when calculating qualification periods. The report does not answer this question. Therefore, the Committee reiterates it.

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

#### *Conclusion*

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

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

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

It already examined the situation with regard to the illegality of dismissal during maternity leave (prohibition of dismissal and redress in case of unlawful dismissal) in its previous conclusions (Conclusions 2017 and 2015). Therefore, it will only consider the recent developments and additional information.

***Prohibition of dismissal***

In its previous conclusion (Conclusions 2015), the Committee asked to clarify, in the light of any relevant case-law example, under what circumstances an employee could be dismissed during pregnancy or maternity leave for serious violation of the contractual obligations.

In response, the report explains that Article 101§4 of the Law on Labour Relations (on prohibition on dismissal during pregnancy, maternity leave or parental leave) does not refer to contract termination due to serious breaches of contractual obligations (disturbances of order at work, breaches of discipline, etc.) for which dismissal without notice is foreseen. The Committee understands that, according to the legislation, the prohibition of dismissal of an employee during pregnancy or maternity leave is absolute and asks for confirmation of this in the next report.

The Committee notes from the report that the same rules concerning the prohibition on dismissal apply to the public sector.

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

In its previous conclusion (Conclusions 2017), the Committee found that the situation was in conformity in this respect. It noted that the labour inspectorate could suspend the contested dismissal (Article 262 of the Law on Labour Relations) pending a final court decision if the employee filed a complaint in court and asked for examples of the case-law in this connection.

In response, the report states that during the reference period, the labour inspectorate received two requests from employers for authorisation to terminate the employment contract of a pregnant woman. In both cases, the labour inspectorate refused to give its consent, and as a result, the employment contracts were not terminated.

The Committee takes note of an example of a court decision which found non-pecuniary damage in a case where of non-extension of an employment contract following the notification of pregnancy to the employer. The report states that according to the Association of Young Lawyers, this was the first case in which discrimination based on pregnancy has been established and that many similar cases emerged in 2017.

With regard to administrative penalties, the Committee notes from the report that, under Article 265 of the Law on Labour Relations, as amended, a fine must be imposed on an employer – legal person (€3,000), head of a legal entity (30% of the fine for the legal entity) or an employer – a natural person (between €300 to €450) if they terminate the employment contract due to pregnancy, childbirth or paternity.

***Conclusion***

The Committee concludes that the situation in North Macedonia is in conformity with Article 8§2 of the Charter.

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

*Paragraph 3 - Time off for nursing mothers*

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§3 of the Charter. It asked whether the nursing breaks were granted in addition to the regular daily rest breaks, what was the situation in respect of part-time employees, and whether the right to paid nursing breaks applied until the child was at least nine months old.

In response, the report indicates that paid nursing breaks are added to the regular rest breaks of breastfeeding employees until the child is one year old (Article 171 of the Law on Labour Relations).

The report does not answer the question on the situation of part-time employees, so the Committee reiterates it.

The Committee also notes that according to the report, under Article 265 of the Law on Labour Relations, as amended, a fine must be imposed on an employer if it does not grant a woman worker the right to breastfeeding breaks.

*Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in North Macedonia is in conformity with Article 8§3 of the Charter.

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

### *Paragraph 4 - Regulation of night work*

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

In its previous conclusion (Conclusions 2015), the Committee found that the situation was in conformity with Article 8§4. It asked whether the employed women concerned were transferred to daytime work and what rules applied if such transfer was not possible.

In response, the report indicates that under Article 3 of the Rulebook on the minimum requirements for the occupational health and safety of pregnant women or women who have recently given birth or are nursing their infant while working, the employer must assess the risks of night work to the health of pregnant or nursing employees, and identify the preventive and corrective measures to be taken.

According to Article 4 of the Rulebook, if the assessment of working conditions reveals that women workers who are pregnant, who have recently given birth or are nursing their infant, are at particular risks, the employer must take the necessary measures to eliminate those risks. The report indicates that if there is no other way to eliminate risks to the employee's health or that of her infant, the employer must adjust her working conditions or working hours or transfer her to another suitable position. If her reassignment is technically or objectively impossible, the employee concerned will be exempted from working as long as necessary for the protection of her health and that of her 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 North Macedonia is in conformity with Article 8§4 of the Charter.

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

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

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

It already examined the situation with regard to the prohibition of dangerous, unhealthy or arduous work. Therefore, it will only consider the recent developments and additional information.

In its previous conclusion (Conclusions 2015), the Committee asked to clarify whether the restrictions concerned pregnant women only or also women having recently given birth and/or who are nursing their infants. It furthermore asked to confirm that the same provisions applied to the public sector.

In response, the report states that the list of harmful factors and working conditions set out in the Rulebook on the protection of pregnant women, women who have recently given birth and are breastfeeding applies to all such women in both the private and the public sector.

The Committee previously noted that, if the health risks for the worker or her child cannot be eliminated otherwise, the employer must adapt the employee's working conditions or working hours or transfer her to another suitable post. Should this be technically and/or objectively unfeasible, the employee can be exempted from work for as long as necessary to protect her health and the health of her child. The Committee asked to confirm that no loss of pay resulted 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 was entitled to paid leave. It furthermore asked whether the same regime applied to women employed in the public sector.

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

The report indicates that although the legislation does not expressly state that the women concerned have the right to the same salary when they have been transferred to another post or their working conditions have been adjusted, it is applied. The Committee asks that the next report clarify how this is guaranteed in practice. According to the report, women employees are entitled to be reinstated in their post subsequently. The same rules apply to public sector employees.

### *Conclusion*

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

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

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

### ***Legal protection of families***

#### ***Rights and obligations, dispute settlement***

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

As regards **rights and obligations of spouses**, the report states that under Article 6 of the Law on Family, marriage is defined as a union between a man and a woman, regulated by law, in which the interests of the spouses, family and society are being realized. The relationship between the spouses is based on their free will to conclude marriage, based on equality, mutual respect and assistance. The Law on Family establishes that parental rights are performed jointly by both parents.

As regards the **settlement of disputes** and **mediation services**, the Committee had already noted (Conclusions 2015) that a reconciliation hearing was carried out by the court if the couple had no children and by the Centre of Social Work when children were involved. The report confirms that, in the event of disagreement, the Centre for Social Work is competent to mediate and make decisions. It adds that the Ministry of Labour and Social Policy is working on the pluralization and decentralization of mediation services, by involving other entities from local level and civic organizations.

The Committee notes the concerns expressed by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in its Concluding Observations of 2018 about notably the lack of mandatory registration of all marriages, which leads to high prevalence of unregistered marriages, including child marriages, which leave women and girls with no legal protection of their rights, including property rights, during such unions and upon their dissolution; the fact that the current legislation on property distribution upon divorce does not adequately address the gender-based economic disparities between spouses resulting from traditional work and family life patterns, in particular the absence of legal mechanisms that provide for the recognition of intangible assets, including pensions and other work-related benefits, and future earning potential for the purposes of property distribution upon divorce.

The Committee asks the next report to provide updated information on all these issues and, also in the light of the CEDAW observations, to clarify the situation in respect of child marriages, the equality of spouses in law and in practice as regards in particular ownership, administration and use of property, through the marriage and in case of divorce, and the compulsory character of mediation and reconciliation procedures. It reserves in the meantime its position on these issues.

#### ***Domestic violence against women***

North Macedonia has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which came into force in North Macedonia on the 1<sup>st</sup> July 2018, out of the reference period). The assessment under this instrument has not taken place yet. The report indicates that an Action Plan for the implementation of the Convention was being prepared.

The Committee previously took note (Conclusions 2015) of the prevention measures envisaged under the National Strategy for Prevention of Domestic Violence 2012-2015 and of the available protection measures, including restraining orders, the setting-up of temporary shelters for victims of domestic violence under the Law on Social Protection and

the laying down of procedures for dealing with them under a Joint Protocol on Domestic Violence.

The report does not provide further information on the implementation of the above-mentioned measures, nor on the setting up of integrated policies against domestic violence, but clarifies the legal basis governing prosecution of domestic violence under the Criminal Code (Article 122, item 21) which defines it as: “abuse, rude insults, threatening of the safety, inflicting physical injuries, sexual or other physical and psychological violence which causes a feeling of insecurity, being threatened, or fear towards a spouse, parents or children or other persons which live in a marital or other community or joint household, as well as towards a former spouse or persons which have a common child or have close personal relations .“Domestic violence constitutes a specific aggravating circumstance in connection with murder, manslaughter, bodily injury, severe bodily injury, coercion, deprivation of liberty, threatening security and mediation in prostitution (Articles 123, 125, 130, 131, 139, 140, 144, 191 of the Criminal Code).

The Committee notes the concerns expressed by the CEDAW in its Concluding Observations 2018 about the fact that the current legislation on domestic violence does not recognize the specific gendered aspects of such violence and, on a more general level, that gender-based violence against women and girls, including physical, sexual, psychological, and economic violence, in public and private spheres is not recognised and criminalised in all its forms; the fact that marital rape is not covered by the Criminal Code (Article 186) and that penetration is required as an element of the crime; the high prevalence of gender-based violence, including murders, against women and girls; the absence of a comprehensive system to collect data, disaggregated by relevant factors, concerning the various forms of gender-based violence against women and girls, including information on the relationship of the perpetrator to the victim; the obstacles faced by women in acquiring temporary protection orders, including the delay in holding proceedings, the lack of a gender-sensitive approach during them, and the lack of mechanisms to monitor their implementation; the limited number of shelters available for victims of domestic violence; the lack of referral centres for victims of sexual violence, including migrant and refugee women; the fact that mediation and reconciliation procedures are compulsory also in cases involving domestic violence against women and that issues related to such violence are not adequately taken into account when determining child custody.

The Committee asks the next report to provide comprehensive and updated information on all aspects of domestic violence against women and related convictions, as well as on the use of restraining orders, the implementation of the existing measures and their impact on reducing domestic violence against women also in the light of the abovementioned CEDAW observations. It reserves in the meantime its position on this issue.

### ***Social and economic protection of families***

#### ***Family counselling services***

In response to the Committee’s question (Conclusions 2015) concerning the free of charge services provided to families in difficulty by regional counselling offices, the report clarifies that Marriage and Family Counselling Centres have been opened in all the 30 Social Work Centres established across the country. They provide support on family issues, in particular in times of difficulty, and contribute to reducing family conflicts while improving relationships and parental functions. The report also indicates that in the Inter-municipal Social Work Centre of the City of Skopje there is an integrated counselling centre providing psychological support and treatment, which is attended by about 70 users on a monthly basis.

#### ***Childcare facilities***

The Committee refers to its previous conclusion (Conclusions 2015) for a general description of childcare facilities in North Macedonia under the Law on Child Protection of 2013. The report refers to several further amendments of this Law concerning inter alia the licensing of childcare professionals (in 2015 and in 2018, out of the reference period). It also indicates that efforts have been made to increase the capacities for care and education of pre-school age children through the construction of different new facilities in municipal and rural areas. As a result of these efforts, the number of facilities for care and education of children increased by almost 35% between 2014 and 2017, from 229 to 309 and the coverage of pre-school children also increased: in 2017, 29% of all children aged 0 to 6 were in kindergartens/early childhood development centres (i.e. 33 826 out of a total of 116 379), and 35% of children between 3 and 6 years old (25 146 children out of 70 302).

The Committee asks the next report to provide updated information on childcare facilities, notably in respect of the proportion of children aged 0-6 in childcare facilities and the cost of childcare to parents.

### ***Family benefits***

#### ***Equal access to family benefits***

In its previous conclusion (Conclusions 2015) the Committee considered that the situation was not in conformity with the Charter as there was no equal treatment of foreign nationals with regard to child benefit. In particular, there was a length of residence requirement of three years for entitlement to child benefit. It notes in this respect from the report that Article 23 of the Law on Child Protection provides that a foreign citizen who has a place of residence on the territory of the Republic of Macedonia can receive a child allowance for a child in accordance with this law and the international agreements ratified in accordance with the Constitution of the Republic of Macedonia. However, the Committee notes from MISSCEO that only Macedonian citizens permanently staying in North Macedonia for the previous three years can be granted child benefit. Therefore, the Committee reiterates its previous finding of non-conformity on the ground that the length of residence requirement for eligibility to family benefits is excessive.

#### ***Level of family benefits***

In its previous conclusion (Conclusions 2015) the Committee considered that the situation was not in conformity with the Charter on the ground that family benefits did not cover a significant number of families. In particular, to receive child benefit the total monthly income per family member had to be lower than € 42.

The Committee notes from the report that according to Article 29 of the Law on Child Protection a child in a family whose income per family member is up to MKD 2 490 (€40) and a child of a single parent whose income is up to MKD 4 980 (€ 80), have the right to child allowance. The Committee also notes from MISSCEO (2018) that to qualify for child allowance, the total monthly income per family member must be lower than 2 587.11 denars (21.6% of the minimum wage). Income threshold is adjusted at the beginning of each year according to the cost of living in the previous year.

The Committee recalls in this respect that under Article 16 of the Charter family benefits must be paid to a significant number of families. The Committee considers that the family benefit will not ensure economic protection of a significant number of families by appropriate means as it is only paid to families with very low income. In this respect the Committee considers that the situation which it has previously found not to be in conformity with the Charter, has not changed. Moreover, it notes that the number of families receiving child benefit has been decreasing since 2014. Therefore, the Committee reiterates its previous finding of non-conformity. It asks the next report to provide information about the proportion of families who receive child allowance.

As regards the adequacy of the level of the benefit, the Committee notes from Eurostat that the median equivalised income in 2017 stood at € 203 per month. According to MISSCEO, the amount of child allowance for children up to 15 years of age or as long as they are full-time primary school pupils stood at 744 denars (€ 12). For children between 15 and 18 years of age or as long as they are full time secondary school students at 1 180 denars (€ 19). The Committee notes that the child benefit (€ 12) represents 6% of the median equivalised income. Therefore, it constitutes a significant income supplement.

### ***Measures in favour of vulnerable families***

According to the report, as regards single-parent families, in 2014 the Law Amending the Law on Child Protection was adopted. The amendments to this Law were aimed at improving the financial situation of single parents entitled to a special child allowance for children with specific physical or mental disabilities or combined developmental disabilities, up to 26 years of age.

As regards the Committee's question about the measures taken to ensure the economic protection of Roma families, the report states that in relation to the activities for improving the social inclusion of Roma, a number of activities in all areas are being continuously implemented, in accordance with the Strategy for Roma 2014-2020. The Committee takes note of the projects in the field of education, including kindergartens, early childhood development, pre-school education. The Committee also notes that as a joint programme of the Council of Europe and the European Commission promotes good governance and empowerment of Roma at the local level, which will indirectly influence the improvement of the situation of Roma communities at the local level. The Programme for conditional financial compensation for secondary education has been implemented since 2010/2011 school year and is intended for children beneficiaries of social financial assistance who regularly go to high school.

The Committee wishes to be kept informed of the implementation of the Strategy for Roma families and measures taken in support of single-parent families.

### ***Housing for families***

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

Concerning protection against unlawful eviction, the report indicates that the Law on Housing (Article 94) regulates the conditions under which a non-profit housing lease agreement cannot be terminated (extraordinary circumstances affecting the lessee or the other beneficiaries indicated in the lease agreement; if he initiated a procedure for exercising the right to subsidized lease within 30 days from the termination of the extraordinary circumstances or a procedure for exercising the right to permanent financial assistance, etc.). In case of circumstances that indicate a long-term impossibility for payment of the rent, the competent state administrative body will offer the lessee another type of adequate accommodation with a non-profit rent, or accommodation in a residential building designed to temporarily address the housing needs of persons at social risk. The Committee takes note of this information. It nevertheless asks that the next report provide information on whether the legal framework applicable to evictions of tenants not entitled to non-profit housing lease agreements meets the requirements of Article 16 of the Charter. 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 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;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction;
- prohibition to carry out evictions at night or during winter.

The Committee asks for information in the next report on all the aforementioned points. In the meantime, it reserves its position.

As regards the provision of an adequate supply of housing for families, the report stresses that Law on Housing (Article 91) defines the categories of persons who are entitled to non-profit rental housing: persons at social risk such as low-income families, young people, young married couples, single parents, retired persons above the age of 60. In addition, Article 98 of the Law on Housing regulates the right to subsidized lease, the amount of the subsidy, the manner and the period for exercising such right and appeals procedures. According to this provision, the validity of the request and the amount of the subsidy are both determined by social work centres. In addition, the Law on Social Protection provides for the right to an allowance (monetary compensation) for social housing for socially endangered persons without housing, such as beneficiaries of permanent financial assistance. The social work centre determines the amount of the social housing allowance depending on the average amount of the rent in the relevant area. The Committee also takes note of the maximum amounts awarded for the different categories of beneficiaries (single persons, family of two to four members, families of five or more members; see details in the report) as well as of the number of beneficiaries per year during the reference period (for instance, 34 persons in 2017). The report further provides information on the implementation of the Programme for Construction and Maintenance of Housing owned by the Republic (see also Conclusions 2015), under which housing units are built and allocated as social apartments to different categories of citizens, such as beneficiaries of permanent financial assistance and single parents. The Committee asks however that the next report provide figures on the overall availability (demand and supply) of the different types of housing support mentioned in the report (subsidized lease, social housing allowance and social lease housing/social apartments).

As regards access to housing for Roma families, in reply to the Committee's previous request (Conclusions 2015), the current report stresses that the Ministry of Transport and Communications implemented projects in the field of communal infrastructure as capital grants to the Units of Local Self-Government, for settlements mainly inhabited by Roma. The Committee takes note of the funds allocated each year of the reference period to the construction of infrastructure facilities in settlements mainly inhabited by Roma citizens. It also notes that 669 social apartments were allocated by the end of 2017, 118 of which to Roma.

The Committee notes that the United Nations Committee on Economic, Social and Cultural Rights, in its Concluding observations on the combined second to fourth periodic reports of the "former Yugoslav Republic of Macedonia" (24 June 2016, § 23), expressed concerns about the fact that Roma families lived in informal settlements in poor living conditions with limited access to basic services and infrastructure, under constant threat of eviction. The United Nations Committee on the Elimination of Racial Discrimination had also expressed concerns about the slow progress achieved with respect to the State's efforts to allocate social housing to Roma families and improve living conditions in Roma settlements (Concluding observations on the combined eighth to tenth periodic reports of the "former Yugoslav Republic of Macedonia", 25 August 2015, § 16). The Committee further notes that according to the last ECRI report on the "former Yugoslav Republic of Macedonia", around 28% of Roma still lived informal settlements (such as Cicino Sem near Skopje), the living conditions of which had been criticised by the Ombudsman, and forced evictions occasionally occurred (Report of 18 March 2016, § 66). Finally, the Advisory Committee on the Framework Convention for the Protection of National Minorities, in its Fourth Opinion on

the “former Yugoslav Republic of Macedonia” (24 February 2016, §§ 92-93), was deeply concerned by the sub-standard living conditions in many Roma dwellings, without safe drinking water or sanitation facilities.

In view of the above findings, the Committee asks the next report to continue to provide information on the measures taken to improve the housing situation of Roma families, particularly as regards the living conditions of Roma in informal settlements and access to social housing units. In the meantime, it reserves its position on this point.

Finally, the Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015). In this regard, it refers to the report of the fact-finding mission of the Special Representative of the Secretary General of the Council of Europe on Migration and Refugees to Greece and “the former Yugoslav Republic of Macedonia” from 7 to 11 March 2016 (26 April 2016), according to which one of the camps for refugees and migrants transiting through the country (Tabanovce, near the Serbian border) during the refugee crisis was seriously overcrowded. The Committee accordingly asks for information in the next report on the accommodation conditions and housing situation of refugee families.

### ***Participation of associations representing families***

In its previous conclusion (Conclusions 2015), the Committee noted that the Ministry of Labour and Social Policy regularly consults associations representing families when preparing or implementing family policies, notably when drafting legislation or national strategic documents.

#### *Conclusion*

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

- the length of residence requirement for nationals of States Parties lawfully resident in the territory for eligibility to family benefits is excessive;
- family benefits do not ensure economic protection of a significant percentage of families by appropriate means.

## **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 North Macedonia.

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

The Committee recalls that under Article 17 of the Charter there must be procedures for establishing parentage and there must be a right for an adopted child to know his or her origins. In its previous conclusion, the Committee asked the state to provide information about the legal framework in this regard. It asked in particular whether there are any restrictions to the right of an adopted child to know their origins (Conclusions 2015). The Committee reiterates this request.

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

According to EUROSTAT in 2015 there were 6,395 first time asylum applications in the EU by children recorded as stateless and 7,620 by children with an unknown nationality. This figure only concerns EU states and does not include children born stateless in Europe or those who have not sought asylum. In 2015, UNHCR estimated the total number of stateless persons in Europe at 592,151 individuals.

According to other sources [European Network on Statelessness, Statelessness Index Country briefing 2018] the main causes of statelessness of children in North Macedonia are the dissolution of the Former Yugoslavia, barriers to birth registration and unregulated civil status. A considerable number of persons, especially Roma, Ashkali and Egyptians continue to be at risk of statelessness because they have not been registered at birth and are therefore unable to prove their entitlement to North Macedonian nationality.

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

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

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

In its previous conclusion the Committee asked the next report to indicate the precise legal provisions and the case law which explicitly prohibit all forms of corporal punishment of children (including the mildest forms) in the home and in institutions. In the meantime, the Committee reserved its position on this issue (Conclusions 2015).

The report provides information on the Law on Prevention and Protection from Domestic Violence and other legal measures. The Committee notes this information as well as information from the Global Initiative to End All Corporal Punishment of Children that all forms of corporal punishment are prohibited in all settings. The Committee therefore concludes that the situation is in conformity with the Charter.

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

The Committee previously asked whether inadequate financial resources of the family could constitute a ground for the placement of a child outside the family (Conclusions 2015). According to the report, the law does not permit a child to be taken away from the parents

solely because of the financial situation of the family. If necessary, in such cases, the Centre for Social Work may provide financial assistance to the family if it finds that it is at risk.

The Committee previously asked what are the criteria for the restriction of custody or parental rights and what is the extent of such restrictions. It also asked what are the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances. It further asked whether the national law provides for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family. This information was not provided. The Committee considers that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

The Committee asks the next report to provide information on the placement of children outside their family. It wishes to receive information on the number of children placed in institutions, the number placed in family type settings and the placed number in foster families, it also asks for information on trends in the area.

### ***Education***

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

### ***Children in conflict with the law***

According to the report a child aged between 14 and 16 who has committed a criminal offence can only be subject to educational measures which include the following; a reprimand, referral to a children's center, increased supervision by the parents or guardians, or referral to an educational institution or to an educational-correctional facility.

Children over 16 years of age who commit a criminal offence may also be subject to educational measures but may exceptionally be sentenced to prison.

In 2015 the courts imposed on 63% of children increased supervision by parents/guardians and increased supervision by the Centre for Social Work, 17% of children received a reprimand, 3% of children were subject to institutional measures, two children were referred to a Youth Centre, and six children were placed in detention.

The Committee previously requested information on the maximum length of pre-trial detention as well as prison sentences. It also asked whether children in detention were always separated from adults (Conclusions 2015).

According to the report pursuant to Article 118 of the Law on Justice for Children ("Official Gazette of the Republic of Macedonia", No.148/2013) detention may be imposed by a Judge for children and can last for a maximum of 30 days, it may be extended for a further 60 days. The Committee understands that this refers to pre-trial detention and asks for clarification in this respect.

The report states that pursuant to Article 51 of the Law on Justice for Children, only children over the age of 16 may be sentenced to prison. This can only occur in situations in which the offence committed attracts a sentence of five years or a more the offence is committed under particularly aggravating circumstances, there is a high degree of criminal responsibility and the imposition of an educational measure would not be justified. A prison sentence imposed on a child may not be shorter than one year, and not longer than ten years. The Committee recalls that a period of detention must be a measure of last resort, for the shortest time possible and subject to regular review. It considers a sentence of up to 10 years to be lengthy and asks whether where a sentence of this length is imposed, it is regularly reviewed. The Committee also asks why sentences cannot be less than a year.

The report states that children are detained separately from adults.

The Committee asks whether children may be held in solitary confinement and if so, for how long and under what circumstances.

### **Right to assistance**

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

The Committee 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.

According to the report, the Government adopted Standard Operating Procedures (SOP) for 2015 dealing with unaccompanied children. The Standard Operating Procedures provide for to an inter-sectoral and multidisciplinary approach in dealing with unaccompanied children in line with the best interests of the child.

In the period from 2014 to June 2018, a total of 232 unaccompanied children applied for asylum in the state and were accommodated in a Reception Centre for Asylum Seekers or another location determined by the Ministry of Labour and Social Policy, adequate for providing child protection.

An unaccompanied child is appointed a guardian by the local competent Centre for Social Work, afterwards an assessment of needs is prepared. Following this measure regarding accommodation, health care, psychosocial support, procedures for family reunification or finding of members of the child's family, and others are adopted.

For certain unaccompanied children, where it has been determined after a brief assessment that it is their best interest, an asylum application is submitted. In such cases the assistance measures will also include measures relating to integration, such as learning the North Macedonian language and enrolling in the regular curriculum.

The Committee asks for the next report to provide information on the proportion of unaccompanied minors for whom an asylum application is submitted. The Committee also asks for information on the difference (if any) between the measures taken with regard to those children for whom an application has been made and those for whom on has not been made in terms of accommodation, health care, psychosocial support, procedures for family reunification and education.

The Committee requests information on accommodation facilities for migrant children, whether accompanied and unaccompanied. Such information should outline the measures taken to ensure that children are accommodated in appropriate settings, which are adequately monitored.

It also 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

North Macedonia uses bone testing to assess age and, if so, in what situations the state does so. Should the State carry out such testing, the Committee asks what potential consequences such testing may have (e.g., can a child be excluded from the child protection system on the sole basis of the outcome of such a test?).

### ***Child poverty***

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

The Committee notes that according to EUROSTAT in 2017 47.2% of children in North Macedonia of children were at risk of poverty or social exclusion, an extremely high figure.

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

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

Meanwhile the Committee reserves its position on this point.

### *Conclusion*

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

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

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

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

#### ***Enrolment rates, absenteeism and drop out rates***

The Committee previously asked to receive information on the number of primary and secondary schools, as well as their geographical distribution. It also asked for information on enrolment and drop-out rates (Conclusions 2015).

The Committee notes the information provided in the report on the number of schools by region. It further notes the number of children who failed to complete primary education in 2016/2017. It notes that the rate has declined over the reference period but that nevertheless a number of children, in particular at primary level, appear to drop out.

The Committee notes from UNESCO that in 2015 (outside the reference period but latest data available) the net enrolment rate for primary education was 91.7%, for secondary education the corresponding rate was 79.13%. The Committee notes that the enrolment rate for secondary seems particularly low and asks the Government for comments on this situation and on measures taken to address it. Meanwhile it concludes that the situation is not in conformity in this respect.

The Committee wishes the next report to provide up to date information on enrolment rates, absenteeism and drop-out rates as well as information on measures taken to address issues related to these rates.

#### ***Costs associated with education***

The Committee previously noted that the Social Protection Act, as amended, provides that financial assistance shall be provided to support the children from vulnerable households with a view to ensuring their regular attendance and completion of secondary education. The Committee asked what was the average number of beneficiaries of this assistance compared to the overall number of children in secondary education (Conclusions 2015). The Committee notes from the report that over 4,000 children received such assistance in 2016/2017. However, the Committee notes that the overall number of children attending regular secondary education was over 80,000 in 2016/2017 and that therefore the number in receipt of this assistance is very low. The Committee seeks clarification of the situation, i.e. what proportion of students receive such financial assistance.

The report also states that children receive free textbooks, and transport is free for students attending schools that are located more than 2.5 kilometres away from their homes. Students with special educational needs and any accompanying persons have the right to free transport regardless of the distance between their place of residence and the school.

#### ***Vulnerable groups***

According to the report classes in primary education are conducted in 4 languages: Macedonian, Albanian, Turkish and Serbian. Members of ethnic communities who do not attend classes in their mother tongue, have the possibility to choose the subject *Language and Culture of Bosniaks, Vlachs and Roma* from the third to the ninth grade. The Government adopted a decision to introduce the Bosnian language as a regular subject in primary schools from the school year 2018/2019.

The Committee previously asked whether irregularly present children have a right to education (Conclusions 2015). According to the report, pursuant to the Law on Primary Education, children with foreign citizenship or children without citizenship who reside in North Macedonia have the right to primary education under the same conditions as national children. The Committee asks whether such children also have the right to attend

compulsory secondary education. The Committee asks how many children in an irregular migration situation attend either primary or secondary school.

It further asks whether migrant children in transit centres/camps are provided with education and, if so, how this education is delivered, and in what form.

The Committee previously asked the next report to provide detailed information about measures taken to ensure that Roma children were mainstreamed in compulsory education. It warned that if this information was not provided in the next report, there would be nothing to establish that the situation is in conformity with the Charter (Conclusions 2015). According to the report a number of activities are continuously being implemented in all areas in accordance with the Strategy for the Roma 2014-2020. Measures taken to support Roma students included special tutoring classes and the provision of Roma mediators/mentors.

The “Inclusion of Roma Children in Public Municipal Institutions – Kindergartens” project has been in operation for eleven years in 19 kindergartens. During the 2016/2017 school year, out of the total number of 34,521 children in all kindergartens 718 or 2.07% were Roma children. In the school year 2016/17, in primary education – from first to ninth grade, 9,362 Roma students were enrolled (4,559 of whom were female students). In the school year 2017/2018, the number increased to 9,679 students (4,668 of whom were female students). As regards secondary education Roma children may receive scholarships to encourage them to remain in education. The Committee notes that the number of children in receipt of such scholarships has increased over the reference period.

The Committee notes that the above-mentioned measures will assist Roma children in attending mainstream education. However, it wishes to receive information on the number of Roma children attending special schools for children with disabilities as well as more concrete information on the trends in their inclusion in mainstream education – i.e. the number of Roma children in compulsory primary and secondary mainstream education.

The Committee notes from an ECRI report on North Macedonia (fifth monitoring cycle) 2016 [CRI(2016)21] that the Ministry of Education informed ECRI that in 2015, 37% of children in special needs schools were Roma, who make up less than 3% of the country’s population. According to the authorities, the system previously used for directing children to special needs schools was amended.

In this respect the Committee notes that the Commissioner of Human Rights of the Council of Europe following his visit to North Macedonia in 2018 (outside reference period) welcomed the work done to re-evaluate Roma children who may have been wrongly directed to special schools.

According to the report primary level education is being rolled out in institutions where children convicted of a criminal offence are detained ensuring such children acquire basic skills. The Committee asks to be kept informed of the development of the programme.

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

As North Macedonia 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 North Macedonia is not in conformity with Article 17§2 of the Charter on the ground that the net enrolment rate in secondary education is too low.

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

### *Paragraph 1 - Assistance and information on migration*

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

### ***Migration trends***

The Committee has assessed the migration trends in North Macedonia in its previous conclusion ([Conclusions 2011](#)). The report does not address this point and the Committee asks that the next report provide up-to-date information on the developments in this respect.

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

The Committee notes the information provided in the report regarding the latest developments in anti-discrimination policies, in particular the Equality and Non-Discrimination Strategy 2016-2020 relating to labour and labour relations, education, science, sports and culture, social security (protection, pension and disability insurance and health), judiciary and administration and access to goods and services and is in accordance with the recommendations that Macedonia received from the international mechanisms for human rights of the United Nations and elaborated with the representatives of state institutions, civil society organizations and international organizations. In line with this strategy, the new Law on Prevention and Protection against Discrimination is to be introduced. The report provides detailed description of the draft, which is pending before the Parliament.

The Committee considers that it is too early to assess the legal framework at this stage and requests that the next report provides for detailed description of the relevant provisions. Meanwhile, it reserves its position on this point.

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

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

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

The Committee further notes that it has comprehensively assessed the services and information for migrant workers (see for a detailed description Conclusions 2011). The report provides no further information in this respect and the Committee asked the next report to submit information on any developments.

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

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

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

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

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

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

In reply to the Committee's query (see Conclusions 2011) about the relevant activities of the Ombudsman, the report provides extensive data on its undertaken activities in 2014-2017, including visits to places receiving migrants, such as police stations, boarder controls, as well as awareness-raising measures and examination of complaints.

The report further specifies that the Council of Honor of the Association of Journalists of Macedonia (AJM) monitors and fights against the spread of false, discriminatory or racist publications. The Council of Honor of the Association of Journalists of Macedonia takes care of the application of the principles of the code by the journalists, while the Appeals Commission of the Council of Media Ethics (CMEM) monitors the application of the professional standards. The Council of Honor of the AJM works on the principle of reviewing complaints but has also reviewed a number of cases on its own initiative. The Appeals Commission of the CMEM works exclusively on complaints filed by the citizens.

In its previous conclusion, the Committee also asked for information on any measures taken to target illegal immigration and in particular, trafficking in human beings. The report provides that the Ministry of Labour and Social Policy, in cooperation with the OSCE Mission, held trainings for social workers from the Centres for Social Work, social workers – volunteers from the camps in the Reception Transit Centres for Migrants, as well as from the Reception Center for Asylum Seekers. Within the framework of these trainings, in addition to the theoretical training, a field training for practical application of the Indicators for identification of victims of trafficking in human beings was organized. Representatives of the police, the border police, as well as associations of citizens providing assistance and support to the camps also took part in these trainings. Furthermore, mobile teams in the relevant regions were established (in Kumanovo and Gevgelija), to focus on identifying the victims of trafficking in human beings, with an emphasis on victims of sexual violence, victims of domestic violence, victims of trafficking in human beings among the migrants and the refugees and other vulnerable categories.

The Committee notes that the new Law on Prevention and Protection against Discrimination, referred to above, is underway and it will be passed during the next reporting cycle. This Law shall, in particular, rule on competences of a monitoring body, responsible for receiving complaints and responding to incidents of false propaganda related to migration (Commission for Prevention and Protection against Discrimination). Meanwhile, the Committee reserves its position on this point.

### *Conclusion*

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

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

#### *Paragraph 5 - Equality regarding taxes and contributions*

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

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

The Committee has assessed the legal framework in this respect in its previous conclusion and considered it to be in conformity with the Charter ([Conclusions 2015](#)).

In reply to the Committee's query what contributions were payable in relation to employment, the report states that the Law on Contributions from Compulsory Social Insurance prescribes the following contributions: pension and disability insurance based on current payments; mandatory fully funded pension insurance; seniority insurance that is considered with increased duration; health insurance and unemployment insurance.

The report confirms that the laws within the tax area, that is: the Law on Tax Procedure, the Personal Income Tax Law, the Law on Utility Taxes, the Law on Administrative Fees, including the Law on Contributions from Compulsory Social Insurance, do not make a distinction regarding the rights and obligations they regulate, and are valid for and equally apply to both the workers who are citizens of the North Macedonia and the migrant workers who legally reside and work on its territory.

### *Conclusion*

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

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

### *Paragraph 6 - Family reunion*

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

### **Scope**

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

In the previous conclusion ([Conclusions 2015](#)), the Committee noted that members of the family eligible for reunion were spouses, the minor children of the foreigner or his/her spouse, including adopted children. The report provides that a new Law on Foreigners was adopted in 2018. The Committee asks whether the scope of the right to a family reunion has changed under the new provisions, in particular, whether there are age, dependency or other requirement for legibility.

### **Conditions governing family reunion**

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

The Committee furthermore recalls taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not adopt a blanket approach to the application of relevant requirements, so as to preclude the possibility of exemptions being made in respect of particular categories of cases, or for consideration of individual circumstances (Conclusions 2015, Statement of Interpretation on Article 19§6). The Committee acknowledges that States may take measures to encourage the integration of migrant workers and their family members. It notes the importance of such measures in promoting economic and social cohesion. However, the Committee considers that requirements that family members pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may impede rather than facilitate family reunion and therefore are contrary to Article 19§6 of the Charter where they have the potential effect of denying entry or the right to remain to family members of a migrant worker, or otherwise deprive the right guaranteed under Article 19§6 of its substance, such as by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments (Statement of interpretation on Article 19§6, Conclusions 2015).

The report submits that under the 2018 Law on foreigners, the procedure for family reunification does not stipulate conditions for studying the language. It is only at the stage of requiring North Macedonian citizenship that knowledge of Macedonian language is required.

The 2018 Law further requires evidence of "stable and regular resources that are sufficient for sustenance of the person and of his close family members who intend to stay in Macedonia". The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion

(Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of Interpretation on Article 19§6). In the light of the above, the Committee asks how the means requirement is calculated and whether social benefits may be taken into account.

The Committee also notes from the report that the Law requires a proof of accommodation for the migrant worker and his or her family members. It recalls 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 (Conclusions 2015, Statement of interpretation on Article 19§6- housing requirements). It asks whether this is the case in Macedonia.

The Committee has previously considered (Conclusions 2015) that the situation in North Macedonia was not in conformity with the Charter on the ground that family members of a migrant worker were not granted an independent right to stay after exercising their right to family reunion. The Committee recalls that once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they should have an independent right to stay in that territory (Conclusions XVI-1 (2002), Article 19§8, Netherlands). The Committee understands from the report that this is still not the situation in North Macedonia, even not under the 2018 Law on Foreigners (adopted outside the reference period) as family members' permits remain contingent upon the right to stay of the migrant worker. Permanent stay may be granted in case the foreigner who applied for a family reunion passes or the matrimony ceases after lasting for minimum three years. A temporary permit is not extended if the migrant worker and his or her close family members do not cohabit in a real matrimony or family union. The Committee therefore considers that the situation in Macedonia is not in conformity with the Charter in this respect.

### ***Remedy***

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

The Committee asked about the availability of such remedy in its previous conclusion. The report does not provide any information in this respect. The Committee recalls its question and underlines that should the next report not provide comprehensive information in this respect, there will be nothing to show that the situation is in conformity with the Charter on this point.

### ***Conclusion***

The Committee concludes that the situation in North Macedonia is not in conformity with Article 19§6 of the Charter on the ground that family members of a migrant worker are not granted an independent right to remain after exercising their right to family reunion.

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

### *Paragraph 8 - Guarantees concerning deportation*

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

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

The Committee deferred its previous conclusion ([Conclusions 2015](#)) requesting following information necessary to establish whether some aspects of deportation of migrant workers satisfied the requirements of the Charter. Namely:

- whether expulsion is the automatic consequence of any sentence to imprisonment exceeding one year?
- on the basis of what criteria a foreigner is considered to represent a threat to public order?
- whether all aspects of the non-nationals' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the state would be taken into account in determining whether a migrant should be expelled? What rules govern appeal procedures?

In reply, the report submits that in 2018 new Law on Foreigners was adopted. Pursuant to its provisions, a foreigner may be expelled if he/she had been sentenced to imprisonment of minimum one year. However, in decision-making process concerning expulsion all circumstances of the case are taken into account, including the length of the foreigner's stay in the Republic of Macedonia, his/her personal, economic or other relations, as well as the consequences arising from such a decision affecting him/her or his/her close family members legally staying in the country. An appeal to court is available against expulsion decision and the report provides the details on the relevant procedures, including on procedural deadlines.

As regards expulsion for reasons of national security, the competent authority is not obliged to explain the reasons take into account for such a decision. The Committee asks, how the principle of proportionality is ensured and whether a court gives a reasoned decision upon an appeal in such cases.

The Committee also notes from the report that an expulsion may be ordered if reasons for public health require so. The Committee recalls that risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment (Conclusions V (1977), Germany). It asks whether a foreigner considered to constitute a risk to public health is offered treatment in practice, before any decision on expulsion is issued.

Given the lack of sufficient information on the situation in the reference period and in the light of the new elements under the 2018 Law, which require more detailed information for their comprehensive assessment, the Committee defers its conclusion once more, but highlights that if the requisite information is not provided in the next report 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 27 - Right of workers with family responsibilities to equal opportunity and treatment**

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

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

***Protection against dismissal***

The Committee understands that the situation which it previously found to be in conformity with the Charter (Conclusions 2015) remained the same during the reference period, and therefore reiterates its finding of conformity on this point.

***Effective remedies***

In reply to the Committee's question on effective remedies, the report states that the legislation in force does not provide no provision for any different treatment for persons whose employment contract has been terminated illegally, including on grounds of family responsibilities. The Committee refers to its conclusions under Article 8§2 of the Charter (Conclusions 2019 and 2017) and considers that the situation is in conformity in this respect.

*Conclusion*

The Committee concludes that the situation in North Macedonia is in conformity with Article 27§3 of the Charter.