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European Social Charter

European Committee of Social Rights

Conclusions XIX-4 (2011)

(“THE FORMER YUGOSLAV REPUBLIC OF
MACEDONIA”)

Articles 7, 8, and 17 of the 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. In respect of national reports, it adopts "conclusions" and in respect of collective complaints, it adopts "decisions".

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

The European Social Charter was ratified by "the former Yugoslav Republic of Macedonia" on 31 March 2005. The time limit for submitting the 4th report on the application of this treaty to the Council of Europe was 31 October 2010 and "the former Yugoslav Republic of Macedonia" submitted it on 11 February 2001.

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

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

"The former Yugoslav Republic of Macedonia" has accepted all the Articles from this group with the exception of Article 7§5, 16 and 19.

The reference period was 30 April 2004 to 31 December 2009.

The present chapter on "the former Yugoslav Republic of Macedonia" concerns 14 situations and contains:

- 3 conclusions of conformity: Articles 7§6, 7§7 and 7§8 ;
- 1 conclusion of non-conformity: Article 17.

In respect of the other 10 situations concerning Articles 7§1, 7§2, 7§3, 7§4, 7§9, 7§10, 8§1, 8§2, 8§3 and 8§4, 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 from "the former Yugoslav Republic of Macedonia" deals with the accepted provisions of the following articles belonging to the first thematic group "Employment, training and equal opportunities":

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

The deadline for the report was 31 October 2011.

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

Article 7 - Right of children and young persons to protection

Paragraph 1 - Prohibition of employment under the age of 15

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

The Committee recalls that in application of Article 7§1, domestic law must set the minimum age of admission to employment at 15 years.

Article 42§1 of the Constitution prohibits employment of a person younger than 15 years. Section 18 of the Act on Labour Relations ("Official Gazette of the Republic of Macedonia" No. 62/05) envisages that employment contract may be signed by person turned 15 years of age, while meeting the conditions for general health condition. Each contract concluded with a person younger than 15 years of age is declared null and void. Section 259§§1, 2, and 3 of the Law explicitly states that it is prohibited to employ persons younger than 15 years of age. However, the report also states that with the amendments of 2010 to the Act on Labour Relations paragraphs 1, 2 and 3 are deleted. Also the Committee takes note of the work done for the transposition of the EU aquis and more specifically for the EU directive 94/33/EC on the protection of young people at work. The Committee notes that these amendments to Act on Labour Relations fall out of the reference period and wishes to be informed in the next report on the implications that these amendments bring to employment of children under the age of 15, as well as the implementation of the amendments in practice.

The Committee recalls that the prohibition on the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households. It also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other).

The report states that legal provisions in relation to the eligibility to sign employment contracts and the ban on employing children younger than 15 years of age refers to the private and public sector, including the family companies and private households. The Committee asks whether these legal provisions cover also all forms of economic activity, irrespective of the status of worker (employee, self-employed, unpaid family helper or other).

Article 7§1 of the Charter allows for an exception concerning light work, i.e. work which does not entail any risk to the health, moral welfare, development or education of children. States are required to define the types of work which may be considered light, or at least to draw up a list of those who are not. Work considered to be light ceases to be so if it is performed for an excessive duration.

The report states further on that in the existing legal framework, there exists the possibility for children who have turned 14 and the students to perform practical work in the framework of the educational program. Also Section 259 of the Act on Labour Relations provides for the possibility for a child younger than 15 years of age, to be able to participate in film industry, preparation and performing art and other similar activities (cultural, artistic, sport and commercial activities), having previously obtained approval on request of the legal representative and upon supervision of such work. The Committee asks whether this is considered light work, whether there are other types of work in which children may participate, what are the rules governing employment of children in these activities, especially duration of such work.

The effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labour Inspectorate has a decisive role to play in this respect. The Committee takes note of the activity of the Labour Inspectorate and the sanctions imposed in cases of violation. It notes that during its inspections the Labour Inspectorate has not found violations of prohibition of employment of children.

Regarding home work, States are required to monitor the conditions under which it is performed in practice. The Committee asks whether Labour Inspectorate may conduct inspections regarding home work.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 2 - Higher minimum age in dangerous or unhealthy occupations

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

The Committee recalls that, in application of Article 7§2, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work. However, if such work proves absolutely necessary for their vocational training, they may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary. The Labour Inspectorate must monitor these arrangements.

The report states that the Act on Labour Relations envisages a ban on performing works that are considered dangerous or detrimental on the health of the workers younger than 18 years of age. Section 173 of this Act envisages that the workers younger than 18 cannot be ordered by the employer to perform hard physical work, work carried out underground or under water, work with sources of ionising radiation and other work that can have detrimental and increased influence on the health, i.e. health development with regard to their psycho-physical specifics.

The process of preparation of the bylaws in the area of occupational health and safety is a process that lasts for a long time and the majority of these acts have already been adopted. Also, the draft version of a Rulebook on determining the works that cannot be performed by workers younger than 18 years of age is prepared.

The Committee asks to be provided with the list of types of work in which young workers are not allowed to work, due to their dangerous or unhealthy nature.

The Committee asks what is the situation regarding vocational training. Are such types of work allowed to be performed as part of the curricula and what measures of supervision and performance are in place.

The Committee takes note of the activity of the Labour Inspectorate and the sanctions imposed in cases of violation. It notes that during its inspections the Labour Inspectorate has not found any violations of prohibition of employment of young workers in dangerous or unhealthy occupations. However, it notes that a considerable number of young workers are employed in agriculture, hunting, forestry and construction, although the nature of work performed in these occupations is not specified.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 3 - Prohibition of employment of young persons subject to compulsory education

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

The Committee takes note of the legislative framework regarding compulsory education. Accordingly, Article 44 of the Constitution and Law on Primary Education No. 103/08, 33/2010, stipulate that primary education is compulsory. Primary education starts at the age of 6 and lasts 9 years. The Law

on Secondary Education No. 44/95 as modified in 2010 stipulates that secondary education is also compulsory which brings the age of young persons subject to compulsory education up to 18 or 19.

The Committee notes from the report that Section 174 of the Act on Labour Relations, limits the duration of the working time of young workers under the age of 18 and prohibits overtime work for them. Hence, the working time of the employee younger than 18 years of age cannot be longer than 8 hours per day and 40 hours per week. The Committee asks, since *prima facie* according to the above-mentioned legal provisions, all young persons under 18 years old are subject to compulsory education, whether there are any restrictions during school year as to the duration of work. If this is not the case, the Committee considers that the length of working time for young persons still subject to compulsory education is excessive.

The Committee recalls that Article 7§3 guarantees the right of every child to education by safeguarding its capacity to learn. Only light work is permissible for schoolchildren under this provision. The notion of "light work" is the same as under Article 7§1. Adequate safeguards must be in place to allow the authorities (labour inspectorate, social and education services) to protect children from work which could deprive them of the full benefit of their education.

During school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework. Allowing children to work before school begins in the morning is, in principle, contrary to Article 7§3. Allowing children aged 15 years still subject to compulsory education to deliver newspapers from 6 a.m. for up 2 hours per day, 5 days per week before school is not in conformity with the Charter.

In order that children still subject to compulsory education benefit fully from school after the holiday, work must be prohibited for a period of at least 4 weeks during the summer holidays and for at least half of each holiday period granted in the course of the school year.

The Committee asks what are the rules governing employment of children still subject to compulsory education as to the issues raised above, and more specifically: light work permitted for those under 15 years of age and the kind of work allowed for those above 15 years of age. What is the work performance in relation to school attendance, are young persons allowed to work early in the morning before going to school and what is their work's daily and weekly duration.

As regards work during school holidays, the Committee refers to its interpretative statement on Article 7§3 in the General Introduction. It asks the next report to indicate whether the situation in "the former Yugoslav Republic of Macedonia" complies with the principles set out in this statement. In particular, it asks whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. It also asks what are the rest periods during the other school holidays.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 4 - Working time for young persons under 16

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Under Article 7§4, domestic law must limit the working hours of persons under 16 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice. For persons under 16 years of age, a limit of 8 hours a day or 40 hours a week is contrary to the article.

The Committee takes note of the information regarding vocational education and the possibility of conclusion of employment contracts in the framework of vocational education.

The report states that Section 174 of the Act on Labour Relations, limits the duration of the working time of workers under the age of 18 and prohibits overtime work for them. Hence, the working time of the employee younger than 18 years of age cannot be longer than 8 hours per day and 40 hours per week. For these workers it is compulsory to have a 30 minutes break after a minimum of 4 and half hours of work and an amendment to Section 174 provides for a worker aged under 18 to have the right of rest of 16 consecutive hours during the period of 24 hours. *Prima facie*, the Committee considers that this limit is excessive for persons under 16 years of age.

However, the Committee notes from the report that the age of young persons subject to compulsory education is up to 18 or 19. The Committee recalls that the personal scope of Article 7§4 of the Charter of 1961 covers only young workers that are not subject to compulsory education. The Committee asks for clarification as to the situation in "the former Yugoslav Republic of Macedonia", namely, whether there are young persons between 15 and 16 years of age that are not subject to compulsory education and allowed to work, apart from those that make part of the vocational education system.

Conclusion

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

Article 7 - Right of children and young persons to protection

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

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

The Committee recalls that, in application of Article 7§6, time spent on vocational training by young people during normal working hours must be treated as part of the working day. Such training must, in principle, be done with the employer's consent and be related to the young person's work. Training time must thus be remunerated as normal working time, and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked.

This right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.

The report states that Section 154 of the Act on Labour Relations stipulates that every employee has the right and the responsibility to receive constant education, additional training and schooling depending on the needs of the work process, with the aim of maintaining and developing the required qualifications. This right refers to all employees, including young workers under 18. The employer has the responsibility to provide the worker with the possibility to access education, training and schooling, if the need of the working process requires so or if this serves to avoid annulment of the employment contract.

The report states that time spent in additional qualification according to the needs of the employer is considered as integral part of the working day. During the additional education, the worker is entitled to salary compensation. The amount of the salary compensation is determined with collective agreements. Accordingly, Section 28 from the General Collective Agreement for the Business Sector No. 88/2009 provides for the salary compensation for additional training, pursuant to the needs of the employer, to be paid in the amount of the average salary of the past 12 months. Also, Section 19 of the General Collective Agreement for the Public Sector No. 10/2008 and 85/2009, provides for the salary compensation for additional qualification, pursuant to the need of the employer, to be paid in the amount of their average salary of the last 3 months.

The Committee asks whether these are the only collective agreements providing for inclusion and remuneration of time spent on vocational training in the normal working time, what proportions of the

work force are covered by these collective agreements and what is the situation for the rest of the work force which is not covered by these collective agreements.

The Committee takes note of the activity of the Labour Inspectorate and notes that there have been no complaints submitted during the reference period.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 7§6 of the Charter of 1961.

Article 7 - Right of children and young persons to protection

Paragraph 7 - Paid annual holidays

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

The Committee recalls that in application of Article 7§7, young persons under 18 years of age must be given at least 3 weeks' annual holiday with pay.

The arrangements which apply are the same as those applicable to annual paid leave for adults (Article 2§3). For example, employed persons of under 18 years of age should not have the option of giving-up their annual holiday with pay; in the event of illness or accident during the holidays, they must have the right to take the leave lost at some other time.

The report states that young workers under 18 years of age have the right to 20 work days of vacation which is the minimum duration of the annual vacation determined by Section 137 of the Act on Labour Relations and an addition of 7 days due to protection of younger workers (Section 176 of the same act). Pursuant to Section 145 of the act, young workers do not have the right to waive the right of annual vacation, i.e. any agreement with which the worker would waive his right to use annual vacation is null and void.

The Committee asks whether in the event of illness or accident during the holidays, young workers have the right to take the leave lost at some other time.

The Committee takes note of the sanctions in place and the activity of the Labour Inspectorate. It notes that during its inspections the Labour Inspectorate has not found any violations.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 7§7 of the Charter of 1961.

Article 7 - Right of children and young persons to protection

Paragraph 8 - Prohibition of night work

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

The Committee recalls that, in application of Article 7§8, domestic law must provide that under-18 year olds are not employed in night work. Laws or regulations must not cover only industrial work. Exceptions can be made as regards certain occupations specified in national laws or regulations.

Section 175 of the Act on Labour Relations, prohibits night work for young workers under 18, for the hours between 10:00 p.m. and 06:00 a.m. the following day. However, a young worker under 18 years of age may work at night, but only in case of *force majeure* and under the supervision of an adult worker, where such work takes certain time and it needs to be performed immediately and there are

no other available full age workers. In such cases there is an obligation for the persons who have worked at night to be provided with leave for the subsequent 3 days.

The Committee takes note of the sanctions in place and the activity of the Labour Inspectorate.

The report states that Labour Inspectorate has carried out numerous inspection supervisions in the catering sector, where workers younger than 18 years are most prevalent, where they also work during part of the night shift, i.e. from 10 p.m. to 12 a.m. or up to 1 a.m.. In such cases, supervision of an older worker is provided. In other industries, there are no cases of workers younger than 18 performing night work.

The Committee asks if there are any other categories of young workers that could be excluded from the prohibition of night work.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is in conformity with Article 7§8 of the Charter of 1961.

Article 7 - Right of children and young persons to protection

Paragraph 9 - Regular medical examination

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

The Committee recalls that, in application of Article 7§9, domestic law must provide for compulsory regular medical check-ups for under-18 year olds employed in occupations specified by national laws or regulations. These check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed.

The report states that regular medical examinations for young workers, until 2007 was regulated by the Act on Protection at Work, and from 2007 onwards it is regulated by the Act on Occupational Safety and Health.

According to Section 17 of the Act on Occupational Safety and Health, the employer is responsible for monitoring the state of health of the workers. The employer fulfils this obligation by engaging authorised health care professionals to perform professional occupational health examinations. The primary objectives of the authorised healthcare institution (Section 20) depending on the type of activities performed by the employer and the type and level of risk of injury or impairment of health at work, are:

- carrying out preventive medical examinations on the employees in accordance with special regulations;
- provision of medical services for employees with occupational diseases;
- organisation and provision of first aid to employees in case of injury of a collective or workplace accident;
- identification and research of the causes of disability and occupational diseases related to work and injuries at work, suggestions for appropriate security measures and measures for treatment; participation in the performance of appropriate professional rehabilitation and consultation on the choice of more appropriate working tasks;
- provision of suggestions to the employer for the protection of the health of the employees who are at high risk of injury or impairment of health;
- keeping records and collecting data on the health of employees in accordance with special regulations;

- participation in each assessment of risk, safety and health in the workplace and working environment, and
- to inform the employees of the risks associated with their work, their job and to pursue education.

Pursuant to Section 22 of the Act, the employer must provide medical examinations for the employees at least every 18 months.

The type, manner and scope of medical examinations are prescribed by the Minister of Health in agreement with the Minister of Labour and Social Policy. The act that describes the medical examinations of employees has been prepared and is currently under a procedure for publication in the Official Gazette. The Committee takes note of this act. It notes that it falls out of the reference period and asks that next report provide information on the types of medical examinations that the young workers must undergo as well as the application of this act in practice.

The Committee takes note of the sanctions in place and the activity of the Labour Inspectorate.

Conclusion

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

Article 7 - Right of children and young persons to protection

Paragraph 10 - Special protection against physical and moral dangers

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Protection against sexual exploitation

The Committee recalls that under Article 7§10 of the Charter, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in the sex industry. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions. The following are the minimum obligations:

-as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised. In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts. Furthermore, States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.

-a national action plan combating the sexual exploitation of children should be adopted.

An effective policy against commercial sexual exploitation of children should cover primary and interrelated forms: child prostitution, child pornography and trafficking in children.

Pursuant to the amendments to the Law on Child Protection 2009, Section 9 now prohibits all forms of sexual exploitation and sexual abuse of children (child pornography, child prostitution), violent seduction, selling or trafficking in children, psychological or physical violence and harassment, punishment or other inhuman treatment, all kinds of exploitation, commercial exploitation and child abuse which violate basic human freedoms and rights of the child.

On 4 July 2007, the Assembly of the Republic of Macedonia passed the Law on the Rights of Minors ("Official Gazette" No. 87/07), signifying reform in the legislation of minors. A child victim of crime is a minor up to the age of eighteen. "Child pornography" means pornographic material that visually displays the obvious sexual acts with a minor, or obvious sexual acts with a person who appears as a minor, or realistic images showing apparent sexual acts with a minor.

Article 193 of the Criminal Code (displaying pornographic material to a minor) was amended in the manner providing for responsibility and participation in pornographic performances. Furthermore, coercion of a minor to produce and record images and other items with pornographic content or for a pornographic performance is an incriminating act, while the perpetration of an act with a minor under 14 years of age shall be a qualified form. The Committee asks whether a simple possession of child pornography is a criminal offence.

As regards trafficking, the Committee notes from the report that Article 418-a "Human Trafficking" was introduced in the Criminal Code in 2002 ("Official Gazette of the Republic of Macedonia" No. 4/02) stipulating that human trafficking shall be incriminated as a separate and serious crime. The Law Amending the Criminal Code ("Official Gazette of the Republic of Macedonia" No. 7/08) was adopted in January 2008, which supplements the Criminal Code with a new crime - 418-d "Trafficking of Minors". This Article provides a minimum sentence for the perpetrator of at least 8 years or 10 years in prison if they used force, threats or other forms of coercion to obtain consent of a person. The Article also provides for a minimum sentence of 8 years in prison for the user of sexual services or other exploitation of a juvenile person for whom he/she knows that he/she is a victim of trafficking. The consent of the minor is irrelevant or is of no significance for the existence of the crime (paragraph 6). In this connection, the Committee recalls that State must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. It asks for confirmation that the legislation meets this requirement. In the meantime it reserves its position on this point.

Section 177 (a-p) of the Law on Families ("Official Gazette of the Republic of Macedonia" No. 84/08) defines as 'child victim of trafficking' a person below the age of 18 who with or without his/her consent, in any way, became a victim of human trafficking for exploitation. In case of uncertainty about the age of the victim and when there are reasons to believe that the person is a child, he/she shall be considered a child until such a time when the age is confirmed and he/she shall be subjected to measures of care provided to child victim of human trafficking.

In 2004, a Subgroup to Combat Trafficking in Children was created within the National Commission for Combating Trafficking in Human Beings and Illegal Migration. The Subgroup prepared the first Action Plans for Combating Trafficking in Children for the period of 2006-2008, which the Government adopted in March 2006. In 2009, the Subgroup prepared a second Action Plan to combat child trafficking in Macedonia 2009-2012. This Action Plan represents a multidisciplinary scheme of measures to combat trafficking in children that includes: prevention, protection, rehabilitation - reintegration – repatriation, co-ordination with competent institutions and international co-operation.

As a special measure, in November 2008, the Action Plan on Prevention and Combating Sexual Abuse of Children and Paedophilia 2009-2012 was adopted. This document provides for a set of interdepartmental and coordinated measures at the level of prevention and protection against and treatment of sexual abuse of children and paedophilia.

The Committee notes from another source¹ that there is a reported rise in the number of cases of child sexual abuse and exploitation, that only children younger than 14 years are protected under Article 188 of the Criminal Code ("sexual attack upon a child under 14") and that in cases of rape the burden of proof falls on the victim above the age of 14 years. In addition, the UN-CRC is concerned that sentences for child sexual abuse pronounced by certain courts have been mostly short and suspended. The Committee asks the next report to provide comments on these observations.

According to the report the National Referral Mechanism registered 37 cases of trafficking in human beings, of which 30 involved minors. The office of the NRM provides support to victims of trafficking and act as special guardian in court proceedings. In 2009 the legal adviser has worked with 2 minor victims for whom court proceedings were underway.

Protection against the misuse of information technologies

In light of the fact that new information technologies have made the sexual exploitation of children easier, States Parties must adopt measures in law and in practice to protect children from their misuse. As for example the Internet is becoming one of the most frequently used tools for the spread of child pornography, States parties must take measures to combat this, such as by providing that Internet service providers be responsible for controlling the material they host, encouraging the development and use of the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.).

According to the report a new crime shall be introduced. Article 193 of the Criminal Code will be amended to cover production and distribution of child pornography with the assistance of computer systems. The Committee wishes to be kept informed.

Protection from other forms of exploitation

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

According to the report with a view to combating the appearance of "street children" the Ministry of Labour and Social Policy is implementing activities and taking measures whose final objective is social inclusion of the street children. Thus, the Law Amending the Law on Social Protection ("Official Gazette" No. 65/2004) first introduced the right to day care of children on street in a day-care centre for children on street. These day-care centres provide the children and the members of their families with educational services, counselling service, cultural-entertainment and recreational activities.

Section 140 of the new Law on Social Protection, adopted in July 2009 ("Official Gazette of the Republic of Macedonia" No. 79/09) systematises the day-care centres for street children as establishments for realisation of extra-institutional protection. The Ministry of Labour and Social Policy opened two day-care centres for the street children on the territory of the City of Skopje and one in the Municipality of Bitola in 2010.

The Committee notes from the report that in the course of 2009 and 2010 the Ministry of Labour and Social Policy in cooperation with UNICEF's Office in Skopje and the OSCE Mission realised a Project for Improved Social Protection of Children on Street named "Children at Risk - Breaking Up the Circle of Social Exclusion of the Children in the Republic of Macedonia".

The Committee notes that the UN-CRC, while noting the development of a protocol for the treatment of children in street situations, is deeply concerned about the growing number of these children, the majority of whom are Roma, and about the absence of progress towards durable solutions, ensuring the children protection, access to education and social reintegration. In addition, while noting plans to open day care centres outside of Skopje, the UN-CRC is concerned that currently there are only two state-owned day care centres providing protection to children in street situations in the capital.

The Committee wishes to be informed about the results of measures taken to assist street children and to reduce their number.

Conclusion

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

¹ <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.MKD.CO.2.doc>

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 "the former Yugoslav Republic of Macedonia".

Right to maternity leave

According to Section 165 of the Labour Relations Act, women are entitled to 40 weeks maternity leave. A period of 28 days before childbirth is compulsory. The employee who is on maternity leave may decide to go back to work before the expiry of her maternity leave. The Committee notes that during a minimum period of 45 days a female worker cannot return to work. It understands this as meaning that in normal circumstances, i.e. where a woman is on compulsory leave for 28 days before childbirth, she will have to take a minimum of 17 days of leave after birth.

The Committee asks what legal safeguards exist to avoid any undue pressure from employers to shorten their maternity leave. It also asks whether there is an agreement with social partners on the question of postnatal leave which protects the free choice of women, and whether collective agreements offer additional protection. In addition, it asks for information on the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave). Should the next report not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 8§1 on this aspect.

It further wishes to know whether the same regime applies to women employed in the public sector.

Should all the information requested not be provided in the next report, there will be nothing to establish that the situation is in conformity with Article 8§1.

Right to maternity benefits

Pursuant to Section 14 of the Health Insurance Act, women on maternity leave are entitled to salary compensation. The basis for the calculation of this compensation is the average monthly salary over the last 12 months during which compulsory health insurance contributions were paid. Women on maternity leave are entitled to 100% of the compensation basis.

The Committee asks whether the same regime applies to women employed in the public sector.

Conclusion

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

Article 8 - Right of employed women to protection

Paragraph 2 - Illegality of dismissal during maternity leave

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Prohibition of dismissal

Section 101 of the Labour Relations Act prohibits dismissals during pregnancy and maternity leave. The Committee asks whether there are any exceptions to this prohibition and whether the same regime applies to women employed in the public sector, in particular those on fixed-term contracts.

Consequences of unlawful dismissals

Section 264 of the Labour Relations Act provides for a fine of €15 000 for an offence committed by an employer/legal entity and €10 000 for an offence committed by an employer/natural person when an

employment contract has been terminated during pregnancy or maternity leave. In addition, a fine of €7 000 is imposed on the person responsible within the enterprise concerned.

The Committee underlines that reinstating unlawfully dismissed women must be the rule (Conclusions 2005, Cyprus). Where this is not possible (e.g. the enterprise has closed down) or the employee concerned does not wish it, adequate compensation must be available. Domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter and fully compensate the victim of dismissal. The Committee asks whether there is a ceiling on the amount that can be awarded as compensation. If so, it asks whether this upper limit covers both pecuniary and non-pecuniary damage or whether unlimited non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation. Should the next report not provide the requested information, there will be nothing to establish that the situation is conformity in this respect.

The Committee also asks whether the same regime applies to women employed in the public sector, in particular those with fixed-term contracts.

Conclusion

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

Article 8 - Right of employed women to protection

Paragraph 3 - Time off for nursing mothers

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Article 171 of the Labour Relations Act provides that breastfeeding employees are entitled during working time to one hour and a half per day. The Committee asks whether these breaks are remunerated and whether they also apply to women employed in the public sector. Should this information not be provided in the next report, there will be nothing to establish that the situation is in conformity with Article 8§3.

Conclusion

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

Article 8 - Right of employed women to protection

Paragraph 4 - The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Regulation of night work for women in industrial employment

Section 164 of the Labour Relations Act prohibits night shifts during an employee's pregnancy and until her child reaches the age of one.

Pursuant to Section 131 of the Labour Relations Act, female workers in industry and civil engineering may not work night shifts if they do not enjoy at least seven hours of rest between 10pm and 5pm the following day. However, this prohibition does not apply to women who have special authorisations and responsibilities or who perform work connected to the health, social and other types of protection of workers. In exceptional cases, it may be required of women to do night shifts when work has been disrupted by force majeure in order to prevent the damage of raw or other material, on the condition that the employer obtains the consent of the state administrative body competent for labour matters. The Committee asks whether women who perform night work undergo regular medical checks and whether they are entitled to be transferred to daytime work in case of health problems linked to night

work. It also asks whether the same regime applies to women employed in the public sector. Should the next report not provide the requested information, there will be nothing to establish that situation is in conformity with Article 8§4 on this point.

Prohibition of women in certain dangerous, unhealthy or arduous types of work

Section 160 of the Labour Relations Act prohibits the employment of female workers in underground work in mines, except if they hold managerial functions who as part of their professional training must spend a certain time as interns performing underground work and in cases where they are part of health and social services and have to work in mines which do not require physical work.

The Committee underlines that certain other dangerous activities, such as those involving exposure to lead, benzene, ionising radiation, high temperatures, vibration or viral agents, must be prohibited or strictly regulated for pregnant women, women having recently given birth or breastfeeding, depending on the risks posed by the work. National law must ensure a high level of protection against all known hazards to the health and safety of this group of women. Furthermore, national law must make provision for the reassignment of women who are pregnant or breastfeeding if their work is unsuitable to their condition, with no loss of pay, if this is not possible such women should be entitled to paid leave. They should retain the right to return to their previous job. The Committee asks for information on these different aspects, and wishes to know whether the same regime applies to women employed in the public sector.

Should the next report not provide the information requested, there will nothing to establish that the situation is in conformity with Article 8§4 on this point.

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 "the former Yugoslav Republic of Macedonia".

The Committee notes that the Law on Child Protection defines child protection as an organised activity based on children's rights as well as on the rights and responsibilities of the parents for planning the family and of the state and the local self-government units for leading a human population policy.

Status of the child

The Committee recalls that Article 17 requires that there be no discrimination between children born within marriage and outside marriage, for example in matters relating to inheritance rights and maintenance obligations. In this regard the Committee notes from the report that according to the law on family, rights and duties of the parents towards their children regarding their upbringing, care, support and education are equal regardless of the fact whether the children were born in or out of wedlock.

The Committee further recalls that under Article 17 of the Charter there must be procedures for establishing parentage and there must be a right for an adopted child to know his or her origins. The Committee wishes to be informed about the legal framework in this regard. It asks in particular whether there are any restriction to the right of an adopted child to know his/her origins.

Protection from ill treatment and abuse

The Committee recalls that under Article 17 states' domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children. The relevant provisions prohibiting corporal punishment must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. There will be no sufficient prohibition of corporal punishment in law unless a state can demonstrate that legislation is interpreted as prohibiting corporal punishment and effectively applied as such.

The Committee notes from another source¹ that corporal punishment is lawful in the home. Provisions against violence and abuse in the Law on Protection of Children (2000), the Criminal Code (2004), the Family Law (2004) and the Constitution (1991) are not interpreted as prohibiting all corporal punishment in childrearing. Corporal punishment is prohibited in schools in the Law on Elementary Education (1995) and Articles 64 and 128 of the Law on Secondary Education (1995). There is no explicit prohibition of corporal punishment in alternative care settings.

The Committee considers that the situation is not in conformity with the Charter as corporal punishment is not explicitly prohibited in the home and in institutions.

Children in public care

The Committee recalls that under Article 17 the long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions. Children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well being as well as to special protection and assistance. Such institutions must provide conditions promoting all aspects of children's growth. A unit in a child welfare institution should be of such a size as to resemble the home environment and should not therefore accommodate, not more than 10 children. Furthermore, a procedure must exist for complaining about the care and treatment in institutions. There must be adequate supervision of the child welfare system and in particular of the institutions involved.

Article 40 of the Constitution provides for an obligation of the state to provide special care and protection to children without parents and parental care. The selection of the mode and form of protection of the child without parents or parental care is done by the authorised social work centre in accordance with the age, needs and interests of the child. The criteria for a selection of a foster family

and the number of beneficiaries who can be accommodated in one fostering family are regulated by the rulebook on selection of a fostering family. Placement of children outside their families is regulated by the Law on Family as regards the methods of guardianship and fostering and the Law on Social Protection as regards institutional care.

Institutional care of children without parents and parental care takes place in the institution for infants and toddlers (age group 0-3) and the Institution for children 11 Oktombri (3-18). There is also a Small Group Institution accommodating up to 5 children. According to the report in 2009 there were 178 children in these three institutions for children and 219 children in foster families.

Supervision of the care of children without parents is performed by the authorised social work centre while complaints regarding conditions can be lodged with the Ministry of Labour and Social Policy.

According to the report the social work centre can adopt a decision to take the child away from parents and for restricting the right to maintain relations with the child and the parent. The social work centre is also responsible for the child after the latter has been placed in a foster family or institution. A separate programme is prepared for each child with a view to monitoring the case.

The Committee notes from another source² that through an amendment of the law on the family in 2004, the social work centres have been granted the power to limit and suspend parental rights due to non-payment of maintenance obligations. The UN-CRC has expressed its concern that this measure unnecessarily severs the connection between parent and child and may result in a violation of the child's right to maintain personal relations and direct contact with both parents.

The Committee recalls (Conclusions XV-2, Statement of Interpretation on Article 17§1, p.29) that any restriction or limitation of parents custodial rights should be based on criteria laid down in legislation, and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family. The Committee has held that it should only be possible to take a child into custody in order to be placed outside his/her home if such a measure is based on adequate and reasonable criteria laid down in legislation. The Committee asks what are the criteria for the restriction of custody or parental rights and what is the extent of such restrictions. It also asks what are the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances. It further asks whether the national law provides for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family.

Young offenders

The Committee recalls that under Article 17 the age of criminal responsibility must not be too low. The criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly. Minors should only exceptionally be detained pending trial for serious offences, for short period of time and should in such cases be separated from adults. Young offenders should not serve their sentence together with adult prisoners.

According to the report the Law on Juvenile Justice was adopted in 2007 and the draft law amending the law on juvenile justice is in parliamentary procedure which foresees incorporation of the principle of the best interest of the child as well as prevention of juvenile delinquency. The Committee wishes to be kept informed about legal developments.

The Committee notes from the report that juvenile justice is regulated through a number of by-laws such as the rulebook on the conditions, procedure and manner of issuing any withdrawal of the permit for execution of alternative measures etc. According to the survey of the social work centres and the Ministry of Interior's analysis certain weaknesses and difficulties have been noticed in the implementation of the legal framework. Following these findings the Government has allocated funds for the realisation of the state council for the prevention of juvenile delinquency programme for 2010. Other measures include further staffing the social work centres, cooperation with local self-government etc. In order to improve inter-ministerial cooperation and coordination when dealing with

children at risk and minors who have committed crimes the Ministry of Labour and Social Policy has submitted a provision to the social work centres, whereby they are obliged to organise regular meetings with the representative of all state bodies and expert teams.

Pursuant to the Law on Juvenile Justice ("Official Gazette of the Republic of Macedonia" No. 87/2007), a sanction provided by this law cannot be applied for a minor who has not reached 14 years of age (minor juvenile) in the time of committing the act that is determined as a criminal offence or a misdemeanour according to the law. Measures of help and protection shall be applied to this minor. The measures of help and protection determined by this Law can also be applied to a major juvenile (14-18). For an act that is determined as a criminal offence or a misdemeanour committed by minors pursuant to the law, the provisions of the Criminal Code are accordingly applied.

The competent court may pronounce a sentence that consists of deprivation of freedom only when the purpose of the educational measures, the punishment or alternative measures cannot be achieved by measures of help and protection. If a more severe sanction or a sanction consisted of freedom deprivation is pronounced, the competent court particularly explains the reasons for doing so.

As regards detention in custody and pre-trial detention, the Committee understands from the report that "the short detention" can last 24 hours at the most. If within this deadline the public prosecutor does not submit a proposal for determining detention, the juvenile delinquency judge will reach a verdict for releasing the minor from detention. Following the decision of short detention, the minor, his/her defence attorney and the public prosecutor are entitled to an appeal to the Criminal Juvenile Council of the Primary Court, which reaches a decision for the appeal within 24 hours. The detention is determined by a decision of a juvenile delinquency judge and it can last 30 days at the most.

Following the justified proposal by the juvenile delinquency judge, and following the opinion from the public prosecutor and the Social Work Centre, the Juvenile Council of the Primary Court can extend the detention for another 60 days for justified reasons. The Committee asks what is the maximum permissible length of pre-trial detention, including all possible extensions. It also asks what is the maximum length of a prison sentence that can be imposed on a juvenile offender.

The Committee notes from another source that the UN-CRC expresses concern about the fact that children under the age of 14 years may be subject to correctional measures decided and applied by the social work centres. Besides, according to the same source, in several cases children have been allegedly treated as adult offenders and children are not separated from adult prisoners. The Committee asks the next report to explain what these correctional measures (measures of help and protection) are. It also asks whether young offenders are always separated from adults both during pre-trial detention as well as in prisons.

The Committee finally asks whether young offenders serving a sentence have a statutory right to education. In the meantime, the Committee reserves its position as regards young offenders.

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 17 of the Charter of 1961 on the ground that corporal punishment is not explicitly prohibited in the home and in institutions.

¹<http://www.endcorporalpunishment.org/pages/frame.html>

²<http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.MKD.CO.2.doc>