



March 2022

## **EUROPEAN SOCIAL CHARTER (REVISED)**

European Committee of Social Rights

Conclusions 2021

**MONTENEGRO**

*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.

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

The following chapter concerns Montenegro, which ratified the Revised European Social Charter on 3 March 2010. The deadline for submitting the 10<sup>th</sup> report was 31 December 2020 and Montenegro submitted it on 27 May 2021.

The Committee recalls that Montenegro was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to all findings of non-conformity or deferral in its previous conclusions (Conclusions 2017).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2017) found the situation to be in conformity, there was no examination of the situation in 2020.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group II "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3);
- the right to protection of health (Article 11);
- the right to social security (Article 12);
- the right to social and medical assistance (Article 13);
- the right to benefit from social welfare services (Article 14);
- the right of elderly persons to social protection (Article 23);
- the right to protection against poverty and social exclusion (Article 30).

Montenegro has accepted all provisions from the above-mentioned group except Article 30.

The reference period was from 1 January 2016 to 31 December 2019.

The conclusions relating to Montenegro concern 15 situations and are as follows:

- 3 conclusions of conformity: Articles 3§1, 11§2 and 14§1.
- 7 conclusions of non-conformity: Articles 3§2, 3§3, 12§1, 12§2, 13§1, 13§4 and 23.

In respect of the other 5 situations related to Articles 11§1, 11§3, 12§3, 12§4 and 14§2, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Montenegro under the Revised Charter.

The next report from Montenegro will deal with the following provisions of the thematic group III "Labour Rights":

- the right to just conditions of work (Article 2);
- the right to a fair remuneration (Article 4);
- the right to organise (Article 5);
- the right to bargain collectively (Article 6);
- the right to information and consultation (Article 21);
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22);
- the right to dignity at work (Article 26);
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28);

- the right to information and consultation in collective redundancy procedures (Article 29).  
The deadline for submitting that report was 31 December 2021.

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

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

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

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

The Committee notes that for the purposes of this report, States were asked to reply to the specific targeted questions put to them in relation to Article 3§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity or deferrals (see appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the remit of the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee found that pending receipt of the requested information, the situation in Montenegro was in conformity with Article 3§1 of the Charter (Conclusions 2017). The assessment of the Committee will therefore only concern the information provided by the Government in response to the targeted questions.

The Committee wishes to point out that it will take note of the reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e., after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

#### ***General objective of the policy***

In its targeted question, the Committee asked about policy formulation processes and practical arrangements made to identify new or emerging situations that represent a challenge to the right to safe and healthy working conditions, the results of such processes as well as intended future developments.

The Committee previously requested that the next report provides more comprehensive information on how the Strategy for Improving Health and Safety at Work is reviewed in the light of changing risks, in consultation with the social partners (Conclusions 2017). It also asked for information on the activities implemented and results obtained by the National Strategy.

In reply to the Committee’s questions, the report states that over 90% of the activities from the Action Plan to implement the Strategy for the Improvement of Safety and Health at Work in Montenegro (2016-2020) have been implemented in cooperation with the social partners. The report details the regulations adopted based on the Action Plan, in the development of which, the social partners were involved. However, the report does not contain any information on the results achieved by the Strategy. The Committee therefore reiterates its request that the next report contain information on the results obtained by the Strategy and considers that if that is not the case there will be nothing to establish that the situation in Montenegro is in conformity with Article 3§1.

The Committee previously reiterated its request (Conclusions 2017) that the next report should provide information on how Montenegro complies with the duty of States Parties to carry out activities in terms of research, knowledge and communication relating to psychosocial risks. In reply to the Committee’s question, the report mentions that as of 2007 Montenegro established cooperation with the European Agency for Safety and Health at Work and appointed its coordinator. In the context of this cooperation, the Agency has financed the activities regarding safety and health at work.

The Committee observes that Montenegro adopted the Strategy for the Improvement of Safety and Health at Work for 2016-2020, along with the Action Plan for its implementation, and the Law on Safety and Health at Work (Official Gazette of Montenegro, Nos. 34/14,

44/18). Unless otherwise regulated by a special law, safety and health measures are defined as a part of prevention and have been pursued to improve the protection and/or hygiene and/or health of the employees. On a general level, measures of safety and health at work are provided or planned in all the working processes on the employer's premises, with a view to preventing or reducing risks to employees' lives or health. In addition, protective measures for safety and health at work have been laid down in detail in 54 subordinate acts in the area of safety and health at work and other regulations.

The report also reiterates the information provided for in the previous report regarding the risk assessment act.

The report states that the monitoring of the law on safety and health at work, of the regulations adopted thereunder, and of technical and other measures relating to safety and health at work is carried out by the Labour Inspectorate, unless the law stipulates that it be carried out by other bodies in certain activities.

### ***Organisation of occupational risk prevention***

In its previous conclusion, the Committee asked for information about the way in which employers, particularly small and medium-sized enterprises discharge their obligations in terms of the initial assessment of the risks specific to workstations and the adoption of targeted preventive measures in practice (Conclusion 2017). It also asked the next report to indicate how the Government ensures that safety and health laws and regulations are adopted and maintained in force based on an assessment of occupational risks.

In reply to the Committee's question, the report states that with the aim of promoting safety and health at work in small and medium-sized enterprises, the Ministry of Labour and Social Welfare conducted, in 2018/2019, a public competition for safety and health at work for all actors in the work process. The report also states that the Directorate for Safety and Health at Work is empowered to draft assessment acts, according to annual reports, on the number of risk assessment acts adopted, and the number of employees covered. The report states that, according to the data obtained, this percentage is increasing by around 4% on a yearly basis.

The Committee considers that the report does not provide the information required on how employers in small and medium-sized enterprises discharge their obligations regarding the initial assessment of the risks specific to workstations and the adoption of targeted preventive measures. The Committee also considers that the report does not indicate the way in which the Directorate for Safety and Health at Work has ensured that safety and health laws and regulations are adopted and maintained in force based on an assessment of occupational risks. The Committee therefore reiterates its request that this information is provided in the next report.

In its previous conclusion, the Committee noted that risk prevention measures exist at the level of undertakings (Conclusion 2017). However, it considered that no information was provided as regards the labour inspectorate and underlined that there is a duty for inspectors to share the knowledge of risks and risk prevention they have acquired during their inspections and investigations conducted as part of their prevention activities (e.g. information, education). The Committee reiterated its request that the next report provide information on the role of the labour inspectorate in sharing knowledge of risks and risk prevention and considered that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Montenegro is in conformity with Article 3§1 of the Charter in this respect.

In its reply to the Committee's question regarding sharing knowledge of risks and risk prevention, the report explains that the Labour Inspectorate keeps the public regularly informed about the activities of individual inspectorates, including those of the Labour Inspectorate. Moreover, the report states that the former Ministry of Labour and Social

Welfare of Montenegro, the Directorate for Inspection Affairs of Montenegro and the Occupational Safety Association of Montenegro have organised numerous conferences, seminars, workshops, and training sessions in which representatives of the Labour Inspectorate were also the trainers/lecturers who transferred the knowledge about the risks and prevention of risks acquired during inspections and investigations conducted as part of their prevention activities. The report contains the links to the activities, seminars, and training sessions.

The Committee takes note of the information regarding the knowledge sharing of the Labour Inspectorate.

### ***Improvement of occupational safety and health***

The Committee previously noted that there is a system aimed at improving occupational health and safety through research, development, and training (Conclusions 2017). It asked that the next report contain updated information, supported by specific examples on the research work (analysis of sectoral risks; standards defined; recommendations made; publications) and training (certification schemes; training of qualified professionals; training schemes) undertaken during the reference period.

In its reply to the Committee's question, the report states that, in 2018, the Ministry of Labour and Social Welfare provided the Government of Montenegro with a sectoral analysis to determine the proposals for priority areas of public interest and the funds needed to finance non-governmental organisations' projects and programmes from the state budget in 2018 for safety and health at work. The analysis identified priority issues and provided an overview of the situation at the national level, of the key strategic planning documents, of the manner to achieving the strategic objectives, as well as of the consultations with organisations and the capacities interested in administering the competition. The report adds that, during the reference period, employees of the Directorate for Safety and Health at Work underwent a series of training sessions, organised conferences and round tables in order to improve knowledge and skills, as well as to raise overall awareness of the importance of health and safety at work.

The Committee notes that the information provided does not contain any specific examples on the research work and training regarding occupational health and safety at work. Therefore, the Committee reiterates its request that the next report provide the information requested.

### ***Consultation with employers' and workers' organisations***

The Committee previously asked the next report to provide specific examples of the involvement of employers' and workers' organisations in shaping occupational health and safety policy in practice (Conclusion 2017).

In its reply to the Committee's question, the report states that the Ministry of Labour and Social Welfare included equal numbers of representatives of representative employer associations and employee organisations in working groups for drafting laws and subordinate legislation. The report contains the links to the public invitations concerning the participation of the abovementioned groups in the working groups. The report also states that representatives of representative associations of employers and employees were members of the working group which developed the Strategy for improving safety and health at work in Montenegro 2016-2020.

In addition, the report mentions that before the Government adopts the Law on Safety and Health at Work, the draft Law must be submitted for an opinion to the Social Council of Montenegro, which is composed of the representatives of the Government of Montenegro, the Union of Employers of Montenegro, the Federation of Trade Unions of Montenegro and the Union of Free Trade Unions of Montenegro.

## **COVID-19**

In its targeted question, the Committee asked about the protection of frontline workers, instructions and training, the quantity and the adequacy of personal protective equipment provided to workers, and the effectiveness of these measures within the context of the Covid-19 pandemic.

In response to the targeted question related to Covid-19, the report states that, in accordance with the Law on Protection of Population against Communicable Diseases, the Ministry of Health, at the proposal of the Institute of Public Health of Montenegro, issued orders to introduce temporary measures to prevent the transmission of the coronavirus and to protect the population. These temporary measures concerned compliance with the prescribed physical distance between persons; the provision of personal protection equipment in all types of facilities both by employees and clients or users of these facilities' services; the obligatory disinfection of facilities; and obligatory provision and disinfection of public transport vehicles and vehicles used for the transport of employees for their own needs. The report also points out that employees were trained to perform safe and healthy work at their workplace, and that the employer must provide employees with the appropriate personal protective equipment in accordance with the PPE standard for each employee, which is prepared in accordance with regulations, standards and the risk assessment act in the workplace. The report also states that the Rulebook on protective measures at work relating to exposure risk to biological agents (Official Gazette of Montenegro, No. 62/17) prescribes the minimum requirements that the employer must meet in providing protective measures at the workplace, in order to eliminate or reduce the risk of the occurrence of accidents at work, or occupational or work-related illnesses.

The report details the measures adopted in prisons to reduce the risk of infection. These measures concern the hygiene of the premises and the protection of employees and inmates, such as measuring body temperature, the suspension of visits and benefits for convicts and the hiring of medical personnel as external associates who participate in providing secondary healthcare through specialist check-ups.

The report states that an instruction was adopted regarding how certain tasks and issues of importance to the Police Administration in the context of Covid-19 should be carried out to prevent its transmission. The report explains that the heads of organisational units undertook activities aimed at providing the employees with appropriate advice, guidelines and recommendations from the Institute of Public Health of Montenegro with an emphasis on hygiene, social distancing measures and the use of available protection equipment when carrying out jobs and tasks. The report provides details of the number of police officers who had recovered from Covid-19, as well as the number of police officers who had died from it. The report states that guidelines and orders were issued for the medical treatment of officials in the specific situations of the occurrence of symptoms of acute respiratory disease, and that, on a daily basis, all organisational units of the Police Administration compiled individual reports on the situation over the past 24 hours which include data or indicators of importance to managing and organising work in the context of the Covid-19 outbreak.

The report also details the measures adopted concerning nursing homes and institutions accommodating beneficiaries of social and child protection.

In line with its Statement on Covid-19 and social rights (March 2021), the Committee recalls that in the context of the Covid-19 crisis, and with a view to mitigating the adverse impact of the crisis and accelerating the post-pandemic social and economic recovery, each State Party must assess whether its existing legal and policy frameworks are adequate to ensure a Charter-compliant response to the challenges presented by Covid-19. Where those frameworks are not adequate, the State must amend them including through the adoption of any additional measures that are required to ensure that the State is able to comply with its Charter obligations in the face of the social rights risks posed by the Covid-19 crisis. In the same vein, the Committee recalls that the Covid-19 crisis does not obviate the requirements

set out by its long-standing jurisprudence regarding the implementation of the Charter and the obligation of the States Parties to take measures that allow them to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.

The Committee points out that, in order to secure the rights set out in Article 3, a response to Covid-19 in terms of national law and practice should involve the immediate introduction of health and safety measures at the workplace such as adequate physical distancing, the use of personal protective equipment, strengthened hygiene and disinfection measures, as well as stricter medical supervision, where appropriate. In this respect, due account should be taken of the fact that certain categories of workers, such as frontline health care workers, social workers, teachers, transport and delivery workers, garbage collection workers, and agro-food processing workers are exposed to heightened risks. States Parties must ensure that their national policies on occupational safety and health, and their health and safety regulations, reflect and address the hazardous agents and the particular psychosocial risks faced by different groups of workers in the Covid-19 context. The Committee also stresses that the situation requires a thorough review of occupational risk prevention at national policy level, as well as at company level, in close consultation with the social partners, as stipulated by Article 3§1 of the Charter. The national legal framework may require amendment, and risk assessments at company level must be adapted to the new circumstances

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Montenegro is in conformity with Article 3§1 of the Charter.

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

#### *Paragraph 2 - Safety and health regulations*

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 3§2 of the Charter as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

The Committee previously found the situation in Montenegro not to be in conformity on the grounds that it has not been established that levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces were in line with the level set by international reference standards, it has not been established that levels of protection against asbestos and ionising radiation were adequate and that domestic workers were not protected by occupational health and safety regulations (Conclusions 2017). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity and to the targeted question.

#### ***Content of the regulations on health and safety at work***

The Committee previously examined the situation regarding safety and health regulations at work. It requested further information on the risks covered by the Law on Safety and Health at Work and asked that the next report explained the specific occupational risk protection system. The Committee also requested information on the regulations covering work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships. The Committee considered that existing regulations only covered a small proportion of the risks identified in Conclusions XIV-2, and failed to offer protection against significant risks such as heavy loads, asbestos, air pollution, noise and vibration, and chemical, physical and biological agents, or exposed sectors such as dock labour and agriculture (Conclusions 2017).

The report states a number of specific regulations adopted in the field on health and safety at work.

In its targeted question on Article 3§2, the Committee asked for information on regulations adopted to improve health and safety in evolving new situations such as in the digital and platform economy by, for example, strictly limiting and regulating electronic monitoring of workers, by recognising a right to disconnect, right to be unavailable outside agreed working and standby time, mandatory digital disconnection from the work environment during rest periods. It also requested information on regulations adopted in response to emerging occupational risks.

In response to the targeted question, the report lists regulations aimed at reducing of harmful effects of alcohol. It also indicates that in the past few years no increase of supply, sale or possession of narcotic and psychotropic substances was observed in the illegal drug market.

The Committee points out that the information requested in the targeted question is insufficient. The Committee therefore repeats this request for information. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Montenegro is in conformity with Article 3§2 of the Charter on this point.

The Covid-19 pandemic has changed the way many people work, and many workers now telework or work remotely. Teleworking or remote working may lead to excessive working hours.

The Committee considers that, consistent with States Parties' obligations in terms of Article 3§2, in order to protect the physical and mental health of persons teleworking or working remotely and to ensure the right of every worker to a safe and healthy working environment, it is necessary to enable fully the right of workers to refuse to perform work outside their normal working hours (other than work considered to be overtime and fully recognised accordingly) or while on holiday or on other forms of leave (sometimes referred to as the "right to disconnect").

States Parties should ensure there is a legal right not to be penalised or discriminated against for refusing to undertake work outside normal working hours. States must also ensure that there is a legal right to protection from victimisation for complaining when an employer expressly or implicitly requires work to be carried out outside working hours. States Parties must ensure that employers have a duty to put in place arrangements to limit or discourage unaccounted for out-of-hours work, especially for categories of workers who may feel pressed to overperform (e.g. those during probationary periods or for those on temporary or precarious contracts).

Being connected outside normal working hours also increases the risk of electronic monitoring of workers during such periods, which is facilitated by technical devices and software. This can further blur the boundaries between work and private life and may have implications for the physical and mental health of workers.

Therefore, the Committee considers that States Parties must take measures to limit and regulate the electronic monitoring of workers.

### ***Establishment, alteration and upkeep of workplaces***

The Committee deferred its previous conclusion on this point and asked for information on the legislative or regulatory measures establishing the levels of prevention and protection against occupational hazards specifically related to the establishment of, alteration to, and upkeep of workplaces. It also asked for more detailed information on the implementation of preventive measures geared to the nature of risks, on the provision of information and training of workers, as well as on a schedule for compliance (Conclusions 2017).

In response, the report states that the employer is obliged to ensure the protective measures at work are in place, as well as that only employees who are trained on the safety regulations have access to an area at work that poses risk to health. The employer must also make sure that the workers are provided with an appropriate work equipment and tools. It is also the employer's obligation to warn any person who is at a workplace about dangerous places or risks to health, the necessary protective measures and to instruct that person about the safe areas. The employer has to put warnings in the official language and languages officially in use and signs on safety and health at work at workstations and on the work equipment.

The Committee notes that the information provided is not detailed enough and that the report does not contain any information on the installation, modification and upkeep of workplaces. The Committee thus repeats its request that the next report provides the updated information on the legislative or regulatory measures establishing the levels of prevention and protection against occupational hazards specifically related to the establishment of, alteration to, and upkeep of workplaces.

In the light of the above information, the Committee reiterates that it has not been established that the levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces are in line with the level set by international reference standards.

### ***Protection against hazardous substances and agents***

It its previous conclusion, the Committee asked for information on the specific provisions relating to protection against risks of exposure to benzene. It also asked for information on the legislation and regulations on level of prevention and protection from asbestos, and on the application of this legislation and regulations in practice. In particular, the Committee asked for information on exposure limit values, on the ban of production and sale of asbestos and products containing it, as well as for specific measures taken to make an inventory of all building and materials contaminated by asbestos. The Committee requested more comprehensive information on the legislation and regulations on the level of prevention and protection from ionising radiation, and on the application of this legislation and regulations in practice (Conclusions 2017).

As regards benzene, the report states that protection against risks of exposure to benzene is governed by the Law on Safety and Health at Work (Official Gazette of Montenegro, Nos. 34/14 and 44/18) and the Rulebook on safety and health measures at work related to the protection of the risk of exposure to chemical hazards (Official Gazette of Montenegro, No. 40/18). The latter determines the minimum requirements that the employer must meet, including limit values aimed at eliminating or reducing the risk of injuries at work, occupational diseases when the employee is exposed to chemical substances. The limit value for benzene is set at 3.25 milligrams in cubic meter. The Law on Air Protection (Official Gazette of Montenegro, No. 25/10) prescribes the target value of benzene content in the air.

As regards asbestos, the report indicates that Rulebook on protective measures at workplace from the risk of exposure to asbestos (Official Gazette of Montenegro, No. 14/17) was adopted in 2017 and that it transposed the Directive 2009/148/EC of the European Parliament and of the Council on the protection of workers from the risks related to exposure to asbestos at work. The Rulebook applies to workplaces where employees are exposed or may be exposed to dust originating from asbestos or material containing asbestos. The limit value is set at 0.1 asbestos fibre per cubic centimetre. It is not allowed to carry out work where asbestos or material containing asbestos is applied by spraying it, it is also prohibited to use the insulation materials with a density less than one gram per cubic centimetre that contain asbestos. It is also prohibited to produce and process products where asbestos has been added intentionally, except for operations carried out to remove asbestos or material containing asbestos. The report also indicates that the Law on Environment (Official Gazette of Montenegro, No. 52/16) prohibits the placing on the market and use of all types of asbestos fibres. The Law on Waste Management (Official Gazette of Montenegro, No. 39/16) prohibits the processing of construction waste containing cement asbestos and states that waste containing asbestos has to be collected, packaged, stored and disposed of in a specific area. The asbestos waste disposal is also governed by the Rulebook on the way of packaging and disposal of waste containing asbestos (Official Gazette of Montenegro, No. 11/13) and the Rulebook on construction waste management, manner and procedure of construction waste processing, conditions and manner of disposal of cement asbestos construction waste (Official Gazette of Montenegro, No. 50/12). The report points out that no facilities are built using asbestos. In order to introduce energy efficiency measures a large number of public buildings were renovated and, in case asbestos was found, it was removed and disposed of in accordance with the legislation in force.

As regards ionising radiation, the report states that protection against ionising radiation and radiation safety is governed by the Law on Ionising Radiation Protection and Radiation Safety (Official Gazette of Montenegro, Nos. 56/09, 58/09, 40/11, 55/16) and seventeen subordinate legal acts, the Strategy for Ionising Radiation Protection, Radiation Safety and Radioactive Waste Management for the period 2017-2021, together with the Action Plan for the period 2017-2021, as well as the Radon Protection Programme together with the Action Plan for the period 2019-2023. Also, protection against ionising radiation is governed by twenty-six international legal instruments to which Montenegro is a party. The report states

that these regulations govern the protection of persons exposed to ionising radiation of its harmful effects.

The report provides a list of regulations related with transport and trade of radioactive materials, food safety and emergencies. The Law on Ionising Radiation Protection and Radiation Safety (Official Gazette of Montenegro, Nos. 56/09/ 58/09, 40/11, 55/16) currently in force establishes the requirements for radioactive activities and protection of life and health of humans and environment from the harmful effects of ionising radiation. Radioactive waste is mainly generated because of the use of radioactive sources for medical and industrial purposes, as well as in education and scientific research. Systematic testing of environmental radiation is carried out as well as environmental radioactivity monitoring.

The report states that a record is kept of persons exposed to ionising radiation at work and persons responsible for protection from ionising radiation, database on reported nuclear materials, a central storage of radioactive waste. The Agency for Nature and Environmental Protection is in charge of issuing the licenses in the area of ionising radiation protection and radiation safety.

The report states that a new legislation will be enacted in the field of ionising radiation and that the drafting of the law has lasted for two years. The draft law regulates the protection of humans against harmful effects of ionising radiation, import, export and transit of sources of ionising radiation and nuclear materials, transport of radioactive sources and nuclear materials, radioactive waste management and other issues. When the law was drafted in 2018, the European Commission verified whether the draft law was in compliance with the *acquis communautaire*. Protection of workers from ionising radiation is provided in the draft law. The draft law also transposes the relevant legislation of the European Union. The report states that the draft law defines the need for an exposure risk assessment, as well as the measures for the risk elimination and reduction, it also regulates the obligation to use the personal protection equipment at work and the way of informing the exposed persons. If, based on the risk assessment, the values of ionising radiation exposure levels are above the permitted levels, there is an obligation to develop an action programme on the implementation of protection measures and if the limit values of ionising radiation are above the threshold values, in addition to the action programme it is obligatory to implement additional measures to reduce the exposure. Such workplaces must be marked accordingly. The report notes that the draft law has not yet been adopted because of the parliamentary elections in Montenegro.

The Committee takes note of the information provided in the report and points out that no information is provided on whether workers were protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007), thus it repeats this request for information and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Montenegro is in conformity with Article 3§2 of the Charter on this point. The Committee also asks for updated information on the adoption of the draft law described in the report.

### ***Personal scope of the regulations***

#### ***Temporary workers***

The Committee previously requested specific examples on the way in which temporary workers, interim workers and workers on fixed-term contracts were provided information on hazards, training on safe working methods, medical examination when rehired or reassigned new tasks. The Committee also asked for specific examples on how these workers were provided access to representation at work and information on any existing limitations on the basis of the number of employees, and on existing measures to monitor the implementation of such legislation and regulations in practice (Conclusions 2017).

The report indicates that the Law on Safety and Health at Work refers to all employees and includes temporary and occasional workers. The employer has an obligation to warn any person in a workplace about any dangerous places or harmful effects on health, the protective measures. The employee has to be informed about safety and health measures and has to be trained about those measures. During the training the employee must be informed about any hazards at the workplace. Medical examination of the employee has to be carried out in accordance with existing legislation. When planning and introducing new technologies, the employer has to consult the employees or their representatives for safety and health at work when choosing the work equipment, as well as when deciding on working conditions, working environment and their consequences to safety and health at work. Supervision is carried out by the Labour Inspectorate (see also examination under Article 3§3, Conclusions 2021).

### ***Other types of workers***

The Committee previously concluded that domestic workers were not protected by occupational health and safety regulations (Conclusions 2017).

The report indicates that the recent amendments to the Law on Safety and Health at Work included employees working in the territory of Montenegro with legal entities and entrepreneurs being engaged in any activity, State government, State administration bodies, local self-government units, employees assigned to work abroad, if the regulations of the host country provide for less favourable measures of safety and health at work than those provided by this law. Thus, as explained in the report, domestic workers are now protected by occupational safety and health regulations.

### ***Consultation with employers' and workers' organisations***

The Committee previously found the situation to be in conformity in this respect (Conclusions 2017).

#### *Conclusion*

The Committee concludes that the situation in Montenegro is not in conformity with Article 3§2 of the Charter on the ground that it has not been established that levels of prevention and protection required in relation to the establishment, alteration and upkeep of workplaces are in line with the international reference standards

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

#### *Paragraph 3 - Enforcement of safety and health regulations*

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

In its previous conclusion, the Committee concluded that the situation in Montenegro was not in conformity with Article 3§3 of the Charter (Conclusions 2017).

Assessment of the Committee will therefore concern the information provided by the Government in response to the non-conformity conclusion and to the targeted questions.

#### ***Accidents at work and occupational diseases***

The Committee previously examined the situation regarding accidents at work and occupational diseases (Conclusions 2017). It considered that the situation in Montenegro was not in conformity with Article 3 § 3 of the Charter on the grounds that it had not been established that accidents at work and occupational diseases were monitored effectively. Concerning accidents at work, the Committee reiterated its previous request for information on the standardised incidence rates of accidents at work and fatal accidents at work. In its targeted question on Article 3§3 with regard to accidents at work and occupational diseases, the Committee asked for information on statistical data on prevalence of work-related death, injury and disability including as regards suicide or other forms of self-harm, PTSD, burn-out and alcohol or other substance use disorders, as well as on epidemiological studies conducted to assess the long(er)-term health impact of new high-risk jobs (e.g. cycle delivery services, including those employed or whose work is managed through digital platform; performers in the sports entertainment industry, including in particular contact sports; jobs involving particular forms of interaction with clients and expected to use potentially harmful substances such as alcohol or other psychoactive products; new forms of high-yield high-stress trading; military and law enforcement; etc.) and also as regards the victims of harassment at work and poor management.

The report states that in the process of joining the European Union, within the negotiation chapter 19 – Social policy and employment, Montenegro completed the legal framework and harmonized its regulations in the field of safety and health at work within the EU acquis. According to the report, concerning the reference period from 1 January 2016 to 31 December 2019, the Labour Inspectorate investigated 25 deaths, 73 serious injuries and 5 collective injuries at work. During 2019, the total number of reported injuries at work amounted to 1,065. For the period of 2018, a total of 1,199 injuries at work were reported. The report also indicated that in 2019, there were 7 fatal and 20 serious injuries in work accidents which represents a decrease of 41.67% in fatal injuries and 64.91% in severe injuries compared to those figures in 2008.

According to the report, the most common cause of injuries at workplace pertain to the failure to apply safety and health measures at work (fall from a height or depth, electric shock, impact/crushing of the trunk part of the body), hiring of untrained workers and who have not undergone a previous health check, obsolescence of work equipment, as well as their use without prior examination and testing. In a case where an imminent danger to life has been established or the health of employees is endangered, a measure of prohibition of the use of work equipment which caused the accident is imposed. Other measures and

actions within the competence of the Labour Inspectorate are taken, and reports of work injuries are submitted to judicial authorities or the prosecution service.

In reply to the question raised by the Committee as to whether inspectors have the right to inspect all workplaces, the report indicates that the provisions of the Law on Safety and Health at Work apply to employees working in the territory of Montenegro with legal entities and entrepreneurs in all activities, government bodies, state administration bodies. It also covers employees assigned to work abroad, if regulations of the receiving country provide for less favourable measures of safety and health at work than those provided for by this law. In accordance with the provisions of the Law on Labour Inspection, the inspectors are authorized to enter the business premises of the employer without prior notice. They are authorized to inspect the employer's documentation, to make copies or excerpts from that documentation, with the obligation to keep it as a business secret. If it is necessary for the inspector to inspect certain residential premises in which the employer's activity is performed and if the employer or the employee objects to the inspection in residential premises, then the inspector must provide a decision of the competent court for the inspection of those premises.

The report does not provide any information on the standardised incidence rates of accidents at work and fatal accidents at work. The Committee accordingly reiterates its request. The Committee considers that the other figures provided by the report do not establish that accidents at work are monitored effectively. It reiterates that the satisfactory application of the Charter cannot be ensured solely by the operation of legislation and regulations, if these are not effectively enforced and rigorously supervised (see, for instance, Complaint no. 1/1998, International Commission of Jurists v Portugal, decision on the merits, 9 September 1999, § 32). The frequency of accidents at work and their evolution are key aspects of monitoring the effective observance of the rights guaranteed in Article 3§3.

Concerning occupational diseases, considering that the previous report did not provide pertinent figures or statistics on the number of occupational diseases, the Committee found in Conclusions 2017 that during the reference period occupational diseases were not adequately monitored. It asked that the next report provide information on the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged.

In reply, the report indicates that according to the Law on Pensions and Disability Insurance, "occupational diseases shall be certain diseases that have arisen during the insurance period, caused by a long and direct influence of processes and conditions at workplace or in the jobs a participant performed." Under the same law, a worker who has suffered complete loss of working capacity due to an injury at work or an occupational disease shall be entitled to a disability pension regardless of the length of insurance. The disability pension in these cases shall be determined in the amount of the old-age pension that a participant would receive for 40 years of pension service. According to the report, the 2004 Rulebook on determining the occupational diseases established a list of 56 diseases that are considered occupational diseases. This list is "closed" in the sense that only diseases listed as occupational diseases are recognised as such. The Rulebook also defines the jobs and workplaces where the disease occurs, as well as the conditions for recognising the disease as an occupational disease.

The report does not provide any information on the incidence rate and the number of recognised and reported occupational diseases during the reference period (by sector and activity year). Nor does the report provide information on cases of fatal occupational

diseases and on measures taken or envisaged to counter insufficiency in the declaration and recognition of occupational diseases. The report does not provide information on the most frequent occupational diseases during the reference period. The Committee therefore reiterates its request for information in these respects. Pending receipt of this information, the Committee still considers that there is nothing to establish that occupational diseases are monitored effectively.

### ***Activities of the Labour Inspectorate***

In its previous conclusions, the Committee, considering that the information provided was not sufficient to assess compliance with Article 3§3, reserved its position on this point (Conclusions 2017). It requested information on measures to focus on labour inspection on small and medium-sized enterprises and reiterated its request for information on the proportion of workers who are covered by inspection and the percentage of companies which underwent a health and safety inspection in the years covered by the reference period. The targeted question with regard to accidents at work concerned the organisation of the labour inspectorate, and the trends in resources allocated to labour inspection services, including human resources; number of health and safety inspection visits by the labour inspectorate and the proportion of workers and companies covered by the inspections as well as the number of breaches to health and safety regulations and the nature and type of sanctions; whether inspectors are entitled to inspect all workplaces, including residential premises, in all economic sectors.

In reply, the report states that a total of 42 inspectors are employed in the Department for Labour Inspection, of which 32 are in charge of labour relations, including the chief inspector and 10 inspectors are in charge of occupational health and safety. In the period from January 2016 to December 2019, the Labour Inspectorate hired two additional inspectors in the area of occupational health and safety.

According to the report, in the period from January 2016 to December 2019, the Labour Inspection carried out 10,831 inspections in total, resulting in the identification of 11,618 irregularities. In order to eliminate identified irregularities, 3,541 warnings and 3,068 administrative orders were issued, and 190 decisions on “prohibitions of work” have been adopted. Due to established irregularities, fines of a total amount of 938,810 € have been imposed. There were 49 requests in total for initiation of misdemeanour procedures in the field of safety and health at work. The Committee also takes note of the figures provided concerning the number of inspections performed, broken down by sector and activity.

The report does not provide any information on measures to focus on labour inspection on small and medium-sized enterprises. Nor does it provide information on the proportion of workers who are covered by inspection and the percentage of companies which underwent a health and safety inspection during the reference period and on the trends in resources allocated to labour inspection services. The Committee reiterates its request for information in these regards and concludes that there is nothing to establish that the activities of the Labour Inspectorate are effective in the practice.

### ***Conclusion***

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

- it has not been established that accidents at work and occupational diseases are monitored effectively;
- it has not been established that the activities of the Labour Inspectorate are effective in practice.

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

*Paragraph 4 - Occupational health services*

The Committee notes that no targeted questions were asked under Article 3§4 of the Charter. As the previous conclusion found the situation in Montenegro to be in conformity with the Charter, there was no examination of the situation in 2021.

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

### *Paragraph 1 - Removal of the causes of ill-health*

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

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 11§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee concluded that the situation in Montenegro was not in conformity with Article 11§1 of the Charter on the ground that adequate measures had not been taken to effectively guarantee the right of access to healthcare (Conclusions 2017). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity and to the targeted questions.

The Committee wishes to point out that it will take note of the reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

### ***Measures to ensure the highest possible standard of health***

In a targeted question for this cycle, the Committee asked for overall and disaggregated statistical data on life expectancy across the country and different population groups (urban; rural; distinct ethnic groups and minorities; longer term homeless or unemployed; etc.) identifying anomalous situation (e.g. particular areas in the community; specific professions or jobs; proximity to active or decommissioned industrial or highly contaminated sites or mines; etc.) and on prevalence of particular diseases among relevant groups (e.g. cancer) or blood borne infectious diseases (e.g. new cases HIV or Hepatitis C among people suffering from substance use disorders or who are held in prison; etc.).

The report indicates that life expectancy at birth in 2019 was 76.7 years. The Committee notes that according to the World Bank data, the life expectancy has slightly increased since the previous reference period (76.4 years in 2015). According to Eurostat, the average life expectancy at birth in the EU-27 was estimated at 81.3 years in 2019.

The report provides data on the incidence of HIV and Hepatitis C. The report further indicates that according to preliminary data from 2017, the main causes of death are the diseases of the circulatory system (cardiovascular diseases) and cancer, in particular lung and breast cancer. The report provides information on the measures related to the control and prevention of chronic non-communicable diseases (such as the Strategy for Prevention and Control of Chronic Non-communicable Diseases, the Action Plan for the Improvement of Mental Health, the Program of Measures for Improving Nutrition and Diet with the Action Plan 2019-2020, the National HealthCare Strategy for Persons with Diabetes, the National Strategy for the Prevention of Harmful Alcohol Use and Alcohol-induced Disorders). The Committee asks for information on the impact of such measures on reducing the prevalence of diseases constituting the main causes of death and improving the health of the population.

The report does not provide disaggregated statistical data on life expectancy across the country and different population groups (urban; rural; distinct ethnic groups and minorities; longer term homeless or unemployed; etc.) identifying anomalous situation (e.g. particular

areas in the community; specific professions or jobs; proximity to active or decommissioned industrial or highly contaminated sites or mines; etc.). The Committee reiterates its question.

### ***Access to healthcare***

In its previous conclusion, the Committee took note of the adoption in June 2015 of the document of Structural Reforms in the Healthcare System of Montenegro with Action Plan for its implementation from 2015 to 2017 (Conclusions 2017). It asked that the next report provide comprehensive information on the implementation of the Structural Reforms mentioned in the report and on their concrete impact on the healthcare system. Meanwhile, noting that the main reforms of the health system should be implemented from 2016 to 2017 (outside the reference period for that reporting cycle), the Committee considered that the situation was not in conformity with Article 11§1 of the Charter on the ground that adequate measures had not been taken to effectively guarantee the right of access to healthcare (Conclusions 2017).

The report indicates that the structural reforms in the healthcare system aimed to achieve a financially sustainable healthcare system, which would effectively provide adequate quality for all service users. Some of the measures taken are related to investing in modern medical equipment, modernization of spatial capacities and education of medical staff. The report states that the overall health system of Montenegro comprises a total of 2,278 actively engaged doctors (namely a ratio of 3.3 doctors per thousand inhabitants, close to the European average of 3.4 doctors). According to the report, significant funds are allocated by the state in order to enable doctors' professional advancement (through specialisation, continuous medical training etc).

The report indicates that the list of medicines, which includes modern therapies, has significantly contributed to the improvement of treatment of insured persons, and by expanding the right to medical devices and aids during the past years, the effects of treatment are stronger and healthcare is more accessible.

Furthermore, the Committee notes from World Bank data that the public health expenditure as a share of GDP in Montenegro was 8.42% in 2018 (compared to 3.7 in 2014). The Committee notes that the OECD average was 8.8% of GDP in 2018 and the EU average was 9.87% in 2018 (Eurostat). The Committee asks for updated data on the public health expenditure as a share of GDP in the next report.

In its previous conclusion (Conclusions 2017), the Committee asked that the next report contain information on the out-of-pocket payments supported by patients (as a percentage of the total health spending). The report indicates that Article 18 of the Law on Compulsory Health Insurance stipulates that for the performed service, the healthcare provider must issue to the insured person proof of payment of the co-payment, which must contain the full price of the health service, the co-payment amount expressed as a percentage of the health service price and the nominal co-payment amount. The Committee notes from the 'European Observatory on Health Systems and Policies' that the health system of Montenegro is based on a social health insurance system, with more than 95% of the population being covered by social health insurance. Additional funds come from the state budget, as well as substantial out-of-pocket payments, with the latter amounting to 40% of current health expenditure in 2018. The Committee asks for updated figures on the out-of-pockets payments in the next report.

In its previous conclusion, the Committee also asked for information and concrete examples of the actual average waiting times for primary and specialist care as well as for surgical interventions (Conclusions 2017). The report indicates that waiting lists can be made for certain health services in the field of diagnostics and treatments which are not urgent and which cannot be provided within 30 days. Waiting lists are compiled by healthcare

institutions. At the primary healthcare level, there is no waiting for examinations by selected doctors for adults, children and women, while specialist examinations by internists and ophthalmologists take an average of up to seven days and radiological diagnostics from 0 to 30 days. The Committee notes from Euro Health Consumer Index 2018 that Montenegro has implemented a real-time e-Referral and e-Prescription system, radically reducing waiting times.

The Committee notes from the EU Commission Report 2020 that Montenegro has developed 10 strategic documents in the field of health protection, including health policy until 2020. One of its priorities is extending life expectancy, which remained at the same level as in 2018 (76.8). The same report indicates that the implementation of the 2015-2020 master plan for health development continued in 2019, but the country's health budget decreased slightly compared to 2018 (6.18%), and was not sufficient to implement various preventive and public health measures. According to the same report, the over-prescription of medicines was still a matter of concern, and efforts to tackle anti-microbial resistance were not sufficiently supported due to insufficient communication and insufficient actions aimed to improve health literacy.

The Committee takes note of the measures and efforts taken to improve the access to healthcare especially with regard to medical staff and waiting times. It asks that the next report continue to provide information on the outcomes of the reforms undertaken by Montenegro in particular in respect of out-of-pocket payments, over-prescription of medicines, country's health budget dedicated to health. In the meantime, the Committee reserves its position on this point.

In a targeted question, the Committee asked for information about sexual and reproductive healthcare services for women and girls (including access to abortion) and statistical information about early (underage or minor) motherhood, as well as child and maternal mortality. It also asked for information on policies designed to remove as far as possible the causes for the anomalies observed.

The report indicates that the Strategy for the Preservation and Promotion of Reproductive and Sexual Health 2013-2020 had the following objectives (among others): to provide high quality family planning services including infertility services; to reduce the abortion rate; to prevent and control sexually transmitted infections; to promote sexual and reproductive health in the context of healthy lifestyles, to ensure a higher level of knowledge in the field of sexual-reproductive health through forms of formal and non-formal education. The report further provides information on the activity of reproductive health counselling centres and the projects implemented in cooperation with non-governmental organisations aimed at providing information on access to health services of sexual and reproductive care for women.

With regard to abortion, the report indicates that according to the Law on Conditions and Procedure for the Termination of Pregnancy, abortion can be performed up to 10 weeks from the day of conception, based on the written request of the pregnant woman (Article 4). The Law provides that abortion can be performed after the expiration of 10 weeks, but not after 32 weeks from the day of conception. Article 5 of the Law stipulates that termination of pregnancy in case of a minor or a person under guardianship may be carried out only with the written consent of the parent, adoptive parent, or guardian.

The report indicates that the costs of terminating a pregnancy up to 10 weeks from the day of conception are borne by the pregnant woman. If the pregnant woman is a beneficiary of social protection pursuant to the regulations on social and child protection, the costs of abortion shall be borne by the Center for Social Work on whose territory the pregnant woman resides. If the pregnant woman is a minor or a person under guardianship, the costs are borne by the parent, adoptive parent, guardian or guardianship authority. In cases of termination of pregnancy for the reasons stated in Articles 6, 7 and 8 of the Law on

Conditions and Procedure for the Termination of Pregnancy, the costs of abortion shall be borne by the Health Insurance Fund of Montenegro.

The report further indicates that women are exempted from paying co-payments during pregnancy, childbirth and one year after childbirth according to the Law on Compulsory Health Insurance (Article 19, paragraph 1, item 2). Compulsory health insurance does not provide funds for abortion for non-medical reasons. The Committee asks for clarification on the costs of abortion and whether they are reimbursed by the State in total or in part.

The Committee asks for information on the measures taken to ensure that women and girls have access to modern contraception. It also asks for information on the proportion of the cost of contraceptives that is not covered by the State (in cases where the cost is not fully reimbursed by the State).

The report indicates that, during the reference period, the infant mortality (number of infant deaths per 1,000 live births) stood at 3.4 in 2016, 1.3 in 2017, 1.7 in 2018 and 2.4 in 2019. The Committee notes that according to Eurostat, the EU-27 average was 3.4 in 2019.

As regards the maternal mortality rate, the Committee notes from World Bank data that the rate was 6 deaths per 100,000 live births in 2016 and 2017 and remained unchanged since the previous reference period (6 in 2015).

The report does not provide statistical data on early (underage) motherhood. The Committee reiterates its question.

In response to a previous question of the Committee with regard to the right to protection of health of transgender persons (Conclusions 2017), the report indicates that the Rulebook on determining medical reasons for gender reassignment ("Official Gazette of Montenegro", No. 47/14) determines the medical reasons for gender reassignment of the insured person, which are borne by the funds of compulsory health insurance. It is prescribed that a gender reassignment for medical reasons may be required by an insured person older than 16 years of age. The medical reasons for gender reassignment of the insured person are determined by: examination at the primary healthcare level, examination and diagnosis by a specialist in internal medicine (general internal medicine, endocrinology), examination and diagnosis by a surgery specialist (general surgery, plastic and reconstructive surgery, urology and gynaecology), the report of a psychiatrist and psychologist, and the social case history issued by a social worker. The opinion on the existence of medical reasons for gender reassignment of the insured person is given by the council of doctors of medicine of the appropriate specialty of the Clinical Centre of Montenegro on the basis of reports and case history.

The Committee refers to its general question as regards the right to protection of health of transgender persons in the general introduction. The Committee recalls that respect for physical and psychological integrity is an integral part of the right to the protection of health guaranteed by Article 11. Article 11 imposes a range of positive and negative obligations, including the obligation of the state to refrain from interfering directly or indirectly with the enjoyment of the right to health. Any kind of unnecessary medical treatment can be considered as contrary to Article 11, if accessing another right is contingent upon undergoing that treatment (*Transgender Europe and ILGA Europe v. Czech Republic*, Complaint No. 117/2015, decision on the merits of 15 May 2018, §§74, 79, 80).

The Committee recalls that state recognition of a person's gender identity is itself a right recognised by international human rights law, including in the jurisprudence of the European Court of Human Rights, and is important to guaranteeing the full enjoyment of all human rights. It also recalls that any medical treatment without free informed consent (subject to strict exceptions) cannot be compatible with physical integrity or with the right to protection of health. Guaranteeing free consent is fundamental to the enjoyment of the right to health, and is integral to autonomy and human dignity and the obligation to protect the right to health (*Transgender Europe and ILGA Europe v. Czech Republic*, op. cit., §§78 and 82).

The Committee invites states to provide information on the access of transgender persons to gender reassignment treatment (both in terms of availability and accessibility). It asks whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other medical requirements which could impair their health or physical and psychological integrity. The Committee also invites states to provide information on measures taken to ensure that access to healthcare in general, including sexual and reproductive healthcare, is provided without discrimination on the basis of gender identity.

In a targeted question, the Committee asked for information on measures taken to ensure informed consent to health-related interventions or treatment (under Article 11§2). The report indicates that Article 11 of the Law on Patients' Rights ("Official Gazette of Montenegro", No. 40/10) stipulates that the patient has the right to receive, in due time, the information from the healthcare professional enabling him/her to make a decision on accepting or rejecting the proposed medical intervention. The information is provided orally and in a way that is understandable to the patient by a health professional with a university degree, while taking into account the patient's age, education and emotional state. If the patient does not know the official language in use or is hearing impaired, the medical institution is obliged to provide a translator or interpreter. Exceptionally, the competent healthcare professional may withhold the diagnosis, limit the course of the proposed medical intervention and its risks or information, if there is a serious danger that the information will significantly harm the patient's health.

### **Covid-19**

In the context of the Covid-19 crisis, the Committee asked the States Parties to evaluate the adequacy of measures taken to limit the spread of virus in the population as well as the measures taken to treat the ill (under Article 11§3).

For the purposes of Article 11§1, the Committee considers information focused on measures taken to treat the ill (sufficient number of hospital beds, including intensive care units and equipment, and rapid deployment of sufficient numbers of medical personnel).

The report indicates that the Committee for Emergencies proclaimed the disease of the coronavirus as a public health emergency of international concern. In order to control and effectively monitor the virus, the Institute of Public Health adopted an Action Plan which aimed to minimize the risk of spreading the virus. The report indicates that measures were taken to save the lives and health of citizens, provide and distribute additional necessary medical equipment, coordinate budget assistance to citizens and the economy in overcoming the consequences of the pandemic, and inform the national and foreign public about all aspects of the coronavirus pandemic in the country.

The Committee recalls that during a pandemic, States Parties must take all necessary measures to treat those who fall ill, including ensuring the availability of a sufficient number of hospital beds, intensive care units and equipment. All possible measures must be taken to ensure that an adequate number of healthcare professionals are deployed (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

The Committee recalls that access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and States must ensure that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status are adequately protected by the healthcare measures put in place. Moreover, States must take specific, targeted measures to ensure enjoyment of the right to protection of health of those whose work (whether formal or informal) places them at particular risk of infection (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

During a pandemic, States must take all possible measures as referred to above in the shortest possible time, with the maximum use of financial, technical and human resources, and by all appropriate means both national and international in character, including international assistance and cooperation (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

*Conclusion*

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

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

### *Paragraph 2 - Advisory and educational facilities*

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter with respect to the provisions falling within the thematic group "Health, social security and social protection") as well as previous conclusions of non-conformity or deferrals.

The Committee deferred its previous conclusion (Conclusions 2017).

### ***Education and awareness raising***

In its targeted questions, the Committee asked for information about health education (including sexual and reproductive health education) and related prevention strategies (including through empowerment that can serve as a factor in addressing self-harm conducts, eating disorders, alcohol and drug use) in the community on a lifelong or ongoing basis, and in schools. It also asked for information about awareness-raising and education with respect to sexual orientation and gender identity (SOGI) and to gender-based violence.

In response, the report mentions various programmes and strategies that aim to support public health in the community, establish rules of healthy lifestyle, and prevent different dangerous diseases. The Committee notes in particular that one of the measures in the Action Plan under the National Strategy for the Prevention of Harmful Alcohol Use and Alcohol-Induced Disorders in Montenegro for the 2013-2020 period includes raising general awareness of the health, social and economic problems caused by excessive alcohol consumption. One of the measures envisaged in the National Health Care Strategy for Persons with Diabetes includes improving of knowledge and skills in prevention, early detection and treatment of diabetes (type 1, type 2 and gestational).

As regards health education in schools, the report indicates that the Montenegro Bureau for Education Services has undertaken a number of activities in order to raise students' awareness of the importance of health education and preventive measures in situations where schools may be exposed to various hazards. In addition to regular and optional subjects, such as biology and healthy lifestyles, there are interdisciplinary areas in primary and upper secondary schools. Teachers should introduce these areas into their subjects. One of these interdisciplinary areas is health education, which includes sexuality education.

With regard to sexual and reproductive health education, the report indicates that, in upper secondary schools, different aspects of these issues are covered in psychology, civics, media literacy, biology and healthy lifestyles classes. In primary schools, sex education issues are covered in the following subjects: biology (in grade IX) and healthy living (in grades VIII and IX). As for secondary vocational schools, different aspects of these issues are covered in psychology, biology and sociology classes.

The Committee notes that the general education programmes implemented in upper secondary schools include an optional subject entitled "Healthy Lifestyle" (1<sup>st</sup> and 2<sup>nd</sup> grades). Its curriculum includes various themes such as health and healthy lifestyles, diet and physical activity, the effects of psychoactive substances on health, sexual and reproductive health, HIV/AIDS, injury and violence prevention and others.

In the curricula of secondary vocational schools, the optional module "Contemporary growing" (72 lessons a year) aims to make young people aware of the process of adulthood. The module provides students with information on the importance of a healthy lifestyle

(healthy diet, physical activity, personal hygiene, etc.) and risky behaviour among young people (consequences of substance and alcohol abuse, possible causes and consequences of risky sexual behaviour, causes and consequences of various forms of violence, prevention of risky behaviour, etc.). Another optional module entitled "Social Networks and Globalisation" provides students with information related to the social context of gender roles in culturally diverse societies (e.g., gender roles in traditional and modern society; gender identity; inequality and gender diversity).

The Committee also notes that, according to the report, the Strategy for improving the quality of life of LGBTI persons in Montenegro for the 2019-2023 period includes certain activities that are implemented in the areas of health, social, cultural and others. These activities include, among others, organising trainings for specialists from social work centres, medical practitioners and workers from other areas (sports, politics, education) to increase their knowledge of LGBTI rights and develop a flexible approach to working with LGBTI people.

### ***Counselling and screening***

The Committee recalls that it deferred its previous conclusion pending receipt of the information requested on the consultation and screening available to pregnant women.

In response, the report states that, according to the Health Act, women have special rights during pregnancy, childbirth and for one year after childbirth. According to Article 19§1 (2) of the Law on Compulsory Health Insurance, they are exempted from paying the participation fee, i.e. the co-payment. A more detailed regulation on the standards and procedures for the provision of primary health care by the specialist medical team or gynaecologist provides for preventive examinations of pregnant women during pregnancy in the outpatient department of the gynaecologist. The Committee notes from the report that screening tests, such as glucose (gestational diabetes) or HIV screening, are available to pregnant women. The Committee requests a detailed description of the free screening and medical check-ups available to pregnant women, and their frequency.

In addition, the report notes that reproductive health counselling is organised by health centres, which work in one or two shifts, depending on the number of doctors working in the centre and the programmes being implemented. The Reproductive Health Counselling Centre is staffed by a nurse and a medical technician at all times, and each gynaecologist provides individual and collective health education as part of his or her work. Moreover, these centres run a "Pregnancy School" programme aimed at the adequate psycho-physical preparation of women for childbirth.

The report indicates that funds for national prevention programmes are allocated by the Health Insurance Fund. Preventive check-ups, additional tests and treatment under the programme for early detection of colorectal, breast and cervical cancer are free of charge for all programme participants. The Committee takes note of the very detailed information provided in the report on the proportion of persons concerned by every type of screening and the frequency of such examinations. The Committee asks for information in the next report on the scope of the screening programmes for other main causes of death, including the frequency of any such screening.

### ***Conclusion***

Pending receipt of the information requested, the Committee concludes that the situation in Montenegro is in conformity with Article 11§2 of the Charter.

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

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

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government’s replies to the targeted questions, namely about healthcare services in prison; community-based mental health services; drug abuse prevention and harm reduction; healthy environment; immunisation and epidemiological monitoring; Covid-19; and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (namely, after 31 december 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

In its previous conclusion, the Committee concluded that the situation in Montenegro was not in conformity with Article 11§3 of the Charter on the ground that the measures taken to ensure smoke-free environments in public places were insufficient (Conclusions 2017).

### ***Healthcare services in places of detention***

In a targeted question, the Committee asked for a general overview of healthcare services in places of detention, in particular prisons (under whose responsibility they operate/which ministry they report to, staffing levels and other resources, practical arrangements, medical screening on arrival, access to specialist care, prevention of communicable diseases, mental health-care provision, conditions of care in community-based establishments when necessary, etc.).

The report provides information about healthcare arrangements in prisons, psychiatric hospitals, and social care homes. The Prison Institute is the main health-care facility for inmates at the national level. In addition, inmates in need of specialist treatment have access to community-based medical facilities. The report provides some detail about staffing levels at the Prison Institute, as well as on medical screening of new arrivals. The Strategy for the protection and improvement of mental health in Montenegro 2019-2023 envisages the construction of a prison hospital by the end of 2021, while also stating that all patients who experience psychiatric disorders receive adequate treatment at the Prison Institute or at the psychiatric hospital in Kotor.

The Committee refers to the latest European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment report on Montenegro (CPT, 2017), which documented the lack of access to inpatient care for inmates suffering from psychiatric disorders, correlated with an over-reliance on mechanical constraint and the overuse of benzodiazepines. Notably, the CPT reported that metal hand and ankle-cuffs and chains were in use and that restraint was occasionally inflicted as punishment or to compensate for shortages of staff. The CPT noted that the psychiatric hospitals in Kotor and Dobrota were chronically overcrowded and lacked the capacity to receive inmates from the prison system for inpatient treatment.

The Committee requests more detailed information regarding mental healthcare provision in prisons, including specifically on the measures taken with a view to improving access to inpatient care and to reducing and regulating the use of restraint.

### ***Community-based mental health services***

In a targeted question, the Committee asked for information regarding the availability and extent of community-based mental health services and on the transition to community-based mental health from former large-scale institutions. The Committee also asked for statistical information on outreach measures in connection with the mental health assessment of vulnerable populations and on proactive measures adopted to ensure that persons in need of mental healthcare are not neglected.

The report provides some information about the services provided in residential institutions, including psychiatric hospitals and social care homes. In addition, the report briefly outlines the contents of the Strategy for the protection and improvement of mental health in Montenegro 2019-2023.

The Committee refers to persistent criticism by international organisations regarding the institutional focus of mental healthcare in Montenegro. The above CPT report notes the overcrowding and generally poor material conditions found at the Dobrota Psychiatric Hospital and the Komanski Most social care home, the fact that around one third of the patients at the Dobrota Psychiatric Hospital did not require further hospitalisation but could not be discharged due to the absence of adequate community care facilities, and the lack of meaningful progress with the deinstitutionalisation process. The Committee on the Rights of Persons with Disabilities noted the continuation of institutional care, the lack of any comprehensive strategy of deinstitutionalization, and the shortage of individual support services (Concluding Observations 2017). The European Commission report on Montenegro for 2021 noted that the Dobrota Psychiatric Hospital was overcrowded and that material conditions remained very poor.

Consistent with the World Health Organisation (WHO) Comprehensive Mental Health Action Plan 2013-2030, and other relevant standards, the Committee considers that a human rights-compliant approach to mental health requires at a minimum the following elements: a) developing human rights-compliant mental health governance through, inter alia, mental health legislation and strategies that are in line with the Convention on the Rights of Persons with Disabilities and other relevant instruments, best practice and evidence; b) providing mental health in primary care community-based settings, including by replacing long-stay psychiatric hospitals with community-based non-specialised health settings; and c) implementing strategies for promotion and prevention in mental health, including campaigns to reduce stigmatisation, discrimination and human rights violations.

The Committee notes that the targeted question refers to the issue of mental health outreach in the community, as opposed to residential care. As the information requested is not provided, the Committee reiterates its question regarding the availability and extent of community-based mental health services, the measures taken with a view to scaling down/closing long stay-psychiatric hospitals, and the mental health outreach targeting vulnerable populations. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Montenegro is in conformity with Article 11§3 of the Charter.

### ***Drug abuse prevention and harm reduction***

In a targeted question, the Committee asked for information about drug-related deaths and transmission of infectious diseases among people who use or inject psychoactive substances both in the community and in custodial settings. The Committee also asked for an overview of the national policy designed to respond to substance use and related disorders (dissuasion, education, and public health-based harm reduction approaches,

including use or availability of WHO listed essential medicines for opioid agonist treatment) while ensuring that the “available, accessible, acceptable and sufficient quality” criteria (WHO’s 3AQ) are respected, subject always to the exigency of informed consent. This rules out, on the one hand, consent by constraint (such as in the case of acceptance of detox and other mandatory treatment in lieu of deprivation of liberty as punishment) and, on the other hand, consent based on insufficient, inaccurate or misleading information (i.e. not based on state of the art scientific evidence).

The report notes that in 2016 there had been five, and, in 2017, six drug-related deaths. A Strategy for the prevention of drug abuse 2013-2020 is in place, with measures related to seven pillars – demand reduction, supply reduction, information and data systems, research, international cooperation, financial cooperation, and evaluation. The Strategy formed the basis for the adoption of several action plans. The report emphasises the importance of early detection of new psychoactive substances. Regarding the situation of incarcerated drug users, the report notes that opioid agonist treatment is available, as well as screening and treatment for infectious diseases.

The Committee notes that the report does not provide information with regard to the situation of drug users in the community, including information about the transmission of infectious diseases and the measures designed to respond to substance use and related disorders (dissuasion, education, and public health-based harm reduction approaches). Therefore, the Committee reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Montenegro is in conformity with Article 11§3 of the Charter.

### ***Healthy environment***

In a targeted question, the Committee asked for information on the measures taken to prevent exposure to air, water or other forms of environmental pollution, including proximity to active or decommissioned (but not properly isolated or decontaminated) industrial sites with contaminant or toxic emissions, leakages or outflows, including slow releases or transfers to the neighbouring environment, nuclear sites, mines, as well as on the measures taken to address the health problems of the populations affected, and to inform the public, including pupils and students, about general and local environmental problems.

In its previous conclusion, the Committee requested information on contamination of drinking water and water management, waste management, environmental noise, ionising radiation and asbestos (Conclusions 2017). The Committee pointed out that in the absence of such information in the next report, there would be nothing to show that the situation was in conformity with the Charter on this point. The Committee also asked to be kept informed on the measures taken to reduce the air pollution across the country.

The report outlines the procedure in place for issuing and reviewing integrated permits setting out permissible emission levels for relevant economic operators, pursuant to the Law on Integrated Environmental Pollution Prevention and Control and the Law on Industrial Emissions. The report provides detailed information regarding the licencing requirements for the management of radioactive waste. The report also describes the legal provisions setting out the obligation of the State authorities to provide information on the environment and identifies the main official channels where such information is provided.

The report states that the trends regarding the contamination of drinking water during the reference period have been stable and describes the institutional arrangements for monitoring water pollution and ionising radiation. On waste management, the report lists certain awareness raising activities implemented during the reference period by the Government in cooperation with local authorities. The report refers to annual noise pollution datasets from external sources and outlines the main provisions restricting the use of asbestos.

The report indicates that overall air pollution levels had decreased during the reference period, but that high and very high levels of critical pollutants had been recorded locally, particularly during the winter. The report describes some of the measures taken to address air pollution, including by carrying out studies to determine the impact of air pollution on health, its sources and contributing factors; adopting air quality plans for areas with high levels of air pollution; and strengthening the air quality management infrastructure.

The Committee asks for more detailed information on waste management, on the measures taken to address persistently high air pollution across the country, and to address the health problems of the populations affected by environmental pollution.

### ***Immunisation and epidemiological monitoring***

In a targeted question, the Committee asked States Parties to describe the measures taken to ensure that vaccine research is promoted, adequately funded and efficiently coordinated across public and private actors.

The report provides some information about measures taken to ensure effective Covid-19 vaccine take-up across the population.

### ***Tobacco***

In its previous conclusion, the Committee considered that the situation was not in conformity with Article 11§3 of the Charter on the ground that the measures taken to ensure smoke-free environments in public places were insufficient (Conclusions 2017). The Committee also asked for updated information on trends in the consumption of tobacco (adults and youth).

The Committee takes note of the adoption in 2019 of the Law on the restriction of the use of tobacco products, which provides, among other measures, for a ban on smoking at work and in public places, with fines for non-compliance ranging from 500 to 20,000 €. On the basis of this clarification, the Committee considers that the situation is no longer in breach of the Charter on this ground.

### ***Covid-19***

The Committee asked States Parties to evaluate the adequacy of measures taken to limit the spread of the Covid-19 virus in the population (testing and tracing, physical distancing and self-isolation, provision of surgical masks, disinfectant, etc.).

The report provides limited information about the Action Plan adopted by the Institute of Public Health, containing measures aimed at preventing the spread of Covid-19.

The Committee recalls that States Parties must take measures to prevent and limit the spread of the virus, including testing and tracing, physical distancing and self-isolation, the provision of adequate masks and disinfectant, as well as the imposition of quarantine and 'lockdown' arrangements. All such measures must be designed and implemented having regard to the current state of scientific knowledge and in accordance with relevant human rights standards (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020). Furthermore, access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status must be adequately protected by the healthcare measures put in place (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

### ***Conclusion***

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

## **Article 12 - Right to social security**

### *Paragraph 1 - Existence of a social security system*

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

### ***Risks covered, financing of benefits and personal coverage***

In its previous conclusion (Conclusions 2017), the Committee asked about the personal coverage of social security risks. As regards healthcare, the Committee notes from the report that according to the Law on Compulsory Health Insurance insured persons include employed and unemployed persons, beneficiaries of social assistance, farmers as well as all foreigners with temporary and permanent residence. The Committee asks the next report to indicate what percentage of population is covered under compulsory healthcare system.

As regards income-replacement benefits, in its previous conclusion the Committee asked what percentage of active population was covered for unemployment, sickness, old-age and disability risks. It notes from the report in this regard that in 2019 there were 619,67000 inhabitants, of whom the active population made 278,300 persons. The Committee also notes from the report that in 2021 the total number of insured persons in the database of insured persons amounted at 678,141, of which the number of active insured persons amounted to 572,892. Every citizen of Montenegro and a foreign national with an approved permanent residence in Montenegro has the right to health insurance.

The Committee notes that the information provided in the report concerning the total number of population and active population and active insured persons is confusing. Therefore, it asks the next report to provide more accurate information about the total active population (employed and unemployed persons) and the percentage covered against social security risks, such as old age, disability, employment injury, sickness and unemployment. The Committee recalls in this respect that under Article 12 a significant percentage of active population should be insured against these risks. In the meantime, the Committee reserves its position on this issue.

### ***Adequacy of benefits***

According to Eurostat data, the poverty level, defined as 50% of the median equivalised income, was € 157 per month in 2019. 40% of the median equivalised income corresponded to €126 monthly. The minimum wage was € 222 per month in 2019.

In its previous conclusion the Committee considered that the minimum levels of sickness, unemployment and disability benefits were inadequate.

As regards sickness benefit, the Committee notes from the report that pursuant to the Law on Compulsory Health Insurance, employed insured persons are entitled to wage compensation during temporary incapacity for work due to illness, for the entire duration of the temporary incapacity for work. The amount of compensation cannot be less than 70% of the compensation basis. The Committee thus notes that a worker earning the minimum wage would get € 155 in sickness benefit. The Committee asks whether its understanding is correct.

As regards unemployment benefit, according to the Law on Mediation for Job Placements and Rights during Unemployment (2019), the monetary compensation is one of the entitlements of an unemployed person in accordance with the Law. The Committee notes that in 2019 the monetary compensation amounted to € 108, which, according to the report has been raised in comparison to the earlier amount, which was set at 40% of the minimum wage. The Committee also notes in this regard that those unemployed persons who have acquired the entitlement to this benefit under the previous legislation (Law on Employment

and Exercise of Unemployment Insurance Rights, now repealed) have continued to receive 40% of the minimum wage as unemployment benefit. The Committee notes that all these amounts fall below 40% of the median equivalised income. Therefore, they remain inadequate and the situation is not in conformity with the Charter on this point.

In its previous conclusion the Committee found that the duration of payment of unemployment benefits to persons with an insurance period of less than ten years was too short. In particular, the Committee noted that a person insured for less than ten years could only get unemployment benefits for 3 or 4 months, which the Committee considered to be too short. It notes from the report in this regard that under the new Law on Mediation for Job Placement and Rights during Unemployment there have been some amendments to the duration of unemployment benefit. Namely, for the insurance period of nine months to 5 years the person is entitled to three months of unemployment benefit and to six months of benefit in case of insurance period of five to 15 years. The Committee considers that three months of entitlement is still too short and therefore, the situation is not in conformity with the Charter.

As regards disability benefits, the Committee notes from the report that the Law on Amendments to the Law on Pension and Disability Insurance of 2020 has raised the minimum pension by 13.16% and it amounted to € 145 in 2020. The Committee notes that the minimum disability pension in 2019 stood at € 128. The Committee asks the next report to indicate whether persons receiving the minimum amount of disability allowance are also entitled to other benefits.

### *Conclusion*

The Committee concludes that the situation in Montenegro is not in conformity with Article 12§1 of the Charter on the grounds that:

- the minimum level of unemployment benefit is inadequate;
- the duration of unemployment benefit for the insurance period of up to five years is too short.

## **Article 12 - Right to social security**

*Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security*

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

The Committee recalls that Article 12§2 obliges States to maintain a social security system at a level at least equal to that necessary for ratifying the European Code of Social Security. The Code requires the acceptance of more parts than ILO Convention No. 102 on social security (minimum standards), i.e. at least six of Parts II to X (on the understanding that Part II, Medical care, counts as two parts and Part V, Old-age benefit, counts as three parts).

The Committee notes that Montenegro has not ratified the European Code of Social Security. Therefore, the Committee cannot take into consideration the Committee of Ministers' resolutions on the application of the Code by States which are bound by it, and must make its own assessment.

The Committee notes that Montenegro has ratified ILO Convention No. 102 and accepted Parts II to VI, VIII and X, which concern medical care (II), sickness benefit (III), unemployment benefit (IV), old-age benefit (V), employment injury benefit (VI), maternity benefit (VIII) and survivors' benefit (X). However, Part VI ceased to apply after Montenegro ratified ILO Convention No. 121 on employment injury benefits.

The Committee recalls that to assess whether a social security system is maintained at a level at least equal to that which is necessary for ratifying the European Code of Social Security, it assesses the information relating to the branches covered (risks covered), to the personal scope and to the level of the benefits paid.

In this respect, the Committee refers to its previous Conclusion on Article 12§1 (Conclusions 2017), in which it had noted that the social security system continued to cover all the traditional branches (medical care, sickness, unemployment, old age, work accidents and occupational diseases, family, maternity, invalidity and survivors).

Concerning the personal scope, the Committee refers to its Conclusion in this evaluation cycle relating to Article 12§1, in which it reserves its position pending more accurate information on the percentage of the active population covered against social security risks.

As for the level of benefits, the Committee recalls that it has concluded that the minimum level of unemployment benefit is inadequate and the duration of unemployment benefit is too short for persons who have paid contributions for up to five years (Conclusion 2021 on Article 12§1); that the level of the minimum old-age pension is inadequate (Conclusion 2021 on Article 23); and that family benefits did not cover a significant percentage of families (Conclusion 2019 on Article 16). The Committee further recalls that, pending receipt of information, it has not ruled on the adequacy of wage compensation during temporary incapacity for work resulting from illness or of disability benefits (Conclusion 2021 on Article 12§1).

### *Conclusion*

The Committee concludes that the situation in Montenegro is not in conformity with Article 12§2 of the Charter on the ground that it has not been established that Montenegro maintains a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security.

## **Article 12 - Right to social security**

### *Paragraph 3 - Development of the social security system*

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

The Committee recalls that States were asked to reply to two targeted questions for Article 12§3 of the Charter as well as, where applicable, the previous conclusions of non-conformity or deferral (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee found that the situation was not in conformity with the Charter on the grounds that no steps had been taken to improve the social security system during the reference period (Conclusions 2017). It asked for information in the next report on:

- any changes to the social security system, including their impact on the system’s personal scope and the minimum levels of income replacement benefits;
- the implementation and impact of the health care and health insurance laws.

The Committee’s assessment will therefore relate to the information provided by the Government in response to its finding of non-conformity and the two targeted questions with regard to Article 12§3 of the Charter, namely:

- social security coverage, and its modalities, provided to persons employed by digital platforms or whose work is managed via such platforms; and
- any impact of the Covid-19 crisis on social security coverage, and any specific measures taken to compensate for or alleviate any possible negative impact.

The Committee wishes to point out that it will take note of the reply to the second targeted question for information purposes only, as it relates to developments that occurred outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

### ***Development of the social security system***

The Committee refers to its conclusions in respect of Article 12§1 for a description of Montenegro’s social security system (Conclusions 2017 and 2021). With regard to maternity and family benefits, it refers, respectively, to its conclusions relating to Articles 8§1 and 16 (Conclusions 2019).

The Committee recalls that Article 12§3 requires States to improve their social security system. A situation of progress may consequently be in conformity with Article 12§3 even if the requirements of Articles 12§1 and 12§2 have not been met or if these provisions have not been accepted. The expansion of schemes, protection against new risks or an increase in the level of benefits are all examples of improvement. A partly restrictive development in the social security system is not automatically in breach of Article 12§3. It should be assessed in the light of Article 31 of the 1961 Charter or Article G of the revised Charter. The assessment of the situation is based on the following criteria:

- the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, etc.);
- the extent of the changes (categories and numbers of people concerned, levels of allowances before and after alteration);
- the reasons given for the changes (aims pursued) and the social and economic policy context in which the changes arise;
- the necessity of the reform;

- the existence of social assistance measures for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13);
- the results obtained by such changes.

In its report, the Government refers (under Article 12§1) to various changes made to the social security system during the reference period. In particular, it states that the Law on mediation for job placement and rights during unemployment came into force on 30 April 2019. This new law reduced the length of insurance contributions required to be entitled to unemployment benefits (nine out of 18 months before unemployment started, compared with 12 out of 18 months previously). The amount of unemployment benefits was also increased and their length extended for some categories of jobseekers. According to official statistics, the average monthly number of jobseekers receiving unemployment benefits increased from 6,386 in 2016 to 12,372 in 2019 although the number of registered jobseekers decreased from 48,300 in 2016 to 43,400 in 2019.

The Government further reports that the adjustment of retirement and disability pensions, which had been suspended throughout the previous reference period (2012-2015) due to poor economic conditions, resumed in 2016. Accordingly, the minimum pension amounts increased from €101 on 1 January 2016 to €128 on 1 January 2019 (then to €145 in 2020, following the entry into force in August 2020 of the Law amending the law on pension and disability insurance – outside the reference period).

The Committee takes note of these welcome developments, which meet the requirements of Article 12§3 of the Charter. The Committee asks for updated information in the next report on the implementation and impact of the Law on mediation for job placement and rights during unemployment and the Law on pension and disability insurance.

The Government report also provides information on the Law on health insurance. In this respect, the Committee refers to its conclusion under Article 12§1.

### ***Platform workers***

The Committee recalls that it has posed a targeted question to all States on social security cover for persons employed or whose work is managed by digital platforms. The emergence of these new forms of employment has had a negative impact on certain rights of these workers, as explained in the General Introduction. In matters of social security, compliance with Article 12§3 of the Charter requires that the existing social security systems be adapted to the specific situation and needs of the workers concerned, in order to guarantee that they enjoy the social benefits included within the scope of Article 12§1. The Committee is keenly aware that there are significant gaps in the social coverage of workers in new forms of employment such as platform workers. It considers that the States Parties are under an obligation to take all the necessary measures to address these shortcomings.

In particular States Parties must take steps to ensure that all workers in new forms of employment have an appropriate legal status (employee, self-employed or other category) and that this status is in line with the actual situation thus avoiding abuse (such as the use of “bogus” or “false” self-employed status to circumvent the applicable social security regulations) and conferring adequate social security rights as guaranteed by Article 12 of the Charter on the platform workers.

In its report, the Government states that, in accordance with the Labour Law (as published in Official Gazette No. 074/19 of 30 December 2019), employers are required to enter into an employment contract with employees (Article 29) and to register employees for compulsory social security on the date of entering employment (Article 33). Compulsory social security includes health insurance, pension and disability insurance and unemployment insurance. The Government also states that the persons required to pay contributions to these schemes are listed in the Law on compulsory social security contributions (Articles 5, 6 and 7). It

refers to the comments it made under Article 12§1 concerning employees' rights with regard to sickness, old age, disability and unemployment.

The Committee notes that the Government has not provided any information about the social security coverage of digital platform workers. The Committee therefore reiterates its question. It asks for updated and detailed information in the next report on the number of digital platform workers (as a percentage of the total number of workers), their status (employees, self-employed and/or other category), the number/percentage of these workers by status and their social security protection (by status). In the meantime, the Committee reserves its position on this point.

### ***Covid-19***

In response to the second targeted question, the Government states that it adopted three packages of measures (in March, April and July 2020) to alleviate the pandemic's negative impact and support both the economy and society's most vulnerable groups. It describes these measures, which included:

- one-off assistance (usually of €50) for pensioners in the lowest pension bracket, jobseekers registered with the Employment Agency as of 31 March 2020 and households receiving social assistance;
- deferral of payment of salary contributions and repayment of loans taken out by individuals and companies from banks, microcredit institutions and the Investment and Development Fund (IDF);
- setting up an IDF credit line to improve liquidity of entrepreneurs and companies (up to €3 million per entrepreneur/company, with a simplified procedure, no approval fees and low interest rate);
- financial support to prevent unemployment (wage subsidies);
- recruitment subsidies.

### ***Conclusion***

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

## **Article 12 - Right to social security**

### *Paragraph 4 - Social security of persons moving between States*

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

### ***Equality of treatment and retention of accrued benefits (Article 12§4)***

#### ***Right to equal treatment***

The Committee recalls that the guarantee of equal treatment within the meaning of Article 12§4 requires States Parties to remove all forms of discrimination against nationals of other States Parties from their social security legislation (Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4). Both direct and indirect discrimination should be eliminated. National legislation cannot reserve a social security benefit to nationals only or impose extra or more restrictive conditions on foreigners. Nor may national legislation stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with than nationals, and therefore affect them to a greater degree. However, pursuant to the Charter's Appendix legislation may require the completion of a period of residence for non-contributory benefits. In this respect, Article 12§4a requires that any such prescribed period of residence be reasonable. The Committee considers that the right to equal treatment covers both equal access to the social security system and equal conditions for entitlement to social security benefits.

In its previous conclusion (Conclusions 2017) the Committee observed that according to Section 9 of the Law on Pension and Disability Insurance, foreign citizens and stateless persons have access to pension and disability insurance under the same conditions as the citizens of Montenegro. The Committee notes from the report that the Law on Foreign Nationals entered into force in 2018 and regulates the entry into, exit from, movement, stay and work of the EU nationals in Montenegro. As regards access to unemployment benefit, the Committee notes that according to the Law on Mediation for job placement and rights during unemployment, a foreign national, with both temporary and permanent residence permit may exercise the right to material compensation during unemployment under the same conditions as Montenegrin citizens. The Committee asks the next report to confirm that equal access to the social security system is guaranteed for all nationals of States Parties and that entitlement to social security benefits is ensured on an equal footing with nationals.

As regards equal treatment in respect of family benefits, the Committee recalls that the purpose of child benefits is to compensate the costs of maintenance, care and education of children. Such costs primarily occur in the State where the child actually resides.

The Committee further recalls that child benefits are covered by different provisions of the Charter, and in particular by Article 12§1 and Article 16 of the Charter. Under Article 12§1 States Parties have an obligation to establish and maintain a social security system including a family benefits branch. Under Article 16 States Parties are required to ensure the economic protection of the family by appropriate means. The primary means should be child benefits provided as part of social security, available either universally or subject to a means-test. States Parties have a unilateral obligation to pay child benefits in respect of all children resident in their territory on an equal footing, whether they are nationals or have moved from another State Party.

The Committee is aware that States Parties that are also EU Member States, on the basis of the EU legislation on coordination of the social security system are obliged to apply coordination rules which to a large extent prescribe exportability of child benefits and family allowances. When the situation is covered by the Charter, and the EU legislation does not

apply, the Committee has regard to its interpretation according to which the payment of child benefits to all residing children, as a starting point, is a unilateral obligation for all States Parties. The Committee decides no longer to examine the issue of exportability of child benefits under Article 12§4a.

Under Article 12§4a of the Charter the Committee will only examine whether child benefits are paid to children, having moved from another State Party, on an equal footing with nationals, thus ensuring equal treatment of all resident children. Under Article 16 the Committee will examine equal treatment of families as regards access to family benefits and whether the legislation imposes length of residence requirement on families for entitlement to child benefit.

The Committee notes from the report that Article 5 of the Law on Social and Child Protection stipulates that the right to social protection determined by this law and the international agreement may be exercised by a foreign national with approved temporary residence or permanent residence. The Committee notes from MISSCEO that foreigners with an approved temporary stay or permanent residence in Montenegro have a right to family benefit. The Committee considers that the situation is in conformity in this respect.

### ***Right to retain accrued rights***

The Committee recalls that old-age benefit, disability benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one State according to the eligibility criteria laid down under national legislation should be maintained (exported) irrespective of whether the beneficiary moves between the territories.

The Committee notes from the report that Montenegro has concluded 23 bilateral agreements with States Parties to the Charter, which guarantee the principle of equal treatment of nationals of these States Parties. They also guarantee the principle of aggregation of insurance periods or other relevant periods for the acquisition of the right to benefits; the principle of payment of benefits in the territory of other Parties; and the principle of cooperation between the competent institutions. The Committee asks what is the legal basis for exportability of old age, disability and survivor's benefits and the international coordination in the social security field with those States with whom no bilateral agreements have been concluded. In the meantime, reserves its position on this issue.

### ***Right to maintenance of accruing rights (Article 12§4b)***

The Committee recalls that under Article 12§4b there should be no disadvantage in terms of accrual of rights for persons who move to another State for employment in instances in which they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. Implementation of the right to maintenance of accruing rights requires, where necessary, the accumulation of employment or insurance periods completed in another territory for the purposes of the opening, calculation and payment of benefits. In the case of long-term benefits, the pro-rata approach should also be employed. States may choose between the following means in order to ensure maintenance of accruing rights: bilateral or multilateral agreement or, unilateral, legislative or administrative measures. States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.

According to the report, the right to accumulate insurance periods and employment periods is ensured through the application of bilateral social security agreements. Montenegro applies bilateral social security agreements with 23 signatory states to the European Social Charter. Negotiations for concluding an agreement with Romania have been completed, and an initiative has been launched for concluding an agreement with Albania, Greece and Ukraine. The Committee asks the next report to indicate how the maintenance of accruing rights is ensured for nationals of those States Parties with whom no relevant bilateral

agreements have been concluded. In the meantime, the Committee reserves its position on this issue.

*Conclusion*

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

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

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

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

The Committee recalls that for the purposes of the present report States were asked to reply to targeted questions for Article 13§1 of the Charter as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

Therefore it will focus on the Government’s replies to the targeted questions, namely about measures taken to ensure that the right to social and medical assistance is ensured and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

The Committee had concluded previously that the situation in Montenegro was not in conformity with Article 13§1 of the Charter on the grounds that: the right to social assistance was not guaranteed as a subjective right of any single person without resources and that the level of social assistance was manifestly inadequate (Conclusions 2017). The assessment of the Committee will therefore only concern the information provided by the Government in response to this and to the targeted questions.

### ***General legal framework, types of benefits and eligibility criteria***

The Committee takes note of the developments during the reference period. The report provides figures concerning beneficiaries of financial support, of child, care and support allowances, etc. The amounts have been revised in 2020. The report states that there are 28338 beneficiaries with financial support. From those, there are 19270 persons with care and support allowance.

In reply to the former conclusion of non-conformity on the ground that social assistance is not provided as a subjective right of any individual (simply because s/he does not have the resources and is unable to obtain adequate resources for any another way), the report states that according to the legislation in Montenegro, the right to financial support is exercised in accordance with the personal status of the beneficiary (health status, family status, maintenance obligation under the Family Law, incomes, wages, assets, etc.). Persons who are capable of work on the basis of the aforementioned conditions exercise their rights in the event that they have minor children or adult children if they have an extended parental right (child’s sickness). Those who can work, with and/or without children, have the unemployment allowance in accordance with the regulations. Unemployed persons who can work and do not have children or any other situation giving right to an allowance (disability, sickness, etc.), can exercise the right to a non-recurring financial assistance (see below) and the right to certain services in the field of social protection (counseling, shelter).

The report also states that at the local level, beneficiaries also exercise their rights in accordance with the decisions of municipalities, which are independent of the central level, specifically the non-recurring financial assistance, home help service, meals in the National Kitchen, housing in accordance with the Law on Social Housing etc. They also exercise certain rights in the field of health care, especially exemption from paying co-payments for

services in that area or from paying co-payments for medicines. As a comparison of social protection benefits, the amounts of the lowest pension in Montenegro was in 2020 of € 144. The average pension was about € 290.

The Committee takes note of this information, which confirms that the situation has not changed since the assessment done in the former conclusions of 2017. According to the information published in the MISSCEO database and a comparative *Overview of Recent Trends and Developments in Social Protection in MISSCEO countries*, published in 2020 (<https://rm.coe.int/missceo-e-2020-trends-developments-social-protection/1680a14352>), in Montenegro the contribution rate of employers for health care, sickness and maternity branches declined from 4.3% to 2.3% of gross wage. Pensions and sickness cash benefits have slightly increased. As regards unemployment benefits, a new Law on mediation in job placement and rights arising from unemployment was adopted in 2019. The qualifying conditions for entitlement to unemployment benefits were modified. The qualification period, which was previously at least 12 months of continuous insurance service or with interruptions in the last 18 months, was reduced from 12 to 9 months. On the other hand, entitlement to benefits was also extended to an insured person who, pursuant to a special law, has ceased to perform entrepreneurial, professional or other activity as a core occupation, without his/her guilt. However, there is still no guaranteed minimum resources. Social assistance is not provided, as a subjective right of any single person, whether or not capable of working and whether or not belonging to a vulnerable category, on the sole ground that he/she is without resources and is unable to obtain adequate resources by any other means. Therefore, the situation is not in conformity with the Charter.

The Committee also asked in its former conclusion whether the withdrawal of social assistance in response to the rejection of a job offer leaves the person concerned completely deprived of his or her means of subsistence. The report states that there has been an increase of certain financial support. While in 2014, a total of about € 50,2 million was paid from the state budget for rights and social and child protection, around € 75 million was paid in 2019. More than 55% of this amount was allocated for rights regardless of the financial situation of the individual or family. Any increase in the financial support in the forthcoming period will be contingent upon the financial possibilities of the state budget. The Committee notes that this does not reply to the question. According to MISSCEO, entitlement to family cash benefit for those of working age requires that the person did not refuse offered employment or vocational training, re-training or additional training, pursuant to the law. Therefore, it results that a person can be deprived of basic access to certain social benefits if s/he does not qualify into one of the special categories and is of working age. The situation is therefore not in conformity with the Charter.

### **Levels of benefits**

As stated in its previous conclusions (2013, 2017), the Committee found that the level of social assistance paid to a single person without resources was manifestly inadequate. The Committee notes from the report that the situation is not changed. The report states that the amount of compensation for an individual as well as for families with more members is not determined in relation to their needs but in relation to the possibilities of the state budget, economic trends, average salaries of employed persons, etc. The increase of compensation for an individual would affect the increase of the compensation to families with more members. Salaries both in the public or private sector are not paid in accordance with the needs of the individual but in accordance with the income of the employer and therefore those who are beneficiaries of social assistance cannot be treated differently from those who work and place in a situation in which their income does not depend on these factors.

The Committee recalls that Article 13 breaks with the traditional concept of assistance, which was bound up with the moral duty of charity. The Contracting Parties are not merely empowered to grant assistance as they think fit. They are under an obligation which they may be called on in court to honour.

To assess the situation during the reference period the Committee takes account of the following information:

- - Basic benefit: the Committee notes from MISSCEO that the amount of cash benefit on a monthly basis for a single-member family stood at € 68,30 in 2019 (the report refers to € 68,57).
- Additional benefits: in its previous conclusion the Committee asked the next report to provide information regarding the average amount of additional benefits paid to a single person in receipt of social assistance. The report states that the beneficiaries of social assistance may also be eligible for other types of benefits, such as one-time financial support (which depending on the reason for requesting assistance at the annual level can amount to € 50 to € 300), subsidies for electricity (in the average amount of € 20 to 30); certain categories are entitled to the right to home help service, day care housing and other benefits (such as transport). The report states that because it is decentralised, it is difficult to calculate the average amount of benefits.
- Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): the report states that the median minimum wage amounts to € 222. According to Eurostat, the poverty threshold stood at € 157 in 2019 .

The Committee notes that the report, again, does not indicate the average monetary value of all additional benefits that would be paid to a single person without resources, in addition to the social assistance benefit. However, the Committee considers that the level of social assistance is manifestly inadequate on the basis that the assistance that can be obtained (€ 68,57), even if certain benefits are available for certain categories of people, is well below the poverty threshold. and, therefore, manifestly inadequate.

### ***Right of appeal and legal aid***

The Committee considered the situation to be in conformity on this point in its former Conclusions and no targeted questions were asked as regards the right of appeal and legal aid. There is no additional information in this respect.

### ***Personal scope***

The specific questions asked in relation to Article 13§1 this year do not include an assessment of assistance to nationals of States parties lawfully resident in the territory. Therefore, this particular issue will only be assessed if there was a request of information or a non-conformity in previous cycle.

#### Foreign nationals lawfully present in the territory

In its Conclusion 2017, the Committee asked the next report to confirm whether both social and medical assistance are provided to nationals of States Parties lawfully resident or regularly working in Montenegro on an equal footing with nationals. The report states that this is in Article 5 paragraph 2 of the Law on Social and Child Protection, which stipulates that the social and child protection rights may be exercised by any foreign national with an approved temporary residence or permanent residence in the country. If a foreign national is coming from a country with which Montenegro has not concluded an agreement on social insurance, and the foreign national does not have the funds to pay for the service provided, the costs are borne by the budget of Montenegro. The Law on International and Temporary Protection of Foreign Nationals stipulates that foreign nationals who have been granted international protection have the right to social and health protection, on equal footing to Montenegrin citizens. In practice, social protection rights are available to these persons under the same conditions and in the same way as to nationals.

#### Foreign nationals unlawfully present in the territory

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

As regards emergency medical assistance, in its conclusion under Article 13§4 (Conclusions 2015) the Committee considered that the situation met the requirements of Article 13§4. Health institutions and health workers are obliged to provide a foreigner with urgent medical assistance. An alien shall bear the costs provided for emergency medical assistance or other types of health care, according to the price list of a medical institution. The Committee asked in 2017 whether these costs will be waived in case the person concerned is without resources. It reserved its position on this point in the meantime.

The report states that medical services are provided to foreigners in need. For particularly vulnerable groups, including children and young people, women, the elderly, people with disabilities, members of minority groups, migrant workers, non-citizens, as well as refugees, displaced persons and asylum seekers, there is a special care. Refugees, internally displaced persons and asylum seekers must be treated without discrimination. The report provides information on foreign nationals seeking international protection, unaccompanied minors who apply for international protection, foreign nationals who are accommodated in a Reception Center.

The Committee takes note of this information. However, the report only refers to asylum seeker or foreigners who may request to stay under international protection, but there is no information concerning foreign nationals unlawfully present and how they can access (emergency) social and health assistance in order to satisfy their basic human material needs. The Committee reiterates its question. If this information is not provided in the next report, there will be nothing to establish that the situation is conformity with the Charter.

### ***Medical and social assistance during the Covid-19 pandemic***

The report states that persons without funds exercise their the right to social assistance during the crisis caused by Covid-19 in the same manner and under the procedure as in the time without the crisis, because the crisis itself did not require a change in regulations in the field of social and child protection. In order to facilitate access to rights in the field of social and child protection, the centers for social work during Covid-19 established rules for communication with the beneficiaries, giving priority to indirect communication via telephone and electronic application allowing also the beneficiaries to submit the request to the mailbox at the entrance of the center. For services that require personal presence, a special regime of entry and stay in the center's premises was established. In case of urgent and interventions, a telephone is provided which is at the service of the clients 24 hours a day. In 2020, the Government of Montenegro on two occasions, in addition to the regular monthly financial support, also opted for non-recurring financial support for the beneficiaries of financial support, beneficiaries of care and support allowance and personal disability benefits.

The Committee asks the next report to produce further information on social assistance and specific measures taken during the Covid-19 pandemic.

### ***Conclusion***

The Committee concludes that the situation in Montenegro is not in conformity with Article 13§1 of the Charter on the grounds that:

- the right to social assistance is not guaranteed to any single person without resources;
- the level of social assistance is manifestly inadequate.

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

*Paragraph 2 - Non-discrimination in the exercise of social and political rights*

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in the current cycle.

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

*Paragraph 3 - Prevention, abolition or alleviation of need*

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in the current cycle.

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

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

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

The Committee recalls that for the purposes of the present report States were asked to reply to targeted questions, as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”). However no targeted questions were posed in respect of Article 13§4. The Committee deferred its previous conclusion in 2017. It will therefore restrict its consideration to the Government’s replies to its previous request for relevant complementary information.

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory. The Committee recalls that States Parties are required to provide non-resident foreigners, without resources, with emergency social and medical assistance. Such assistance must cover accommodation, food, clothing and emergency medical assistance, to cope with an urgent and serious state of need (without interpreting too narrowly the ‘urgency’ and ‘seriousness’ criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171).

In its Conclusion 2017 regarding Article 13§4 the Committee asked two questions. First, whether emergency social and medical assistance would be granted without costs to persons who are lawfully in the territory (e.g. tourists and those in transit) in case the person concerned is without resource. The second question was whether the provision of emergency social and medical assistance was left to the discretion of the centres for social work.

The Committee notes from the report that, according to the Law on Health Care (Article 12, paragraph 2), healthcare institutions and healthcare practitioners are obliged to provide emergency medical care to foreign nationals. The provision is imperative, and the center for social work cannot deny health care to a person who needs an urgent medical intervention. As for emergency social assistance, the report states that Article 5, paragraphs 2 and 3 of the Law on Social and Child Protection stipulate that the rights of social and child protection may be exercised by a foreign national with an approved temporary residence or permanent residence in the country. Therefore, it does not seem to apply to non-resident foreigners lawfully present (e.g. tourists and those in transit). The report further refers to a non-recurring financial assistance and temporary accommodation, which could be considered as emergency social assistance, available for asylum seekers and foreigners under subsidiary protection.

The Committee considers that non-resident foreigners lawfully present in the territory and who are in need may have access to emergency medical assistance. As regards social assistance, the Committee notes that not all non-resident foreign nationals lawfully present in the territory in need may have access to such assistance, as it is only available for persons with a residence permit, asylum seekers and foreigners under subsidiary protection.

### *Conclusion*

The Committee concludes that the situation in Montenegro is not in conformity with Article 13§4 of the Charter on the ground that not all non-resident foreign nationals lawfully present in the territory in need are entitled to emergency social assistance.

## **Article 14 - Right to benefit from social welfare services**

### *Paragraph 1 - Promotion or provision of social services*

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

The Committee recalls that Article 14§1 guarantees the right to benefit from general social welfare services. It notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government’s replies to the targeted questions, namely how and to what extent the operation of social services was maintained during the COVID-19 crisis and whether specific measures were taken in view of possible similar crises arising in the future. The Committee wishes to point out that it will take note of the information provided in reply to the question relating to COVID-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the COVID-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

In the previous conclusion (Conclusions 2017) the Committee found the situation to be in conformity with the Charter. The situation has not changed, as confirmed by the further detailed description, provided by the report, of the organization of social services and the activities carried out by social services (such as day-care services, accommodation service, home help, family services services for victims of abuse, neglect domestic violence and exploitation or who are at risk of becoming victims, including reception stations). The report also provides updated statistics, as well as information on the geographical distribution of social services.

In reply to the Committee’s targeted questions, the report provides that during the COVID 19 pandemic the provision of social services continued. The Centres for Social Work (CSR) established rules for communication with the beneficiaries, who, in addition to direct communication, were given means for a greater indirect communication and the opportunity to submit requests to the mailbox at the entrance to the centre. Hotline was set up which is accessible 24/7.

The report does not contain information on any specific measures taken in anticipation of similar crises in the future.

### *Conclusion*

The Committee concludes that the situation in Montenegro is in conformity with Article 14§1 of the Charter.

## **Article 14 - Right to benefit from social welfare services**

### *Paragraph 2 - Public participation in the establishment and maintenance of social services*

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

The Committee recalls that Article 14§2 requires States Parties to provide support for voluntary associations seeking to establish social welfare services. The “individuals and voluntary or other organisations” referred to in paragraph 2 include the voluntary sector (non-governmental organisations and other associations), private individuals, and private firms.

The Committee further notes that for the purposes of the current examination, States were asked to reply to the specific targeted questions posed to States in relation to this provision (questions included in the appendix to the letter of 3 June 2020, in which the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the scope of the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals. States were therefore requested to provide information on user involvement in social services (“co-production”), in particular on how such involvement is ensured and promoted in legislation, in budget allocations and decision-making at all levels, as well as in the design and delivery of services in practice. Co-production is understood here to mean that social services work together with users of the services on the basis of fundamental principles, such as equality, diversity, accessibility and reciprocity.

The legal framework, which the Committee found to be in conformity with the Charter in the previous conclusion (Conclusions 2017) has not changed. The report provides further information on the implementation of the Law on Social and Child Protection, such as complementary rulebooks, establishment of licensing of service providers, training programs and accreditation procedures.

In reply to the targeted question, the report provides an example of users involvement as foreseen by the Law on Social Child Protection, which sets a principle of active participation of beneficiaries in the creation, selection and use of rights from social and child protection, which is based on participation in the assessment of the situation and needs and deciding on the use of necessary services. The Law further provides for criteria and benchmark for the participation of beneficiaries in the costs of the service provided.

The very general information in the example provided does not, however, allow the Committee to make a full assessment of the situation from the point of view of all of the requirements of Article 14§2. It therefore requests that the next report provides full information on user participation in social services, in particular, how the user participation in various social services is encouraged in legislation and other decision-making, how the general principles are implemented and whether any practical measures to support it, including budgetary measures, have been adopted or envisaged.

### *Conclusion*

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

## **Article 23 - Right of the elderly to social protection**

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

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore it will focus on the Government’s replies to the targeted questions, namely about measures taken to ensure that the social and economic rights of older persons are respected and Covid-19 and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (namely, after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

The previous conclusion was one of non-conformity on the grounds that the level of old-age pensions was manifestly inadequate and accommodation facilities for the older persons were neither subject to any accreditation or licensing procedure nor inspected by an independent body (Conclusions 2017).

### ***Autonomy, inclusion and active citizenship***

#### ***Legislative framework***

The Committee recalls that Article 23 of the Charter requires State Parties to undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular to enable older persons to remain full members of society for as long as possible. The expression “full members of society” used in Article 23 requires that older persons must suffer no ostracism on account of their age. The right to take part in society’s various fields of activity should be ensured to everyone active or retired, living in an institution or not.

The Committee takes due account of contemporaneous definitions of ageism which refer to the stereotypes, prejudices and discrimination directed towards other or oneself based on age (see for example WHO report on Ageism, 2021, p. XIX) As the World Health Organisation has noted, “... ageism has serious and far-reaching consequences for people’s health, well-being and human rights“(WHO report on Ageism, 2021, p. XVI).

The Covid-19 crisis has exposed and exacerbated a lack of equal treatment of older persons. This has included in the healthcare context, where there have been instances of rationing of scarce resources (e.g. ventilators) based on stereotyped perceptions of quality of life, vulnerability and decline in old age.

Equal treatment calls for an approach based on the equal recognition of the value of older persons’ lives in all the areas addressed by the Charter.

Article 23 of the Charter requires the existence of an adequate legal framework for combating age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services, such as insurance and banking products, allocation of resources and facilities. Discrimination against older persons in terms of social rights enjoyment, is also contrary to Article E.

The overall emphasis in the Charter on using social rights to underpin personal autonomy and respect the dignity of older persons and their right to flourish in the community requires a commitment to identifying and eliminating ageist attitudes and those laws, policies and other measures which reflect or reinforce ageism. The Committee considers that States Parties, in addition to adopting comprehensive legislation prohibiting discrimination on grounds of age, must take a wide range of measures to combat ageism in society. Such measures should include reviewing (and as necessary amending) legislation and policy for discrimination on grounds of age, adopting action plans to ensure the equality of older persons, promoting positive attitudes towards ageing through activities such as society-wide awareness campaigns, and promoting inter generational solidarity.

Article 23 further requires that States Parties provide for a procedure of assisted decision making.

With regard to age-based discrimination, the Committee previously noted that (Conclusions 2017) the Law on the Prohibition of Discrimination of 2010, as amended in 2014, prohibits discrimination on the grounds explicitly listed in its Article 2, which includes age, in various areas. Furthermore, Article 4 of the Law on Healthcare refers to age as a possible ground of prohibited discrimination as does the Law on Social and Child Protection

The Committee noted, however, that despite this legislative framework, discrimination on the ground of age is still very widespread and asked what practical measures Montenegro is taking to counter this type of discrimination outside the employment field (Conclusions 2017).

The report provides no information on this issue. The Committee repeats its request for this information .

The Committee takes note of the detailed information provided in the report in response to its previous questions on guardianship procedures.

The Committee recalls that there should be a national legal framework related to assisted decision making for older persons guaranteeing their right to make decisions for themselves. Older persons must not be assumed to be incapable of making their own decisions just because they have a particular medical condition or disability.

States Parties must take measures to replace regimes of substituted decision-making by supported decision-making, which respects the person's autonomy, will and preferences. These may be formal or informal.

Older persons may need assistance to express their will and preferences, therefore all possible ways of communicating, including words, pictures and signs, should be used before concluding that they cannot make the particular decision on their own.

In this connection, the national legal framework must provide appropriate safeguards to prevent the arbitrary deprivation of autonomous decision making by older persons. It must be ensured that any person acting on behalf of older persons interferes to the least possible degree with their wishes and rights (Statement of Interpretation 2013).

The Committee asks the next report to provide information on assisted decision making procedures.

### ***Prevention of abuse of older persons***

As regards abuse of older persons the report refers to several initiatives taken to prevent and protect persons from domestic violence- A protocol on the Procedure, Prevent and Protection from Violence against Women and Domestic Violence, the National Action Plan for Improving General Support Services for Victims of Domestic Violence and the National Plan for improving Specialised Support Services for Victims of Domestic Violence for 2019-2021.

The Committee asks for updated information to be provided in the next report, on measures taken to combat abuse of older persons (beyond the institutional care context) such as measures to raise awareness of the need to eradicate older abuse and neglect, and any legislative or other measures. It also asks whether data has been collected which would indicate the prevalence of older abuse.

### ***Independent living and long term care***

The Committee asks whether steps have been taken to move away from the institutionalisation of older persons and adopt a long term care and support in the community model. The Committee recalls that Article 23 provides that measures should be taken to enable older persons to lead independent lives in their familiar surroundings therefore it considers that older persons requiring long term care should be able to choose their living arrangements. In particular, this requires states to make adequate provision for independent living, including housing suited to their needs and state of health, as well as the necessary resources and supports needed to make independent living possible.

Institutionalisation is a form of segregation, often resulting in a loss of autonomy, choice and independence. The Covid-19 pandemic has put the spotlight on the shortcomings of institutionalised care. The Committee refers in this respect to its Statement on Covid-19 and social rights (adopted March 2021) where it stated that enabling older persons to remain in their familiar surroundings as required by Article 23 of the Charter has become even more important in view of the heightened risk of contagion in the congregated settings of nursing homes and other long-term institutional and residential facilities and to the human rights-based argument for investment in the community to give reality to the right to community living is now added a public health argument in favour of moving away from residential institutions as an answer to long term care needs.

The Committee asks the next report to provide updated information on the progress made in providing care in the community, it asks in particular how many older persons reside in institutions- residential care and trends in the area.

### ***Services and facilities***

The report states that home help services are available in 15 municipalities and provide assistance to approximately 1,200 users. The Committee asks whether such services will be extended to all parts of the country and whether there is a charge for the services. There are also 13 day care centres for adults and older persons. The Committee asks whether there are charges associated with these services.

The report also refers to the Shelter for the Homeless within the Nursing Home Grabovac Risan which provides accommodation inter alia, to older persons who need accommodation for up to 12 months while a Social Work Centre finds a permanent solution for the individual concerned.

The Committee asks the next report to provide updated information on the range of services and facilities available to older persons, including long term care, in particular those enabling them to remain active members of their community and to remain in their home. It further asks for information on the costs of such services, whether there is an adequate supply of care services, including long term care services and whether there are waiting lists for services.

The Committee asks what support is available for informal carers.

The Committee notes that many services (and information about services) are increasingly accessible online. Digitalisation provides opportunities for older persons. However older persons may have more limited access to the internet than other groups and may lack the necessary skills to use it. Therefore, the Committee asks what measures have been taken to improve the digital skills of older persons, ensure the accessibility of digital services for older persons, and ensure non-digital services are maintained.

## ***Housing***

According to the report measures have been taken to address the housing shortage for older persons. Between 2013 and 2020 510 apartments for older person were built and another 276 are under construction or are planned.

The Committee asks the next report to provide information on how the needs of older persons are taken into account in national or local housing policies and strategies as well as information on the supply of sheltered/supported housing and the range of accommodation options for older persons.

## ***Health care***

The Committee asks that the next report provide information on healthcare programmes specifically designed for older persons.

The Committee notes that the pandemic has had devastating effects on older persons' rights, in particular their right to protection of health (Article 11 of the Charter), with consequences in many cases for their rights to autonomy and to make their own decisions and life-choices, their right to continue to live in the community with adequate and resilient supports to enable them to do so, as well as their right to equal treatment in terms of Article E when it comes to the allocation of health care services including life-saving treatments (e.g., triage and ventilators). Whether still living independently or not, many older persons have had their services removed or drastically reduced. This has served to heighten the risk of isolation, loneliness, hunger and lack of ready access to medication.

Further the Covid-19 crisis has exposed examples of a lack of equal treatment of older persons, too much space was allowed for implicit judgments about the 'quality of life' or 'worth' of lives of older persons when setting the boundaries for such triage policies.

The Committee also asks whether decisions around the allocation of medical resources may be made solely on the basis of age, and asks whether triage protocols have been developed and followed to ensure that such decisions are based on medical needs and the best scientific evidence available.

## ***Institutional care***

The Committee previously concluded that the situation was not in conformity with Article 23 of the Charter on the grounds that accommodation facilities for the elderly were neither subject to any accreditation or licensing procedure nor inspected by an independent body (Conclusions 2017).

According to the report the Law on Social and Child Protection requires accommodation facilities for older persons to be licensed. The report states that licenses are issued for a period of six years and issued to service providers who fulfil the necessary requirements. The Ministry of Labour and Social Affairs has issued five licenses.

The report states that the above mentioned law provides for an independent Inspector to inspect institutions.

There are according to the report 4 public and 2 private institutions providing care for older persons and persons with disabilities. The Committee asks whether all institutions both public and private must be licensed, as it appears from the information in the report that there are 7 institutions but only 5 licenses have been granted. The Committee further asks that the Inspector can visit both public and private institutions.

The report states that due to the lack of nursing home places new institutions have been established. The Committee refers to its statement above on the importance of moving away from institutional care and towards care in the community.

The Committee considers that the overall emphasis in the Charter on personal autonomy and respect for the dignity of older persons, results in a pressing need to re-invest in

community-based supports as an alternative to institutions. Where, in the transition period, institutionalisation is unavoidable, Article 23 requires that living conditions and care be adequate and that the following basic rights are respected: the right to autonomy, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact (including through internet access) with persons close to the elderly person and the right to complain about treatment and care in institutions. This also applies in the Covid-19 context.

Due to the specific Covid-19 related risks and needs in nursing homes, States Parties must urgently allocate sufficient additional financial means towards them, organise and resource necessary personal protective equipment and ensure that nursing homes have at their disposal sufficient additional qualified staff in terms of qualified health and social workers and other staff in order to be able to adequately respond to Covid-19 and to ensure that the above mentioned rights of older people in nursing homes are fully respected.

### ***Adequate resources***

When assessing adequacy of resources of older persons under Article 23, the Committee takes into account all social protection measures guaranteed to older persons and aimed at maintaining income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to older persons. These resources will then be compared with median equivalised income. The Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee previously concluded that the situation in Montenegro was not in conformity with Article 23 of the Charter on the grounds that the level of old-age pensions was manifestly inadequate (Conclusions 2017).

According Eurostat data, the poverty level, defined as 50% of the median equivalised income, was €157 per month in 2019. 40% of the median equivalised income corresponded to €126 monthly. According to the report and MISSCEO the lowest pension paid in January 2019 was €128,14. The Committee notes that amount falls below 50% of the median equivalised income. Therefore the Committee again finds that the situation is not in conformity with the Charter on the grounds that the level of the minimum old-age pensions is inadequate.

The Committee asks the next report to provide complete information on the minimum old age pension, as well as on any additional benefits older persons may receive and minimum income guarantees for those not entitled to a pension.

### ***Covid-19***

The Committee asked a targeted question on measures taken to protect the health and well-being of older persons in the context of a pandemic crisis such as Covid-19.

According to the report the Institute of Public Health adopted recommendations to prevent and suppress Covid-19 in nursing homes. Measures taken in this respect included regular disinfecting, bans on visitors, support from epidemiologists, regular testing of employees in nursing homes. Very few cases of Covid-19 were reported.

The Committee refers to the section on older persons in its statement on Covid-19 and Social Rights (March 202) (and to sections cited above). It recalls Article 23 requires that older persons and their organisations be consulted on policies and measures that concern them directly, including on ad hoc measures taken with regard to the current crisis. Planning for the recovery after the pandemic must take into account the views and specific needs of older persons and be firmly based on the evidence and experience gathered in the pandemic so far.

### *Conclusion*

The Committee concludes that the situation in Montenegro is not in conformity with Article 23 of the Charter on the ground that the level of the minimum old-age pension is inadequate.