



January 2010

European Social Charter (revised)

European Committee of Social Rights

Conclusions 2009 (BELGIUM)

Articles 3, 11,12, 13,14 and 30
of the Revised Charter

This text may be subject to editorial revision.

Introduction

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, the 1998 Additional Protocol and the Revised 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.

The Revised European Social Charter was ratified by Belgium on 2 March 2004. The time limit for submitting the 3rd report on the application of this treaty to the Council of Europe was 31 October 2008 and Belgium submitted it on 12 March 2009. On 17 September 2009, a letter was addressed to the Government requesting supplementary information regarding Article 3§3. The Government submitted its reply on 27 October 2009. In addition to the state reports, the Committee had at its disposal comments on the reports submitted by ATD Fourth World.

This report concerned the accepted provisions of the following articles belonging to the thematic group "Health, social security and social protection":

- 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).

Belgium has accepted these articles with the exception of Article 23.

The applicable reference periods were:

- 1 May 2004 – 31 December 2007 for Articles 12 and 13;
- 1 January 2005 – 31 December 2007 for Articles 3, 11, 14 and 30.

The present chapter contains 14 conclusions :

- 11 cases of conformity : articles 3§2, 3§3, 3§4, 11§1, 11§2, 12§2, 12§3, 13§1, 13§2, 13§4 and 30
- 3 cases of non-conformity : articles 12§4, 14§1 and 14§2

In respect of the other 4 cases, that is articles 3§1, 11§3, 12§1 and 13§3, the Committee needs further information in order to assess the situation. The

Government is therefore invited to provide this information in the next report on the articles in question.

The next report of Belgium deals with the accepted provisions of the following articles belonging to the third thematic group "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 the report was 31 October 2009.

Article 3 - The right to safe and healthy working conditions

Paragraph 1 - Health and safety and the working environment

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

The report indicates that a national strategy on well-being at work has been presented by the Ministry of Labour. It will span from 2008 to 2012, thus outside the reference period. The main objectives of this strategy are the following: diminution of accidents at the workplace, notably by examining the connected reasons; promoting a change in employers' and workers' behaviour towards safety and health at work through the promotion of a culture of risk prevention (the Belgian Safe Work Information Center¹ has been created for this purpose); improving the functioning of prevention services, notably exchange of information; launching a survey on the quality of safety and health at work in 2009. Five main programmes have been devised: (i) strengthening the prevention of occupational diseases and accidents; (ii) improving the treatment of occupational diseases and return to work after sick leave; (iii) strengthening the monitoring and effectiveness in the implementation of legislation and regulation in particular in high-risk sectors; (iv) modernisation and simplification of legislation and regulations; (v) assessment, notably through survey on well-being at work. This strategy was to be presented to social partners before being approved by the Council of Ministers. Before this strategy, another plan had been set up for the period running from 2004 to 2007, whose objective was the reduction of serious accidents - another plan has been devised to pursue this objective.

The Committee recalls that the scope of Article 3§1 requires States to provide information not only on the main characteristics of the country's policy but also on the following questions:

- whether there are strategies for making occupational risk prevention an integral aspect of the public authorities' activity at all levels;
- the State's involvement in research and training with a view to improving occupational health and safety;
- the assessment of work-related risks and the introduction of preventive measures within individual firms, including the provision of information and training for employees.

The Committee therefore asks that the next report provides more comprehensive information on the content and implementation of the national policy on occupational health and safety. It emphasises that, if the next report does not

provide the required information, the Committee will not be in a position to conclude that Belgium is in conformity with Article 3§1.

Conclusion

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

¹ *Centre de connaissance interactif sur le bien-etre au travail, www.beswic.be*

Article 3 - The right to safe and healthy working conditions

Paragraph 2 - Issue of safety and health regulations

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

Content of the regulations on safety and health at work

The Committee examined the general legal framework in a previous conclusion (Conclusions XIV-2) and considered it was in conformity with the requirements of this provision. The report states that there have been no developments during the reference period.

Protection against dangerous agents and substances

In reply to the Committee's question concerning the protection of workers against chemical substances and the transposition of the relevant EU directive, the report confirms that European Commission Directive 2006/15² establishing a second list of indicative occupational exposure limit values regarding carcinogenic substances and mutagens was transposed into domestic law by a Royal Decree of 17 May 2006.

Protection of workers against asbestos

Council Directive 83/477/EEC³ on the protection of workers from the risks related to exposure to asbestos measures and subsequent Directive 2003/18/EC⁴ of the European Parliament and the Council of 27 March 2003 which amends the former by introducing new limits on exposure as well as minimum health and safety measures have been transposed by Royal Decree of 16 March 2006. Commission Directive 1999/77/EC of 26 July 1999⁵ relating to restrictions on the marketing and use of asbestos has also been transposed by Royal Decree of 23 October 2001.

The Committee asks whether the authorities have considered drawing up an inventory of all contaminated buildings and materials. Bearing in mind the importance of this question in the light of the right to health of the population (Article 11), the Committee asks the next report to provide specific information on steps taken to this effect.

Protection of workers against ionising radiation

The Committee has already found that Council Directive 96/26/Euratom⁶ of 13 May 1996 which lays down basic safety standards for the protection of the health and workers and the general public against the dangers arising from ionising radiation, which reflects the recommendations of the International Commission on Radiological Protection (ICRP), had been transposed into domestic law.

Protection of temporary workers

The Committee considered in a previous conclusion (Conclusions XVI-2) that the relevant legislation took into account the specific nature of temporary employment in a manner consistent with the requirements of the Charter. In reply to the question put by the Committee regarding measures taken to reduce the incidence of occupational accidents of temporary agency workers, the report indicates that Royal Decree of 19 February 1997 concerning the protection of temporary agency workers is under revision. The draft decree is currently being discussed with social partners, notably the question of the supervision of such workers' health, before being submitted to the Minister of Labour for signature. The Committee therefore asks to be kept duly informed of developments concerning the future decree.

Personal scope of the regulations

The Committee has previously found that the situation in Belgium, in particular regarding the protection of the self-employed and domestic workers, was in conformity with the Charter. The report indicates that no changes have taken place.

Consultation with employers' and workers' organisations

The situation has already been examined (Conclusions XIV-2) and considered to be adequate. The report specifies that no new development have taken place regarding consultation with employers' and workers' organisation on occupational health and safety regulations.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation is in conformity with Article 3§2 of the Revised Charter.

¹ Official Journal No. L 38/36 of 9/02/2006.

² Official Journal No. L 263 of 24/09/1983.

³ Official Journal No. L 097 of 15/04/2003.

⁴ Official Journal No. L 207/18 of 06/08/1999.

⁵ Official journal No. L 159 of 19/06/1996.

Article 3 - The right to safe and healthy working conditions

Paragraph 3 - Provision for the enforcement of safety and health regulations by measures of supervision

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

Occupational accidents and diseases

From Eurostat data, the Committee notes that number of accidents at work with more than 3 days' absence decreased between 2005 and 2006, from 72 541 to 62 117. The incidence rate of accidents per 100 000 workers followed this trend (3 167 in 2005 and 3 077 in 2006), roughly at EU-15 level. The number of fatal accidents rose slightly during the same period (45 in 2005 and 50 in 2006). The incidence rate of accidents was 2.6 both years, close to the EU-15 average. The Committee asks that figures on occupational diseases be provided.

Activities of the labour inspectorate

The Committee examined the general framework of inspection services in previous conclusions (Conclusions XIV-2 and 2007) and considered it adequate. The Committee asks that any changes in the national inspection system which might take place during the reference period be included in the next report.

The number of visits carried out by the inspection services concerning well-being at work (undertakings and building sites) have slowly declined between 2005 and 2007 (34 797 in 2005; 31 104 in 2006; 28 312 in 2007). However, in 2008, outside the reference period, the number of visits increased slightly (29 559 visits). Overall, more than half visits are undertaken in building sites. According to the report, the proportion of workers covered by visits is considered to be more than 90% of the total workforce (only the self-employed and their family members are not subject to inspection visits). The Committee asks in this respect not the proportion of workers covered in theory by inspection visits, but the proportion of workers concerned by the inspection visits which have taken place. This information should thus be provided in the next report. It also asks for information on the number of staff of the labour inspection services and more specifically those dealing with occupational health and safety.

As regards enforcement measures, the number of statements of breach increased between 2005 and 2007 (respectively 310 and 391). As a result of these statements, the number of criminal penalties rose significantly between 2005 and 2006 (respectively 31 and 239) before going down slightly in 2007 (191). The report underlines the problem of length of proceedings: only when a court has found that no criminal responsibility was involved, can administrative penalties be imposed. 40% of judgments regarding statements of breach dating back from 2005 are still pending before the courts. The report indicates however that efforts are being made to improve this situation. The Committee asks for an

update on progress made to reduce the length of proceedings regarding the processing of statements of breach by the competent courts.

Conclusion

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

Article 3 - The right to safe and healthy working conditions

Paragraph 4 - Occupational health services

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

In its previous conclusion (Conclusion 2007) the Committee examined the legal framework of occupational health services and, while considering that the situation was in conformity with Article 3§4, asked for further information on the content and functioning of such services.

According to a source⁷ referred to in the report, Internal Services for the Prevention and Protection of Work (ISPPW) contribute to identifying risks and giving opinions on the assessment of risks and the global plan of prevention; participate in the examination of causes of accidents; give opinions on questions pertaining to well-being at work; give opinions on, inter alia, information and training of workers; participate in the implementation of measures to be taken in case of immediate and serious dangers and the organisation of first aid. In addition, prevention counsellors and occupational doctors carry out certain activities within the framework of these services: examining how to improve working conditions, supervising workers' health and overseeing the organisation of first aid and emergency medical care. When employers do not have an occupational health service within their ISPPW, these activities can be entrusted to an external service. The ISPPW has however an important coordination role in such cases. External services have to be duly authorised by the authorities and be delivered a quality certificate. They must have a minimum number of health specialists. An consultative committee has been set up within the external service which is composed of members representing the employers having hired the services and workers from the enterprises concerned. This committee gives opinions on different matters in order to contribute to the good functioning of the external service. The report provides figures concerning external services which show that an increasing number of enterprises have recourse to external services (167 000 in 2005 up to 202 526 in 2007), of regular health assessments (from 1 032 207 in 2005 to 1 431 777 in 2007), of the number of prevention counsellors - occupational doctors, engineers, ergonomists, psychosocial counsellors - (1 124 in 2005 up to 1 385 in 2007). The Committee asks whether similar figures could be furnished on internal services, as well as on the

proportion of enterprises having recourse to external services and the global coverage of enterprises and workers.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation is in conformity with Article 3§4 of the Revised Charter.

¹<http://www.emploi.belgique.be>

Article 11 - The 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 Belgium.

State of health of the population - General indicators Life expectancy and principal causes of death

Average life expectancy at birth in 2006 was 76.6 for men and 82.3 for women⁸ (the EU 27 average in 2004 was 75.2 for men and 81.5 for women⁹). The mortality rate in 2007 was 10.3 per 1 000 inhabitants¹⁰ (the EU 27 average was 6.48 per 1 000 inhabitants in 2006¹¹).

According to the report the principal causes of death were cancer, particularly lung and breast cancer, and suicide. The Committee notes that the situation in Belgium falls significantly behind that of other European countries with regard to the mortality rate. It also notes that a national plan was launched in 2006 to raise public awareness about the need to improve eating habits and increase or maintain daily physical activity to reduce obesity and illnesses such as diabetes, cardio-vascular conditions and certain types of cancer. This strategy is to be applied at Community and local level.

Infant and maternal mortality

The infant mortality rate decreased from 3.7 deaths per 1 000 live births in 2005 to 3.1 deaths per 1 000 live births in 2007¹² (the EU 27 average was 4.7 per 1 000 in 2006¹³). According to the report, the perinatal mortality rate was 6 per 1 000 live births in 2006. The principal causes of infant mortality are complications during pregnancy and congenital defects. The maternal mortality rate was 8 per 100 000 births in 2005¹⁴, which is an equivalent rate to that of other European countries¹⁵.

Health care system -Access to health care

The Committee notes that the Flemish Government's aim is to place increased emphasis on access to and organisation of primary health care. In this connection, two decrees were adopted, on 3 March 2004 and 23 May 2003, to improve access to care through the territorial reorganisation of the Flemish Region and the Brussels-Capital Region. According to the report, these measures are part of the Flemish Community's equal opportunities policy. These decrees should ultimately make it possible to streamline and reduce the number of bodies involved through the establishment of primary health care co-operation schemes (*SELs*), which would take over the tasks of home help co-ordination programmes. The decrees also make provision for negotiating co-operation

agreements with various health care providers and partner organisations, which may apply for grants once they have obtained the necessary authorisation.

With regard to access to care for disadvantaged people, the report states that on 21 November 2003 the Flemish Community adopted a decree on preventive health policy intended to facilitate the negotiation of co-operation agreements with various partner organisations or individual care providers working in this field. Child and family support centres (CKGs), which are governed by an Order of 28 February 2003, complement *Kind & Gezin's* work and provide support for families in difficulty through day and night care facilities and home help.

The Committee asks again for information on access to health care for disadvantaged people in the German-speaking Community. It also asks for up-to-date information on access to health care for disadvantaged people in the French speaking Community.

In reply to the Committee, the report states that waiting times for non-emergency operations are generally under 90 days while cancer patients can expect to be dealt with within an average of 21 days. The Committee asks for information on the management of waiting lists.

The health care budget was 9.5% of GDP in 2006¹⁶ and 9.7% in 2004, which is one of the highest figures in Europe¹⁷.

Health care professionals and facilities

There were 6.7 hospital beds per 1 000 inhabitants in 2006¹⁸ (the EU 27 average in 2005 was 5.9 beds per 1 000 inhabitants)¹⁹. The Committee notes that this number had decreased (from 7.4 hospital beds per 1 000 inhabitants in 2004). There were 1.8 psychiatric hospital beds per 1 000 inhabitants in 2006²⁰ (the European average²¹ in 2005 was 0.6 beds per 1 000 inhabitants²²).

In 2007²³, there were 44 124 doctors (which is 42 per 10 000 inhabitants), 8 305 dentists (that is 8 per 10 000 inhabitants) and 146 846 nurses and midwives (which is 142 per 10 000 inhabitants).²⁴ There were also 11 775 pharmaceuticals (that is 11 per 10 000 inhabitants). These are similar figures to those in most other European countries.²⁵

The Committee reiterates that living conditions in hospitals, including psychiatric institutions and other care centres, must be adequate and preserve human dignity (Conclusions XVII-2 and 2005, statement of interpretation of Article 11§5; Conclusions 2005, Romania). It asks for the next report to describe patients' living conditions in hospitals, including psychiatric institutions and other care centres.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 11§1 of the Revised Charter.

¹ Eurostat

² Ibid

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ WHO

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

¹¹ Eurostat

¹² Ibid

¹³ Ibid

¹⁴ EU 27 average

¹⁵ Eurostat

¹⁶ WHO

¹⁷ Ibid

¹⁸ Ibid

Article 11 - The right to protection of health

Paragraph 2 - Advisory and educational facilities

The Committee takes note of the information in the Belgian report. It refers to its previous conclusions (Conclusions 2007) for a general description of health advice and education services.

Encouraging individual responsibility - Health education in schools

In the French speaking Community, programmes to promote health in school address issues such as sex education, eating habits and activities that are damaging to health (smoking, alcohol and drugs). Environmental policy does not form part of the French speaking Community's specific health-related powers, being the responsibility of the Walloon and Brussels Regions. However, school principals may consider organising activities in this field with the various parties involved.

The report includes a detailed description of all of the awareness-raising projects run by schools in the Flemish Community. The Cultural Unit of the Education Department (*CANON*) helps schools to devise projects related to health, safety and the practice of sport through a specific programme called DynaMo2. Their aim is to help pupils understand that an active, safe and healthy lifestyle improves their quality of life. Various bodies draw up projects for and in schools such as the local health consultation platforms (*logos*). Schools are also supported by pupil guidance centres (*CLBs*), the Flemish Institute for Health Promotion (*VIG*) and the Sensoa Association. The Sensoa Association and the

VIG produce working methods and teaching materials for schools, which form the basis for a number of training activities centered on sex education and the prevention of sexual abuse.

Public information and awareness-raising

A national plan for healthy eating was launched at federal level in 2006. The Committee refers to its conclusion under Article 11§1 in this respect.

In reply to the Committee the report states that there are specific information campaigns in the French speaking Community intended to inform the public about various subjects such as activities that are damaging to health (smoking, alcohol and drugs), sexuality and eating habits.

The Flemish Community also runs public information and awareness-raising campaigns on alcohol, drugs, smoking, eating habits and sexuality alongside the various specific awareness-raising schemes implemented in schools.

The Committee asks for information on the measures taken in the German-speaking Community in this sphere.

Counselling and screening

Population in general

In addition to the specific counselling services and systematic screening organised by the Flemish organisation, *Kind & Gezin*, such as those run for all children up to the age of three and the breast cancer screening provided for all women aged 50 to 69, arrangements are supplemented by company medical services and measures set up by *CLBs* for other target groups. In addition to this there are specific campaigns in areas where a particular need is felt such as screening for cancer of the cervix or the colon. Provincial authorities are subsidised by the Flemish Government to raise public awareness on this subject. Expert advice centres have been set up throughout the Community to support its regular schemes and government-approved partnerships (*logos*) have been established.

The Committee asks again for information on health counselling and screening measures in the German-speaking Community. It also asks for up-to-date information on the French -speaking Community in the next report.

Pregnant women, children and young people

In the Flemish Community, women's pregnancies are generally monitored by general practitioners, gynaecologists and maternity clinics. To improve co-operation between these different care providers, *Kind & Gezin*, a Flemish public body providing support and advice on child health and welfare, has drawn up a "mother's record book", in which all the medical data concerning pregnant women are recorded, serving as a link between the different care providers. According to the report, special attention is also paid to preventing sudden infant death syndrome.

The report gives a detailed description of the main counselling and screening services in the Flemish Community, both for school pupils and for other groups. *CLBs* provide counselling and screening services at school for children between the ages of 5 and 18. All school pupils attend regular health checks at *CLBs*. During the reference period, there were 75 *CLBs*, covering 262 sites.

The Committee asks again for information on health counselling and screening measures in the German-speaking Community. It also asks for up-to-date information on the French -speaking Community in the next report.

Conclusion

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

Article 11 - The right to protection of health

Paragraph 3 - Prevention of diseases

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

Belgium was previously found not to be in conformity with this provision of the Revised Charter on the grounds that it had not been established that the right to protection of health was effectively guaranteed. This was due to the lack of information previously supplied in particular in relation to the French and German speaking communities. The current report provides more detailed information in relation to the measures taken in these communities, however the Committee still needs further information on the situation in order to assess the situation. Therefore the Committee again finds that the situation is not in conformity with this provision of the Revised Charter.

Policies on the prevention of avoidable risks

Reduction of environmental risks

Air - The Committee recalls that the prevention of pollution falls within the competencies of the regions. The report provides details of the measures taken in this field by the French and Flemish Communities, notably studies and research in the Flemish Community and the adoption of legislation on pollutants dose limits and emissions in the French Community. Air quality is monitored by a network managed by the Flemish Society for the environment. The Committee asks for further information on monitoring of the air quality in the French speaking community.

The Committee asks what measures have been adopted in the German speaking community.

Water - The Committee previously received information on measures taken to prevent water pollution in the Flemish Community but has asked for further information on the monitoring of nitrates. According to the report legislative amendments were made to the relevant legislation in 2007 in order to ensure full compliance with the European Nitrates Directive. This Directive was transposed in 2008 by the French speaking community.

The Committee asks what measures have been adopted in the German speaking community.

Noise - The Committee recalls that the Federal Government has introduced measures relating to product standards to protect the environment and public health. Among these are the Royal Decree of 6 March 2002 on the acoustic power of equipment designed to be used outside buildings and the Royal Decree of 26 February 1981 on the sound levels authorised for communication and transport facilities. Furthermore, pursuant to Directive 2002/49/EC relating to the assessment and management of environmental noise, the Regions have arranged for noise maps to be drawn up, for the level of public exposure to extreme noise to be assessed and, subsequently, for action plans for improved management of environmental noise to be prepared. The Regions are also responsible for imposing noise limits on business activities and musical and sports events.

Ionising radiation - Royal Decree of 20 July 2001 on the protection of the public, workers and the environment from ionising radiation sets radiation exposure levels for the public, persons exposed in the course of their work, apprentices, students, workers under the age of 18, pregnant workers and workers who are breastfeeding. In its previous conclusion, the Committee asked for information about the implementation of the measures described in the Royal Decrees of 20 July 2001 and 17 October 2003 (Royal Decree of 17 October 2003 fixes contingency plans in case of nuclear emergencies). The report provides details of numerous decrees and directives of the Federal Agency for nuclear Control implementing the above mentioned legislation.

Asbestos - Royal Decree of 3 February 1998 (Conclusions XV-2, pp. 99-104) as amended by Royal Decree of 23 October 2001 prohibits the marketing and use of asbestos. Information is provided on the protection of workers from asbestos related risks. This the Committee examines under Article 3 of the Revised Charter. The Committee asks the next report to provide information on the rules concerning the removal of asbestos from buildings including domestic dwellings.

Food safety

The Committee previously requested further information on labelling and fines that may be imposed when food hygiene legislation is infringed. The report provides information on the range of administrative fines that may be imposed for breach of food safety legislation. New legislation was introduced on the

labelling of food products in 2005 transposing the relevant EU Directive (Directive 2003/89/EC of the European Parliament and of the Council of 10 November 2003 amending Directive 2000/13/EC as regards indication of the ingredients present in foodstuffs). The legislation requires inter alia that food labels must indicate whether the food product contains one of 12 allergenic foods.

Measures to combat smoking, alcoholism and drug addiction

Smoking-the report provides information on the measures taken in the Flemish and French speaking communities to reduce smoking as well as measures to reduce alcohol and drug abuse. Information has also been supplied on measures taken to combat drug abuse in the German speaking community.

The Committee asks whether smoking has been banned in public places, what restrictions are in force on the sale and advertising of tobacco products.

It asks the next report to provide information on the rules regarding the sale and distribution of alcohol as well as information on trends in alcohol consumption, smoking and drug abuse..

Prophylactic measures - Epidemiological monitoring

The report provides updated information on measures in place to deal with flu epidemics.

Accidents

The reduction of fatal accidents in the private sphere and traffic accidents by 20% has been a government priority since 1998. In 2003 for example the reduction in the number of falls of elderly people was made a key priority in the prevention of accidents strategy.

The report provides information on measures the Flemish community has taken to reduce accidents; measures to reduce falls by elderly persons, to reduce dog attacks on children and to prevent burns among children. The Committee asks for further information on measures taken by the German and French speaking authorities.

Immunisation

Vaccination policy is a shared responsibility of the national Ministry of Health/Social Affairs as well as of the regional Ministries of Health of the Flemish speaking, the French speaking and the German speaking communities. These Regional authorities are responsible for the implementation and promotion of the recommended vaccination programmes, and are in charge of purchasing most of the traditional infant and adolescent vaccines. A set of recommended infant vaccines (polio, tetanus, diphtheria, pertussis, *H influenza* type b, hepatitis B, measles, mumps, rubella and meningococcal C) is offered free of charge. The Polio vaccination is the only mandatory vaccination in Belgium.

The pneumococcal vaccine was included in the programme as of 1 January 2007).

There is no national institution officially in charge of measuring the vaccine coverage, this is a responsibility of the local authorities. Coverage studies have been organized at different time points in Flanders, Brussels' capital region and Walloon. Recent coverage studies have been performed in Wallonia (2003) and in Flanders (2005 and 2007) using the WHO cluster sampling technique.

According to the report the studies in the Flemish and French communities have shown an increase in the coverage rates for recommended vaccines.

Conclusion

The Committee concludes that the situation in Belgium is not in conformity with Article 11§3 of the Revised Charter on the ground that that it had not been established that the right to protection of health is effectively guaranteed in all communities.

Article 12 - The 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 Belgium.

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions (Conclusions XVII-1 and XVIII-1) for a description of the Belgian social security system and notes that it continues to cover the branches of social security corresponding to all traditional risks: medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors. Distinct social security schemes exist respectively for employees, self-employed and civil servants, but they are broadly similar. The Committee also continues to rest on collective funding: it is funded by contributions (employers, employees) and by the State budget.

To assess whether a significant proportion of the total and/or active population in Belgium is guaranteed an effective right to social security with respect to the benefits provided under each branch, the Committee has to regularly be provided with percentage figures concerning the coverage of the population for all social security branches. The report fails to contain such data. Since the personal coverage of the social security system was previously not questioned (Conclusions 2006), the Committee reserves its position this time. It however requires the next report to contain the relevant up-to-date information.

Adequacy of the benefits

The Committee refers to its previous conclusions (Conclusions XVII-1 and XVIII-1) for a description of the various social security schemes.

The Committee recalls that it previously held the level of income replacement benefits to be adequate (Conclusions XVII-1 and XVIII-1) and notes that during the reference period several measures were adopted to readjust the level of benefits by 1% or 2% and to extend conditions for entitlement to benefits. The Committee observes that the level of such benefits remains above the poverty threshold defined as 50 % of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. It therefore reiterates that the level of income replacement benefits is adequate.

However, as regards unemployment benefits in particular, adequacy is also established by considering whether there is a reasonable initial period during which an unemployed person may refuse a job offer or a training not matching his/her previous skills without losing his/her unemployment benefits (Conclusions

XVIII-1/2006, Germany, Denmark and Norway). The Committee therefore asks the next report to clarify the situation in this regard.

Meanwhile it notes from the Mutual Information System on Social Protection²⁶ and a publication on social security published in January 2008 by the Belgian Federal Public Service Social Security that an unemployed person may be excluded from receiving benefits and face additional sanctions, *inter alia*, if s/he:

- refuses an "appropriate" job offer;
- sets conditions for his re-employment.

The Committee asks the next report to clarify what is meant by "appropriate" job offer and how such appropriateness is assessed in individual cases. It also asks the next report to indicate how often unemployment benefits are suspended on the ground of refusal of an appropriate job or for one's setting conditions for re-employment. It also asks for clarifications on the nature of the other sanctions which may be applied and how often they are decided upon. The report should also contain information on any relevant case law.

Pending receipt of the above clarifications, the Committee reserves its position as to the actual guarantee of the unemployment risk for which every worker has contributed during his working activity.

Conclusion

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

¹ MISSOC, *Comparative table X for 2007 on Unemployment*, available at: http://ec.europa.eu/employment_social/missoc/2007/tables_part_1_en.pdf

Article 12 - The right to social security

Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that required for ratification of the International Labour Convention No. 102

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

Belgium has ratified the European Code of Social Security and its Protocol on 13 August 1969 and has accepted parts II-X of the Code.

The Committee notes from Resolution CM/ResCSS(2008)1 of the Committee of Ministers on the application of the European Code of Social Security and its Protocol by Belgium (period from 1 July 2006 to 30 June 2007) that the law and practice in Belgium continue to give full effect to the parts of the Code which

have been accepted, as amended by the Protocol, subject to further information on the application of several parts of the Code (regarding medical care and unemployment benefit).

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 12§2 of the Revised Charter.

Article 12 - The 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 Belgium.

The report states that no major reform of the system occurred during the reference period.

However, information provided with regard to the adequacy of benefits highlights that numerous measures were taken during the reference period to increase the level of benefits and to broaden conditions for entitlement to benefits.

Since Belgium has ratified Articles 8 and 16 of the Revised Charter, the Committee will assess the scope and impact of developments with regard to maternity and family benefits when it will next examine compliance with these articles.

As to developments concerning the other branches of social security, as mentioned above these resulted in increases of the level of benefits (between 1% and 2%) and in a widening of the persons entitled to the benefits. The Committee thus considers that Belgium endeavoured to raise the system of social security to a higher level.

Conclusion

The Committee concludes that the situation in Belgium is in conformity with Article 12§3 of the Revised Charter.

Article 12 - The 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 Belgium.

Equality of treatment and retention of accrued benefits (Article 12 4a)

Right to equal treatment

The Committee recalls that relations with other member states of the enlarged European Union in connection with social security are governed by Council regulations (EEC) No 1408/71 and (EEC) No 574/72. Council Regulation (EC) No. 859/2003 allows Regulation No. 1408/71 to be applied to nationals of third countries and members of their families provided they are legally resident in the territory of a member state and are in a situation which is not confined in all respects within a single member state (Article 1). These regulations also apply to nationals of European Economic Area (EEA) member states, that is Norway, Iceland and Liechtenstein. EU member states must at least guarantee nationals of other States Parties that are not EU members equal treatment with respect to social security rights if they are legally resident in their territory (Conclusions XVIII-1). The Committee asks again for the next report to provide information about the extension in practice of the equal treatment principle to third country nationals.

During the reference period, Belgium did not negotiate any bilateral agreements establishing the principle of equal treatment with States Parties that are not EU or EEA members. It had previously negotiated agreements with Bosnia and Herzegovina, Croatia, “the former Yugoslav Republic of Macedonia” and Turkey. The Committee points out that States Parties can comply with their obligations not only through bilateral or multilateral agreements, but also through unilateral measures. According to the report, Belgium is looking into the possibility of starting negotiations with Albania and Moldova. The Committee asks whether it is planned to negotiate agreements with the other States Parties, namely Andorra, Armenia, Azerbaijan, Georgia and Ukraine. It also asks whether the conclusion of such agreements is foreseen with States which have ratified the Charter outside the reference period, i.e. Serbia and the Russian Federation.

The Committee has previously ruled that under Article 12§4 any child resident in a country is entitled to family benefits on an equal footing with nationals of the country concerned. Whoever the beneficiary under the social security system, i.e. whether it is the employee or the child, States Parties are required to ensure through unilateral measures that family benefits are actually paid to all children residing in their territory. In other words, requiring the child concerned to reside in the state in question is compatible with Article 12§4 and its Appendix. However, since not all countries apply such a system, states applying the “child residence requirement” are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to negotiate within a reasonable time bilateral or multilateral agreements with those states which apply a different entitlement principle. The Committee asked previously whether such agreements exist with Albania, Armenia, Georgia and Turkey, and if not, whether they are planned, and within what timescale. According to the report there is an agreement with Turkey on family benefits. The Committee asks for information in the next report on any agreements that are being planned with Albania, Armenia and Georgia, and the time span for their negotiation.

In its previous conclusions (Conclusions XVII-1 and XVIII-1), the Committee considered that the situation was not in conformity with regard to equal treatment as payment of the disability allowance to nationals of States Parties that were not EU members was subject to the additional condition that applicants had to have received the additional family allowance for children with disabilities up to the age of 21. The report states that following a Constitutional Court decision of 12 December 2007, the Secretary of State, who is the minister responsible for persons with disabilities, will shortly be presenting the Cabinet with a draft royal decree under which all nationals of third parties entered in the Belgian population register will be eligible for these allowances. As there was no change in the situation during the reference period, the Committee renews its finding of non-conformity on this point.

Right to retain accrued benefits

The Committee noted previously that the retention of accrued benefits was guaranteed for nationals of States Parties covered by Community regulations or bound by a bilateral agreement with Belgium. Since no such agreement had been negotiated with the non-EU or EEA states (namely Albania, Andorra, Armenia, Azerbaijan, Georgia, Moldova and Ukraine), the nationals of these states moving to a State Party did not have a guaranteed right to retain accrued benefits. As there has been no change in the situation, the Committee confirms its finding of non-conformity in this regard.

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

The principle of accumulation of insurance or employment periods applies to nationals of States Parties covered by Community regulations or bound by a bilateral agreement with Belgium. Under the European Convention on Social Security, Belgium has undertaken to apply the accumulation of insurance or employment periods to non-nationals.

Conclusion

The Committee concludes that the situation in Belgium is not in conformity with Article 12§4 of the Revised Charter on the following grounds:

- equal treatment as regards the payment of disability allowance is not guaranteed to nationals of States Parties not covered by Community regulations or bound by agreement with Belgium;
- the retention of accrued benefits for persons moving to a State Party which is not covered by Community regulations or not bound by an agreement with Belgium is not guaranteed.

Article 13 - The 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 Belgium.

Types of benefits and eligibility criteria

The Committee notes that there have been no changes to the types of benefits or eligibility criteria.

Level of assistance

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

- basic benefit: according to MISSOC in 2007 the monthly integration allowances were as follows: a single person living alone received € 657, a cohabiting person received € 438 and a couple with or without children received € 876. As regards the guaranteed income for the elderly (GRAPA), it amounted to €795.

-medical assistance: the Committee notes that there have been no changes to the situation whereby recipients of the guaranteed income and social assistance are entitled to full reimbursement of medical expenses.

- the poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value: estimated at € 731 per month.

In the light of the above data, the Committee considers that the levels of social assistance paid to a single person living alone and to an elderly person without resources are adequate.

Right of appeal and legal aid

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.

Personal scope

In its previous conclusion (Conclusions XVIII-1) the Committee held that the situation was not in conformity with Article 13§1 of the Charter on the ground that the guaranteed income for the elderly (GRAPA) was not granted to nationals of the States not covered by community law or who had not concluded reciprocity agreements with Belgium. In this connection, the Committee notes from the Governmental Committee meeting report (T-SG (2007)11 §247) that the Belgian authorities' attention has been drawn to the situation of nationals of States

Parties who fall outside the scope of the Act of 22 March 2001 instituting a guaranteed income for the elderly. However, the report does not provide any information on further developments in this area. Therefore, the Committee reiterates its previous conclusion of non-conformity on this ground.

In its previous conclusion the Committee asked how the requirement to be 'habitually and permanently resident' was interpreted in practice. The report states in this connection that 'habitual' residence means that the person concerned spends most of his time in Belgium, whereas for permanent residence, he/she should have an authorisation. The Committee asked whether the 'habitual residence' requirement which foreign nationals should meet to qualify for social integration allowance may in law or in practice entail a length of prior residence requirement for entitlement to this benefit. The Committee notes that the report does not provide this information. Therefore it holds that if this information is not provided in the next report, there will be nothing to establish that the right to social assistance is guaranteed to foreign nationals without resources legally resident in Belgium.

Conclusion

The Committee concludes that the situation in Belgium is not in conformity with Article 13§1 of the Revised Charter on the ground that the guaranteed income for the elderly (GRAPA) is not granted to foreigners without resources unless they are covered by community law or are nationals of States which have concluded reciprocity agreements with Belgium.

Article 13 - The right to social and medical assistance

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

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

It notes there have been no changes to the situation that it has previously considered to be in conformity with the Revised Charter (Conclusions XVIII-1).

Conclusion

The Committee concludes that the situation in Belgium is in conformity with Article 13§2 of the Revised Charter.

Article 13 - The right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

It notes the information provided on the staff of Public Social Assistance Centres in the Flemish Community and the public spending on these services. The Committee asks whether services and institutions are provided with sufficient means to give appropriate assistance as necessary to make those concerned fully aware of their rights to social and medical assistance. It specifically asks for this information as regards the French and German-speaking Communities.

Conclusion

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

Article 13 - The 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 Belgium.

The Committee notes that there have been no changes to the situation which it has previously considered to be in conformity with the Revised Charter. The Committee asks what is the nature and extent of emergency social and medical assistance which is provided to unlawfully present foreigners.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 13§4 of the Revised Charter.

Article 14 - The right to benefit from social welfare services

Paragraph 1 - Provision or promotion of social welfare services

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

Organisation of the social services

The report describes the social services and care available to adults and children with disabilities in the Flemish Community. These facilities provide accommodation, treatment and support services in the care sector on a residential basis (day and night care in homes, short-stay centres or licensed centres for persons who work or do not work), a semi-residential basis (day care and day centres for adults with disabilities who do not work) or in the community (supervised care in the community, including placement with foster families, domiciliary support services and sheltered housing schemes offering varying degrees of support).

The report still fails to provide any information on the services available to persons in need in the German- or French-speaking Communities. Under these circumstances, the Committee cannot appreciate the situation in Belgium with regard to Article 14§1 of the Revised Charter. It considers that the situation in Belgium is not in conformity with Article 14§1 of the Revised Charter on this point.

Effective and equal access

Despite the Committee's repeated requests, there is still no information in the report on the measures guaranteeing equal and effective access for nationals of other States Parties in the German- or French-speaking Communities. Under these circumstances, the Committee cannot appreciate the situation in Belgium with regard to Article 14§1 of the Revised Charter. It considers that the situation in Belgium is not in conformity with Article 14§1 of the Revised Charter on this point.

The Committee asks for information on the fees charged for social services in each Community.

Quality of services

According to the report, a total of 65 615 people were employed by Public Social Assistance Centres during the reference period.

There is still no information in the report on the total number of beneficiaries of social services in the Flemish or German or French-speaking Communities and on the total spending on social services. Neither does the report provide any information on the staff of the social services in the German- or French-speaking Communities despite the Committee's repeated requests to this effect.

Similarly, despite the Committee's repeated requests, there is still no information in the report on quality control of social services in the German- and French-speaking Communities. Under these circumstances, the Committee cannot appreciate the situation in Belgium with regard to Article 14§1 of the Revised Charter. It considers that the situation in Belgium is not in conformity with Article 14§1 of the Revised Charter on this point.

Conclusion

The Committee concludes that the situation in Belgium is not in conformity with Article 14§1 of the Revised Charter on the grounds that it has not been established that:

- services adapted to people's needs exist in the French and German-speaking Communities;
- nationals of other States Parties have access to social services on an equal footing with nationals in these two Communities;
- supervisory mechanisms have been set up to guarantee the quality of the social services provided by different agencies operating in the French and German-speaking Communities.

Article 14 - The right to benefit from social welfare services*Paragraph 2 - Public participation in the establishment and maintenance of social welfare services*

The Committee takes note of the information in the Belgian report. Inspection services have been set up in the Flemish Community to monitor services for people with disabilities provided by non-public bodies. Despite the Committee's repeated requests, there is still no information in the report on whether non-public service providers are entitled to provide social services or whether supervisory mechanisms exist to control the quality of service. Under these circumstances, the Committee cannot appreciate the situation in Belgium with regard to Article 14§2 of the Revised Charter. It considers that the situation in Belgium is not in conformity with Article 14§2 of the Revised Charter on this point.

There is still no information in the report on participation by civil society organisations in providing social services in the German- or French-speaking Communities or on arrangements for consulting users when devising social service-related policies in any of the three Communities. It underlines that if the next report does not provide the necessary information, there will be nothing to show that the situation in Belgium is in conformity with Article 14§2 of the Revised Charter on this point.

Conclusion

The Committee concludes that the situation in Belgium is not in conformity with Article 14§2 of the Revised Charter because conditions imposed on non-public service providers to have access to the provision of social services are not clearly defined and it has not been established that control mechanisms have been set up to guarantee that these providers fulfill the conditions imposed on them.

Article 30 - The right to protection against poverty and social exclusion

The Committee takes note of the information in the Belgium report.

Measuring poverty and social exclusion

The main indicator used to measure poverty is the relative poverty rate. This corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income. There are no figures in the report concerning the poverty rate and no data by which the extent of social exclusion can be assessed. The Committee asks for this information in the next report. According to the strategic report on social protection and social inclusion for 2008-2010²⁷, 14.8% of the population were living below the poverty threshold in 2005 and 14.7% in 2006. This is one of the five highest rates in the European Union (the EU rate was 16% in 2005 and 2006).

The report does not provide any information on social exclusion. The Committee recalls that Article 30 does not only cover poverty but also social exclusion and the risk of social exclusion. It asks that the next report indicate how this phenomenon is tackled.

Approach adopted to combating poverty and social exclusion

The Committee points out that Governments must adopt an overall and co-ordinated approach, which must comprise an analytical framework, and take measures promoting access to social rights, in particular employment, housing, training, education, culture and social and medical assistance for persons in, or at risk of finding themselves in, a situation of poverty or social exclusion.

In 2005, the National Action Plan (NAP) for social inclusion was replaced by a more broad-ranging document entitled the National Strategy Report on Social Protection and Social Inclusion. During the reference period, Belgium appointed a State Secretary for Poverty Prevention. One of the new measures which he introduced was a federal anti-poverty plan, adopted on 11 December 2008, which comprises 59 specific measures pursuing 6 general goals (including decent housing). Unlike the strategic report and the NAP, this plan relates to the whole of Belgium and includes only federal measures. It is an action plan, which encourages stakeholders to devise practical means of enabling everyone to have a decent standard of living. For this to be implemented effectively, four lines of action are set out:

- the establishment of an "inter-federal" mechanism to measure poverty;
- proper dialogue with people in a situation of poverty;
- involvement of all the stakeholders (in the public and voluntary sector);

- using Europe as a partner in the fight against poverty (Belgium takes over the Presidency of the Union in 2010).

In the light of the information available, the Committee considers that, on the whole, the approach taken by the Government establishes a clear analytical framework, sets proper priorities and fosters appropriate action. It is therefore in conformity with the Committee's interpretation of the overall and co-ordinated approach referred, to in Article 30 of the Revised Charter.

In the training and employment sphere, the Government's aim is to introduce financial aid to increase the employment rate of risk groups (such as women, people with few educational qualifications, people of foreign origin or foreign nationals and people with disabilities), promote further training for people without qualifications and measures to combat school dropout and place particular emphasis on improving access to employment for the target groups. The National Reform Programme includes an extensive new labour market policy, which aims at providing decent jobs for every citizen, young or old, and is centred on increasing the employment rate and creating new jobs.

Housing is dealt with in the federal anti-poverty plan even though it is mostly a regional matter. A project has been launched to increase the amount of "emergency housing" on offer. "Emergency homes" are rented out for short periods (up to 4 months maximum) to persons in situations of need for various reasons (including housing that is declared unfit or uninhabitable, eviction, family conflict, or disasters such as floods or fire). Specific measures were also adopted relating to policy in large towns and cities.

The Committee notes the measures taken to combat poverty in the Flemish Community. It also notes that neither the Brussels-Capital Region nor the Walloon Region or the French Community have provided information on anti-poverty measures. It asks for this information in the next report. It also asks for information on measures taken to combat social exclusion.

An inter-federal mechanism to measure poverty has been set up because poverty is not just a matter of insufficient financial means, it also entails exclusion, unsuitable housing, serious health problems and day-to-day problems such as heating and eating correctly and paying for child care. This mechanism is based on 15 indicators, which focus on poverty and financial insecurity levels in several areas (including income and debt, health care, employment, education, housing and non-monetary hardships) and measure one or more of their main features. It is a product of co-operation with the Regions and Communities, several federal public services and programming services, universities, experts on statistics and associations involved in combating poverty, which was arranged to ensure that the tool would reflect each of these stakeholders' priorities and viewpoints in so far as possible.

The Federal Minister for Integration was assigned the task of co-ordinating anti-poverty policy, with help from the federal ministers responsible for social inclusion-related matters and the ministers of the Communities and Regions in charge of co-ordinating inclusion policy. It was a conference of these ministers which approved the choice of the three main priorities, along with the timetable of the national action plan for inclusion for 2006 -2008. Political co-ordination also took place at regional level, in the Flemish Community, the Walloon Region and Brussels-Capital.

The Committee asks that the next report to include more information about the impact of any measures taken in terms of reducing poverty and, in particular, social exclusion. It asks for more details on what has been done to integrate the various benefits and services across the policy areas referred to in Article 30, such as employment, housing, training, education and culture, and asks for quantified indicators of the means deployed, the number of beneficiaries and the results achieved for each of the measures concerned.

Monitoring and assessment

As regards co-ordination at the political level, given its constitutional structure, Belgium has established a system of consultation between all the relevant legislative tiers, namely federal government, the communities and the regions. The corresponding administrative authorities and the social partners are also involved in this consultation. Ad hoc processes and bodies including associations of people living in situations of poverty or social exclusion contribute to the drafting and the implementation of the national action plan. Since 2004 it has been possible for people with proven experience of poverty and social exclusion to receive special training which qualifies them to make use of their experience of poverty in a professional public service context. During the reference period, 18 mediators specialising in poverty and social exclusion field work were employed by 10 different federal public services.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Belgium is in conformity with Article 30 of the Revised Charter.

¹http://ec.europa.eu/employment_social/spsi/docs/social_inclusion/2008/nap/belgium_en.pdf