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EUROPEAN SOCIAL CHARTER

European Committee of Social Rights

Conclusions 2019

DENMARK

This text may be subject to editorial revision.

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

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

The 1961 European Social Charter was ratified by Denmark on 3 March 1965. The time limit for submitting the 38th report on the application of this treaty to the Council of Europe was 31 October 2018 and Denmark submitted it on 3 December 2018.

This report concerned the following “non-hard core” provisions of the Charter:

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

Denmark has accepted all provisions from the above-mentioned group except Articles 7, 8§§2 to 4 and 19.

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

The present chapter on Denmark concerns 3 situations and contains:

– 1 conclusion of conformity: Article 8§1;

– 1 conclusion of non-conformity: Article 17.

In respect of the situation related to Article 16, the Committee needs further information in order to assess the situation.

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Denmark under the 1961 Charter. The Government consequently has an obligation to provide the requested information in the next report from Denmark on this provision.

The next report from Denmark deals with the accepted provisions of the following articles belonging to the thematic group “Employment, training and equal opportunities”:

- the right to work (Article 1);
- the right to vocational guidance (Article 9);
- the right to vocational training (Article 10);
- the right of persons with disabilities to education, training and employment (Article 15);
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18);
- the right of men and women to equal opportunities (Article 1 of the Additional Protocol).

The deadline for the report was 31 December 2019.

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

Article 8 - Right of employed women to protection

Paragraph 1 - Maternity leave

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

Right to maternity leave

In its previous conclusion (Conclusions XX-4 (2015)), the Committee noted that the situation was in conformity with Article 8§1 as regards the length of leave and compulsory maternity leave: pregnant employees are entitled to four weeks' maternity leave before the birth of their child and 14 weeks' after. Since there has been no change in the situation, it confirms its previous findings of conformity on this point.

Right to maternity benefits

In its previous conclusion, the Committee asked if a worker who was not receiving maternity benefit might still be entitled to compensation from the employer during maternity leave corresponding to at least 70% of her basic salary. It also asked what categories of employees (and their percentage in each category) were not entitled to compensation during their maternity leave (from their employer and/or in the form of maternity benefits) corresponding to at least 70% of their basic salary.

In reply, the report states that if an employee's working conditions entitle her to a salary during maternity leave (or a part thereof), her employer must pay her a salary. If a worker meets the conditions to be entitled to maternity benefits, the state will reimburse her employer for the amount of cash maternity benefits to which she was entitled. The Committee requires that the next report should provide information regarding the right to any type of allowance paid to a working woman during her maternity leave if she is not entitled to maternity allowance or to a salary paid by her employer.

According to the report, wages and working conditions are generally set out in sectoral collective agreements. The law does not set a minimum wage but it may be laid down in employment contracts. The report also states that there are no figures on the amount of wages to which workers are entitled during leave under collective agreements or individual employment contracts.

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

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

According to Eurostat data, the median equivalised income in 2017 was €29,383 a year or €2,449 a month. 50% of the median equivalised income amounted to €14,692 a year, or €1,224 per month. According to the MISSOC database, calculations of maternity benefits are based on weekly hours during leave and the hourly wage that the employee earned over the three months preceding the leave. The report states that in 2018, the upper limit on maternity benefits was €576 per week or €15.60 per hour (37 hours a week). The Committee requested that the next report should state whether maternity benefits can be combined with other benefits.

The Committee asks again what categories of employees (and their percentage in each category) are not entitled to compensation during maternity leave (from their employer and/or in the form of maternity benefits) amounting to at least 70% of their basic salary.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 8§1 of the 1961 Charter.

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

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

Legal protection of families

Rights and obligations, dispute settlement

The Committee previously considered the situation to be in conformity with Article 16 of the 1961 Charter as regards **rights and obligations of spouses**, **settlement of disputes** and **mediation services** (see Conclusions XIX-4 (2011)). It takes note of the information provided in the report about the changes introduced in respect of the legal age for marriage, the rules on divorce and the sharing of assets between spouses. It considers that the situation remains in conformity with the Charter.

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

Domestic violence against women

The Committee takes note of the information presented in the report concerning the developments occurred since its latest assessment (see Conclusions XX-4 (2015), in particular as regards the implementation of the 2014 National Action Plan against Violence in the Family and in Intimate Relations, the setting up of a national unit against violence, the extensive nationwide support system (advice, shelters and treatment) and the further strengthening of other protection measures through initiatives aimed to ensure a uniform and effective handling of domestic violence cases in all police district, including the entry into force of new provisions on immediate restraining orders and the issuing of guidelines to the police for the practical handling of cases regarding stalking and harassment (see the report for details). In this connection, it notes that integrated policies have been set up between the Ministry of Justice and the Ministry of Education to gain better knowledge of the extent of violence and harassment related to stalking; recommendations in the area of sexual assault and abuse were furthermore expected to be developed by a panel of experts. As regards prosecution, the report refers to the extension of the scope of the provision on rape in the criminal code in 2013 (out of the reference period) and indicates that new measures are envisaged in respect of psychological violence. The Committee takes note of the figures provided concerning victims of physical violence in intimate relations. It also takes note of the positive assessment of the prevention measures implemented in the context of the National Strategy 2010-2013.

Insofar as Denmark has signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (which entered into force in Denmark on the 1st of August 2014), the Committee refers to the assessment procedure which took place in the context of this mechanism. It notes that on 24 November 2017, the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its first baseline evaluation report on Denmark (GREVIO/Inf(2017)14). GREVIO experts recognised the national action plans and other targeted measures adopted, as well as the high level of equality between women and men achieved in Danish society but noted a loss of the gender narrative in the Danish response to violence against women. In particular, GREVIO experts considered that the visitation and custody regime applicable in the context of parental responsibility did not take due account of the need to protect victims of domestic violence. The Committee asks the next report to provide updated information on domestic violence against women and related convictions, as well as on the use of restraining orders, the implementation of the measures described in the report and their impact on reducing domestic violence against women, also in the light of the abovementioned GREVIO recommendations.

Social and economic protection of families

Family counselling services

The Committee previously noted that Section 109 of the 2008 Act on Social Services provides for family counselling (Conclusions XIX-4 (2011)) and considers that the situation remains in conformity with the Charter in this respect.

Childcare facilities

The Committee refers to its previous conclusions (Conclusions XX-4 (2015) and XIX-4 (2011)) for an overall description of childcare facilities, which it considered to be in conformity with the Charter. It takes note of the additional information provided in the report, indicating that parents of pre-school children bear only part of the costs of a place in a day-care facility as most of them are covered by the local councils. Parents with a low-income are granted a partial or full reduction of their payment for a place in a day-care facility. In any case, irrespective of their level of income, parents with more than one child in a day-care facility receive a reduction in their fees. Furthermore, parents may receive special subsidies towards the payment for a day-care facility that provides treatment or special socio-pedagogical measures. Treatments given in day-care facilities for children with considerable or permanent reduced physical or mental capacity are also subsidised. Furthermore, subsidies are granted when a place in a day-care facility is considered necessary for social or pedagogical reasons or when the payment constitutes an obstacle for a child to attend and remain in the day-care facility. The reduction/subsidy is usually borne by local councils. The Committee takes also note of the various initiatives taken under the Early Childhood and Education (ECEC) Agreement during the reference period, in particular as regards the amendments introduced in 2017, which notably impose stricter language requirements.

According to the report, more than 97% of all children between the ages of three and five attend a day-care facility. The percentages of children attending the day-care facilities at the age of 1-5 years old have remained stable during the reference period.

Family benefits

Equal access to family benefits

In its previous conclusion (Conclusions XX-4 (2015)) the Committee considered that the situation was not in conformity with the Charter on the ground that the length of residence requirements for ordinary and special child allowances for nationals of States Parties were excessive.

The Committee notes from the report that the right to child benefits and child subsidies are, among others, conditioned by the fact that at least one of the persons who has custody of the child must have had residence or employment in Denmark for at least 6 years in the last 10 years prior to the period that the payment regards. The benefit is gradually earned every six months so that the right to the full benefit is obtained after six years of residence or employment in Denmark. Refugees (foreigners) who have been granted a residence permit in Denmark according to paragraph 7 or 8 of the Aliens Act and foreigners that have been granted a humanitarian residence permit according to paragraph 9 b of the Aliens Act are also included in the accrued principle on equal terms with other persons that have had residence in a foreign country, including Danish citizens. For persons that are included as part of the European Parliament and Councils Regulation (EC) No 883/2004 of the 29th of April 2004 on the coordination of social security system, the periods spent in other Member States, as part of the existing rules, should be included in the calculation of the accrued period as if it were periods spent in Denmark (principle of aggregation of periods).

The Committee notes from the Governmental Committee report (GC(2016)21) that according to the representative of Denmark, the Danish system of public financial support to families with children consists of a wide range of benefits. In this context child allowances only make up a relatively small share of the combined benefits available to vulnerable families. Moreover, several other child and family related benefits would often in themselves exceed the level of child allowance. Main examples of such benefits are social assistance and housing benefits which were both awarded at significantly higher levels to families with children. Another important example were the subsidies towards day care expenses. In general, these other child related benefits are not associated with length of residence requirements. These benefits are therefore available to newly immigrated families regardless of their length of residence. Furthermore, all these types of benefits are fully tax funded and generally universal. So entitlement to the vast majority of child and family related benefits is not subject to prior contributions.

The Committee observes that foreigners have access to other family benefits, for which, unlike in the case of child allowances, there is no length of residence requirement. The Committee asks the next report to provide more detailed information about these benefits and to demonstrate that they are available to foreign nationals, without any length of residence requirement. In the meantime, it reserves its position on this point.

Level of family benefits

The Committee takes note of the update as regards the level of the child benefit:

- 0-2 years – DKR 1502 = € 202
- 3-6 years – DKR 1189 = € 160
- 7-14 years – DKR 936 = € 126
- 15-17 years – DKR 936 = € 126

The Committee notes from Eurostat that the median equivalised income in 2017 stood at € 2450 per month. Therefore, the benefits represent between 5.1% and 8.2% of the median equivalised income. The Committee considers that they represent an adequate income supplement. Therefore, the situation is in conformity with the Charter on this point.

Housing for families

The Committee refers to its previous conclusion (Conclusions XX-4(2015)) for a description of social housing in Denmark. The report explains that between 1 January 2014 and 31 December 2017, approximately 9 000 social housing family dwellings had been constructed or were under construction. The Committee previously noted (Conclusions XX-4 (2015)) that the policies for improving living conditions in the challenged social housing neighbourhoods had the inverse effect of preventing vulnerable tenants from moving into these neighbourhoods. It therefore asked what steps were being taken to remedy this situation.

In its reply, the national report indicates that only approximately 10% of social housing family dwellings are located in challenged social housing neighbourhoods. Moreover, the municipalities' right to dispose of 25% of all vacant such dwellings is a sufficient instrument to secure access to social housing for vulnerable groups. The report further notes that an agreement has been concluded with Local Government Denmark (*Kommunernes Landsforening*) to introduce economic incentives to build smaller and more affordable social dwellings. In 2016, some extra € 85.8 million were granted to support the construction of more than 8 000 small family housing dwellings, which can be let to refugees as well as other citizens in need of housing.

As regards protection against eviction, the report stresses that there is a legal protection for persons under threat of being evicted. If the rental agreement has been cancelled due to non-payment of the rent and if the tenant does not move, the owner may ask the bailiff to assist in evicting the tenant. There are rules which have been introduced to ensure that the municipality will be informed when a tenant is in arrears with the rent. When it is a family with

children or a particularly vulnerable person, the municipality must decide within 14 days whether it can help the tenant. Municipalities play a very important role in the efforts to prevent evictions. According to the records of the Danish Court Administration, the total number of forced evictions, due to payment default, dropped from 2014 (more than 3 000) to 2016 (2 115), and there was a rise again in 2017 (2 306).

The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include (European Roma and Travellers Forum (ERTF) v. the Czech Republic, Complaint No. 104/2014, decision on the merits of 17 May 2016, §§81-82):

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to adopt measures to re-house or financially assist the persons evicted in case of eviction justified by the public interest;
- an obligation to fix a reasonable notice period before eviction;
- prohibition to carry out evictions at night or during winter;
- access to legal remedies;
- access to legal aid;
- compensation in case of illegal eviction.

Furthermore, when evictions do take place, they must be:

- carried out under conditions which respect the dignity of the persons concerned;
- governed by rules of procedure sufficiently protective of the rights of the persons.

Despite its previous request for information on some of the aspects considered above (Conclusions XX-4 (2015)), the Committee finds no information in the report on issues such as the obligation to fix a reasonable notice period before eviction, accessibility to legal remedies and legal aid, and compensation in case of unlawful eviction. It therefore asks the next report to provide more detailed information on all the aspects concerning the legal framework ensuring the protection against unlawful eviction, in the light of the general principles referred to above.

With regard to Roma families, the report stresses that no special measures are taken to secure their right to housing since pursuant to the Social Housing Act they enjoy equal rights in accessing social housing. Statistical data on Roma in Denmark, or on how many Roma families live in a social housing dwelling, are not available, since the ethnic origin of persons is not registered in Denmark. The Committee notes from another source that there are no found documented patterns of housing segregation and discrimination against Roma (European network of legal experts in gender equality and non-discrimination, Country report non-discrimination: Denmark, 2018, reporting period 2017).

Finally, the Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015). In this connection, the Committee notes from the Concluding observations of 18 October 2019 (outside the reference period) of the United Nations Committee on Economic, Social and Cultural Rights on the sixth periodic report of Denmark that a new legislation in 2018 (Act No. 174 of 2018) no longer requires municipalities to provide refugees with permanent housing (§25). The Committee therefore asks for information in next report on the situation in practice as regards access to housing for refugee families.

Pending receipt of the information requested, the Committee considers that the situation in Denmark is in conformity with the Charter on this point.

Participation of associations representing families

The Committee previously noted that relevant organisations, including unions, associations and NGOs representing families or the interests of families, are consulted before relevant

new legislation is proposed to Parliament and any comments they may have are submitted to the Parliament along with the draft legislation (see Conclusions XIX-4 (2011)).

Conclusion

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

Article 17 - Right of mothers and children to social and economic protection

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

The legal status of the child

The Committee previously found the situation to be in conformity in this respect.

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

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

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

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

Protection from ill-treatment and abuse

The Committee notes that the situation which it has previously considered to be in conformity with the Charter, has not changed. Corporal punishment is prohibited in all settings, including in the home.

According to the report in 2017, 'The Children's Rights package' allocated DKK 24 million over a four-year period to enhance the protection of children's rights and prevent ill-treatment and abuse of children. Initiatives under the package include the strengthening of early detection of and rapid reaction to cases of ill-treatment with a specific focus on young children aged 0-6 years old. Children's knowledge of their own rights with a particular focus on the right to be protected from abuse will also be strengthened.

Rights of children in public care

According to the report 'The Act on Adult Responsibility' came into force in January 2017. The act regulates the use of coercive measures which may be imposed on children and young persons placed in care outside the home.

The Act ensures that coercive measures may only be used in exceptional circumstances. Measures adopted shall be necessary, lawful and proportionate to the aim in question. Coercive measures shall be employed as briefly and with the greatest possible consideration for the child or young person's integrity. Violence, fixation (immobilisation), humiliating or other degrading treatment are strictly prohibited.

The 'Better Quality in Foster Families' agreement from 2017 allocated DKK 73.7 million over four years to strengthen the quality of foster families. The measures adopted include the re-organisation of the training and support given to foster families so that the majority of it is received during the beginning of the child's placement and a standardised approval of potential foster families.

The report states that the Children's Rights package strengthens the inclusion of children in their own cases implementing the children's right to be heard.

According to the report at the end of 2016 there were 11,895 children in care, 63.9% in foster family care and 31.1% in residential care. The Committee asks to be kept informed of all trends in this area and of all measures taken to reduce the number of children in institutional care.

Children in conflict with the law

In its previous conclusion (Conclusions 2015) the Committee found that the situation was not in conformity with the Charter on the grounds that children could be subject to 8 months of pre-trial detention and solitary confinement of children could last up to four weeks.

The report provides no information on children in conflict with the law. The Committee therefore reiterates its finding of non-conformity on these grounds. However the Committee notes that there were amendments to the legislation (Legal Procedures Act- *Relpsejeloven*) outside the reference period a and asks the next report to provide information on all developments in the situation.

The Committee further requests information on the maximum prison sentences that maybe imposed on a child.

Right to assistance

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

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

According to the report the Danish immigration authorities have taken measures to ensure the care of unaccompanied children throughout the asylum system. When an asylum seeker claims to be an unaccompanied child his or her asylum application is prioritised by the asylum authorities. Consequently, their asylum application will be examined as soon as possible and dealt with by a separate team, specialised in working with unaccompanied children. An unaccompanied child will be accommodated in an accommodation centre only for unaccompanied children staffed by specialized personnel.

Children are assigned a primary and a secondary contact person at the centre. The asylum centre must also ensure that individual plans are made to ensure each asylum seeker's personal development.

Furthermore, an unaccompanied child will be appointed a personal representative. The role of this representative is to guide and support the child through the relevant legal systems, and to make sure that the rights and welfare of the child is upheld.

If it is suspected that an unaccompanied child has been a victim of human trafficking, the personal representative must have relevant experience or relevant training related to this issue. In these situations the Danish Centre Against Human Trafficking is contacted. Children have additional rights if they are victims of human trafficking.

Asylum seeking children have the same right and access to medical care as Danish children.

The Committee notes from the Concluding Observations of the UN Committee on the Rights of the Child on the fifth periodic report on Denmark [CRC/C/DNK/CO/5 October 2017] that the UN Committee noted asylum-seeking families with children may, under certain circumstances, be detained awaiting deportation; that unaccompanied children may, under certain circumstances, be placed in detention when awaiting deportation and, as of age 17, they are not placed in the specialized children's asylum centres but in centres for adults. Unaccompanied siblings are accommodated according to their age and may thus be separated. Further between 2014 and 2016, an increasing number of unaccompanied children went missing from asylum centres and may thus have become victims of trafficking.

The Committee therefore asks what measures have been taken to provide alternatives to detention for children in an irregular situation, to ensure that all unaccompanied children are accommodated in appropriate facilities and that unaccompanied children are never accommodated with adults and to ensure that siblings are kept together. Further it asks what measures have been taken to ensure that unaccompanied children are protected from exploitation and abuse i.e. do not go missing. It reiterates that the state is ultimately responsible for ensuring the protection of all children from violence, exploitation and abuse and that this necessarily requires preventing disappearances of children in the asylum system where this may expose them to such a risk.

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

Child poverty

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

The Committee notes that according to EUROSTAT in 2017 14.5% of children in Denmark of children were at risk of poverty or social exclusion, lower than the EU average (24.9%).

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

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

Conclusion

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

- the maximum length of pre-trial detention is excessive;
- children can be placed in solitary confinement for up to four weeks.