



January 2010

European Social Charter

European Committee of Social Rights

Conclusions XIX-2 (2009)
(GERMANY)

Articles 3, 11, 12, 13 and 14
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, 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.¹

The European Social Charter was ratified by Germany on 27 January 1965. The time limit for submitting the 26th report on the application of this treaty to the Council of Europe was 31 October 2008 and Germany submitted it on 30 October 2008. On 17 April 2009, a letter was addressed to the Government requesting supplementary information regarding Article 14§1. The Government submitted its reply on 5 June 2009.

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

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 4 of the Additional Protocol).

Germany has accepted all of these articles, with the exception of Article 4 of the Additional Protocol.

The applicable reference periods were:

- 1 January 2003 – 31 December 2007 for Articles 11 and 14;
- 1 January 2005 – 31 December 2007 for Articles 3, 12 and 13.

The present chapter contains 16 conclusions :

- 10 cases of conformity : articles 3§2, 3§3, 11§1, 11§2, 11§3, 12§2, 13§1, 13§2, 14§1 and 14§2;

- 4 cases of non-conformity : articles 3§1, 12§4, 13§3 and 13§4.

In respect of the 2 other cases concerning articles 12§1 and 12§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 German report 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 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The deadline for the report was 31 October 2009.

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

Article 3 - The right to safe and healthy working conditions

Paragraph 1 - Issue of safety and health regulations

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

Content of the regulations on health and safety at work-Protection against dangerous agents and substances

The Committee examined the general scope of the regulations in a previous conclusion (Conclusions XIV-2) and found them in conformity with the Charter.

The report mentions the following regulation which has been adopted and/or updated during the reference period: the Noise and Vibration Health and safety at Work Ordinance (*Lärm- und Vibrations Arbeitsschutzverordnung*) which transposed the EC Directives on health and safety at work on noise and vibration. The new law reduced noise exposure thresholds as well as permitted vibration levels.

In respect of biological agents, a new Committee the Biological Agents Committee was established under the Biological Agent Ordinance (*Biostoffverordnung*) it is composed of representatives of the scientific community, industry and the business sector trade unions and implementing authorities. Its role is to advise on safety and health issues for those working with biological agents.

As regards asbestos and ionising radiation the Committee recalls it previously found that the situation was satisfactory.

On the basis of the above information, the Committee considers that Germany meets the general obligations under Article 3§1 of the Charter..

Protection of temporary workers

The Committee examined the regulations relating to the protection of temporary workers in its last conclusion (Conclusions XVIII-2) and considered that regulations and practice comply with Article 3 on this point, as they take account of the special nature of temporary work.

Personal scope of the regulations

The Committee previously found that the situation was not in conformity with Article 3§1 on the grounds that not all self-employed workers, in particular those working in high risk sectors, are covered by regulations on health and safety, and as there was no information in the report indicating that other training or health surveillance measures apply to them (Conclusions XVIII-2). According to the report there is a broad spectrum of measures to promote occupation health and safety for the self employed. Under the law there exists the possibility to make the self employed insured under the statutory accident insurance scheme by applying the statutes of the accident insurance funds and hence to place them

under the protection of the health and safety regulations. Self employed workers working in agriculture are already compulsorily insured in accident insurance.

Further the Federal Government has used the EC Council recommendation concerning the improvement of the protection of health and safety at work of self employed workers (2003/134/EC) to initiate a national action programme to improve safety and health of the self employed. This has led to a number of projects and measures such as development of networks for the self employed, information and training via chambers and associations, the Federation of Industrial Accidents Insurance Funds/employer liability funds and other agencies, etc.

The Committee takes note of this information however it still considers that the situation is not in conformity on the grounds that in light of the information it follows that not all categories of the self employed are sufficiently protected.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 3§1 of the Charter on the grounds that certain categories of self-employed workers are not sufficiently covered by the occupational health and safety regulations.

Article 3 - The right to safe and healthy working conditions

Paragraph 2 - 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 Germany.

Occupational accidents and diseases

According to the report until 2005 there was a continuous decline in the number of accidents at work, however a slight increase in reported accidents was detected in 2006. Nevertheless the overall rate per 1,000 workers continued to decrease during the reference period. Information from Eurostat indicates that the rate of fatal accidents at work and the incidence rate of accidents remains below the EU average.

Activities of the Labour Inspectorate

Information included with the report indicates that the number of inspections and the number of enterprises inspected increased significantly over the reference period. In light of this information and information submitted with previous reports the Committee considers that there is an efficient inspection system.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 3§2 of the Charter.

Article 3 - The right to safe and healthy working conditions*Paragraph 3 - Consultation with employers' and workers' organisations on questions of safety and health*

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

The Committee previously found that the situation was in conformity with Article 3§3 of the Charter. No information was submitted on this provision in the current report. The Committee ask the next report to provide updated information.

Conclusion

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

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 Germany.

State of health of the population - General indicators

Life expectancy and principal causes of death

Average life expectancy at birth in 2006 was 77.2 for men and 82.4 for women¹ (the EU 27 average in 2004 was 75.2 for men and 81.5 for women²). The mortality rate in 2006 was 5.96 per 1,000 inhabitants³ (the EU 27 average in 2006 was 6.48 per 1,000 inhabitants⁴). The main causes of death were cardiovascular diseases, which accounted for 43.7% of all deaths (and 91.2% of which related to persons over 65) and cancers (24.6% of all deaths). The number of deaths as a result of cardiovascular diseases is nonetheless decreasing.

The Committee notes that there are significantly more deaths due to alcohol abuse in Germany than in other European countries (4.7 per 1 000 in 2006 compared to 2.7 per 1 000 in the same year for the EU 27⁵). It asks what measures are being taken to address this situation.

The Committee noted in previous conclusions that there was a high rate of deaths from suicide (Addendum to Conclusions XV-2 and Conclusions XVII-2). It notes that this rate has been decreasing steadily and reached 9.8 per 100 000 inhabitants in 2006 (the EU 27 average was 10.4 per 100 000 in 2006⁶). A national suicide prevention programme (NaSPro) was set up in 2002. Under the programme, 16 working parties produced information brochures and leaflets, focusing on various subjects such as suicide prevention in old age, and targeting specific groups such as family members of suicidal people and the media. NaSPro also holds conferences and a major event every year to mark World Suicide Prevention Day.

Infant and maternal mortality

The infant mortality rate amounted in 2007 to 3.8 deaths per 1,000 live births⁷ (the EU 27 rate in 2006 was 4.7 per 1,000⁸) and decreased steadily throughout the reference period (having been 4.2 for 1 000 in 2003).

As concerns the maternal mortality rate, the Committee notes that it amounted to 4 deaths per 100,000 live births in 2005⁹ which is one of the lowest rates in Europe.

Health care system

Access to health care

Despite the request in its previous conclusion (Conclusions XVII-2), the report fails to state if changes have been made to the legislation on the health care system. The Committee therefore repeats its request. To be more specific, it

asks for a description of the health care system including the role of the private sector.

In its previous conclusion (Conclusions XVII-2), the Committee has asked for up-to-date information on the situation in law and in practice including detailed facts and figures, on access to health care for the most disadvantaged members of society. The report does not provide this information and the Committee points out that if the next report does not provide the necessary information, there will be nothing to show that the situation in Germany is in conformity with Article 11§1 of the Charter.

The Committee noted in its previous conclusion (Conclusions XVII-2) that Germany had introduced advisory and other services to facilitate migrants' access to health care. It asks that the next report provides details on the measures taken. The Committee also asks whether access to health care is guaranteed equally to German nationals and foreign nationals residing or working lawfully in Germany alike.

The right of access to health care also requires that arrangements for access to care must not lead to unnecessary delays in its provision. The management of waiting lists and waiting times in health care are considered in the light of Committee of Ministers Recommendation (99)21 "on criteria for the management of waiting lists and waiting times in health care" (Conclusions 2007, Albania). According to the report, Germany does not use waiting lists to regulate access to health care. This does not necessarily mean that there are no temporary bottlenecks in some specialist out-patient departments or some hospitals. The Committee asks what arrangements are made to manage health care waiting times.

The State health care budget in 2006 represented 10.4% of GDP¹⁰, which is one of the highest proportions in Europe.

Health care professionals and facilities

There were 8.29 hospital beds per 1,000 inhabitants in 2006 (the average number of hospital beds in Europe (EU 27) was 5,90 per 1,000 inhabitants in 2005¹¹). The Committee asks how many hospital beds there are for psychiatric patients (the average number of beds in psychiatric hospitals in Europe (EU 27) was 0.60 per 1,000 inhabitants in 2005¹²).

With regard to physicians, there were 284,427 physicians in 2006, equating to 34 physicians per 10,000 inhabitants¹³.

In 2006, there were 65,683 dentists (equating to 8 per 10,000 inhabitants) and 46,953 pharmacists (equating to 6 per 10,000 inhabitants), as well as 662,000 nurses and midwives in 2005 (equating to 80 per 10,000 inhabitants)¹⁴, which is a density comparable to that observed in other European countries.

The Committee notes from another source¹⁵ that there is a problem of uneven geographical distribution of doctors between urban and rural areas and, in particular, that 50% of posts in hospitals in former East Germany remain empty.

The Committee therefore asks for information on the geographical distribution referred to above and measures taken to remedy the problem of uneven distribution of health care professionals.

Conclusion

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

¹ Eurostat

² *Ibidem*

³ *Ibid*

⁴ *Ibid*

⁵ *Ibid*

⁶ *Ibid*

⁷ *Ibid*

⁸ *Ibid*

⁹ WHO

¹⁰ *Ibidem*

¹¹ Eurostat

¹² *Ibidem*

¹³ WHO

¹⁴ *Ibidem*

¹⁵ *Liaisons sociales magazine, January 2009, p. 28-29*

Article 11 - The right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Health education

Public information and awareness-raising

Recommendations have been adopted on a national alcohol prevention programme particularly aimed at young persons. The "GREAT/are you stronger than alcohol?" campaign has targeted young persons since 2001 to encourage them to take a critical stance towards alcohol consumption and delay the start of drinking as long as possible. The report refers to activities aimed at the general public and young persons to inform them of the effects of alcohol consumption on their health.

The Non-Smokers Protection Act (*Nichtraucherchutzgesetz*) has been in force at federal level since September 2007 and all the federal Länder had adopted anti-smoking legislation by July 2008. Non-smokers are now protected in public places. The sale of tobacco products to juveniles under 18, and their use in public, have been prohibited since September 2007. Tobacco advertising has been prohibited in most printed publications and on radio and television since

September 2007, in accordance with European Directive 2003/33/EC. Warnings setting out the risks of smoking must now be printed on the packets of all products containing tobacco. Finally, anti-smoking campaigns aimed at young persons and adults have been conducted using the Internet, leaflets, advertising in youth magazines and cinemas, a film shown in schools and a hotline on giving up smoking.

The federal government has introduced measures to reduce cannabis consumption. They are designed to strengthen primary prevention and support consumers' efforts to end consumption by differentiated therapeutic aids. The Committee asks what steps have been taken to inform and educate the public about the dangers of other drugs.

In the absence of information in the report, the Committee again asks whether there are specific public campaigns in such areas as nutrition, sexuality and the environment.

Health education in schools

Health education in school should cover the following subjects: prevention of smoking and alcohol abuse, sexual and reproductive education, in particular with regard to prevention of sexually transmitted diseases and HIV, road safety and promotion of healthy eating habits (Conclusions XV-2, Belgium).

Health education is included in all German school curricula, irrespective of level or type of schooling. It is not taught as a separate subject, but across all subjects, for example environmental studies, biology, sport, religion, ethics, chemistry and physics. There are also national strategies to establish health-promoting schools, and 10% of schools are attempting to achieve this goal.

Young persons are informed about the HIV virus at school. According to the report, 92% of 16-20 year-olds say that HIV has been dealt with in lessons and 74% say that they have learned a lot about the topic. The aim of the strategy is to encourage young people to talk to one another about sexuality and protection against infection risks, particularly HIV, so that they will take responsibility for their own actions.

The Committee asks whether and how problems relating to smoking, alcohol, road safety and healthy eating are incorporated into the school curriculum and whether all pupils are concerned.

Counselling and screening

Population at large

Persons insured under the statutory health insurance scheme have a right to avail of certain screening programmes. From the age of 35, everyone is entitled to health check-ups every two years, in particular to screen for cardiovascular diseases, diabetes mellitus and kidney disease. Women of 20 and over and men of 35 and over are also entitled to regular screening for certain sorts of cancer.

Pregnant women, children and adolescents

There must be free and regular consultation and screening for pregnant women and children throughout the country (Conclusions 2005, Moldova).

Recent reports have not included any information on consultations and screening for pregnant women so the Committee asks for information in the next report.

There is an early disease detection programme for children under the statutory health insurance scheme, in which about 90% of children up to the age of six take part. The programme currently covers a total of ten examinations aimed at identifying as rapidly as possible major developmental problems and diseases. The Committee notes that in order to reach the remaining 10% of children, the health insurance funds have been obliged by law from 1 January 2009 to make even greater use of early screening. The federal government's strategy to promote child health was adopted on 27 May 2008. The Committee asks for information in the next report on its core elements and the first results.

Conclusion

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

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 Germany.

Reduction of environmental risks

Air pollution - By the end of 2007, Germany had reduced its greenhouse gas emissions by 20.4% compared to 1990 which is very close to the Kyoto Protocol targets. It also adopted in 2007 an Integrated Energy and Climate Protection Programme which should allow Germany to cut its greenhouse gas emissions even further. The programme provides for a wide range of measures on energy efficiency, renewable energy and transport saving regulations etc.

Risks relating to asbestos and ionising radiation - The Committee previously found that the situation was in conformity on these points.

Water pollution - Germany transposed EC Water Framework Directive 2000/60/EC in 2002. Germany carried out a survey on the pressures on water bodies and the water body status. The survey confirmed that considerable progress has been made to prevent water body pollution.

Nuclear risks - 90% of the clean up of the former uranium ore mines in Saxony and Thuringia has been completed and most work will be completed by 2015. As regards the adoption of uniform radiation protection rules to replace those

applicable in the "new Lander" the report states that although federal regulations on the clean up of old industrial and mining burdens which were to create a national standard radiation protection law in this field have been drafted they have not been adopted due to problems at the Lander level. The Committee asks to be informed of all progress in this area.

Noise - The Committee had previously requested information on measures taken to reduce noise pollution. The report states that the Federal Government aims at revising certain of the standards sets for many appliances and products and thereby making the rules more stringent. Further Germany has transposed the EU Directive on Noise 2002/49/EC which concerns the reduction of ambient noise.

Food safety

The report provides updated information on measures introduced in order to improve food safety. A new food and feed code entered into force in 2005 which sets standards in relation to animal feed in the food production chain. Other legislation on food hygiene was also adopted in order to transpose the relevant EU Directives.

Measures to combat smoking, alcoholism and drug addiction

A range of measures have been undertaken by the various authorities in order to avoid alcohol abuse (see under Article 11 §2). The report states that roughly 1.3 million persons are alcoholics. It states that although the occasional consumption of alcohol amongst young persons has declined, the volume of alcohol consumed by young persons has in fact increased. The Committee asks to be kept informed of all trends in consumption and measures taken to combat alcohol abuse in particular in light of the high annual consumption of alcohol per person aged 15 and over.

The Non Smokers Protection Act (*Nichtraucherchutzgesetz*) entered into force at the federal level in September 2007 further all Lander adopted similar legislation by 2008. The sale of tobacco products to persons under 18 was prohibited in 2007. The Tobacco Advertising Directive was transposed into German law in 2007, which *inter alia* prohibits the advertising of tobacco products. The report states that tobacco consumption amongst young persons has declined from 28% in 2001 to 18% in 2007. A national Tobacco Prevention Action programme was launched in 2008 to try to further reduce tobacco consumption.

The report provides figures on drug abuse, policies to combat drug addiction and drug related deaths. The number of deaths from drugs which fell continuously since 2000 increased in 2007. The Committee asks to be informed of all trends in this area.

Epidemiological monitoring

Information is provided on the HIV/AIDS situation in Germany, new diagnoses rates remain low but have recently increased slightly; it also provides detailed information on the Protection against Infection Act 2001.

Prevention of Accident

Under Article 11§3 states must take steps to prevent and reduce accidents such as road accidents, domestic accidents, accidents at school, accidents during leisure time etc. The Committee asks the next report to provide information on measures taken to reduce injury and death by accidents as well as trends in the number of accidents.

Immunisation

The standard vaccinations currently recommended by the Standing Vaccination Commission currently include vaccinations against measles, mumps, rubella, pneumococcal meningococemia, tetanus, haemophilus-influenzae Type b (Hib), hepatitis B, Whooping cough, chicken pox, diphtheria, polio vaccinations against human papillomavirus.

According to recent data there is a continuous increase in vaccination rates.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 11§3 of the Charter.

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 Germany.

The Committee notes that during the reference period health insurance was reformed, a new basic security benefit for jobseekers was created and new pension adjustment rules were established. The Committee refers to its assessment under Article 12§3 in this respect.

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusion for the description of the social security system (Conclusion XVIII-1) 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. It also continues to rest on collective funding as it is funded by contributions (employers, employees) and by the State budget. Since 2005, unemployment assistance and social assistance for employable persons have been combined into a basic security benefit for jobseekers regulated in the Second Book of the Social Code. This benefit is tax-funded, needs oriented and means tested.

In its previous conclusion (Conclusion XVIII-1), the Committee asked for figures in percentage indicating the personal coverage of each branch of social security. In reply, the report highlights that in 2007:

- 89.7% of the "total population" was covered by statutory health insurance (including non-contributory affiliated family members). Since 1 April 2007, health insurance has become compulsory for all citizens.
- 100% of the "domestic population" is covered by social long term care insurance, which safeguards against the risk of being in need of long-term care independently of age and of income.
- 100% of the population "habitually residing" in Germany is covered by the new basic security benefit for job seekers.

As to the active population, the report only states that :

- 38.7% claimed a sickness benefit in 2007;
- 1% claimed maternity benefit in 2006.

In order to assess to what extent persons in Germany are guaranteed an effective right to social security with respect to the benefits provided under each branch, the Committee reiterates that it has to regularly be provided with percentage figures concerning the coverage of the population for all social security branches.

Adequacy of benefits

The report indicates the level of social security benefits calculated for a “typical” beneficiary in 2007 and states that they comply with the replacement rates required by ILO Convention No. 102. Under Article 12§1, the Committee requests that information on the minimum level of benefits for all social security branches be provided as well as information on the duration of their payment. It therefore asks the next reports to systematically contain such information and meanwhile reserves its position in this regard.

In its last conclusion (Conclusions XVIII-1), the Committee held Germany not to be in conformity with the Charter in relation to unemployment benefits, the adequacy of which is established *inter alia* by considering whether there is a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching his/her previous skills without losing his/her unemployment benefits.

The report clarifies that according to the regulations on the acceptability of taking up a job:

- The priority of the employment agencies is to integrate the unemployed in jobs which are in line with their skills and knowledge (placing the right worker in the matching job).
- An unemployed is expected to take up activities in areas other than his/her previous one as long as the activity is suitable (in line with his/her skills and knowledge) and its remuneration is not below previous remuneration.
- Suspension of unemployment benefits in the case of rejection of an offer by the Federal Employment Agency does not apply if the unemployed person has an important reason for his/her rejection.

The report further specifies that the length of the period of suspension of unemployment benefit is fixed by law at two weeks for little effort to seek employment and one week for failure to attend an appointment.

The Committee notes from the Mutual Information System on Social Protection **Error! Hyperlink reference not valid.**¹⁶ that in the event of an unjustified refusal of a reasonable job, the sanction is suspension of unemployment benefits for up to 12 weeks. The Committee asks the next report to indicate how often this sanction is applied and the average number of weeks during which the unemployment benefits are suspended. The report should also contain information on any relevant case law. Meanwhile, 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.

⁷ MISSOC, Comparative table X for 2007 on Unemployment at http://ec.europa.eu/employment_social/missoc/2007/tables_part_2_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 Germany.

The Committee notes from Resolution ResCSS(2008)7 of the Committee of Ministers on the application of the European Code of Social Security by Germany (period from 1 July 2006 to 30 June 2007) that Germany continues to give full effect to the parts of the Code it has accepted, subject to clarification on methods of calculation of the replacement rate of pensions. In so doing, Germany maintains a social security system that meets the requirements of ILO Convention No. 102.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 12§2 of the 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 Germany.

In its previous conclusion under Article 12§3 (Conclusions XVIII-1), the Committee held that the situation in Germany was not in conformity with the Charter because of restrictions introduced in the social security system with respect to unemployment benefits. Such restrictions concerned the suspension of unemployment benefits for unemployed employable persons not attending an appointment with the employment agency or making too little effort to seek employment. The Committee refers to its conclusion under Article 12§1 in this regard.

Health care

In its previous conclusion (Conclusions XVIII-1), the Committee took note of the aims of the Statutory Health Insurance Modernisation Act and asked for information on any restrictions it entailed for the social security system. In response, the report indicates that the funeral and birth allowance were abolished and new rules on co-payment which increased expenses for patients (up to €10 maximum) were introduced.

The report also informs that the reform of health insurance was carried on in 2007 through the adoption of the following two legislative changes in particular:

- the Act amending the Law on Panel Doctors ("VÄG"), which entered into force in January 2007, aimed at improving the medical care of the population in rural areas;
- the Act to Increase Competition in Statutory Health Insurance ("GKV-WSG"), which entered into force in April 2007, aimed at providing compulsory insurance protection for all citizens.

The report underlines that under the *GKV-WSG* co-payments were not increased and benefits were not reduced. Some benefits were expanded (e.g. rehabilitation benefits were included under compulsory health insurance) and long-term care beneficiaries are also targeted by the *GKV-WSG*.

Basic security for jobseekers

The Committee notes that since January 2005 unemployment assistance and social assistance for employable persons were combined in a basic security benefit for jobseekers whose beneficiaries are all employable needy persons aged between 15 and 65 habitually resident in Germany as well as the family members living with them in a joint household. A right to this benefit exists if the income or assets of all persons belonging to the joint household is insufficient to ensure a basic standard of living. There is no qualifying period to receive the benefit. The report specifies that all persons who may work at least 3 hours per day are classified as "employable" and anyone who is unable to meet his/her needs and those of his/her family members living within a joint household are considered as "needy".

The benefit is meant to cover the costs of food, household equipment and personal needs of daily life. It corresponds to the minimum subsistence level. Since 2007, a single standard flat-rate unemployment benefit of €347 has to be applied everywhere in Germany. An additional 90% of the standard flat-rate benefit may be paid if the claimant has an unemployed partner aged 19 or older (€312 a month per person); 80% for children between ages 15 and 18 (€278 a month); 60% for children younger than age 15 (€208 a month). In addition, support is provided for heating and housing costs. There is no limit to duration. The standard flat-rate benefits are adjusted annually in July according to changes made to pensions with regard to old age, disability, and survivors.¹⁷

The benefit forms part of a strategy known as "Promoting and Demanding" whose aim consists in achieving (re)integration in gainful employment of employable needy persons. Each claimant is assigned to a personal contact person for a careful profiling of his/her strengths and weaknesses. As a result of this process, an integration agreement is concluded. It contains information on training measures, social integrative benefits needed as well as a commitment by the needy person to work if offered a suitable job.

The same regulations applying to beneficiaries of unemployment benefit apply to beneficiaries of the basic security benefit in the event they make little effort to seek employment, do not attend an appointment with the employment agency or refuse to accept a suitable job offer. For this specific matter, the Committee refers to its assessment under Article 12§1.

Unemployment

In its previous conclusion (Conclusions XVIII-1), the Committee requested clarifications as regards the reduction in the duration of unemployment benefits provided by the Third Act for Modern Services on the Labour Market. In reply, the report points out that:

- the protection previously offered was generous in European comparison;
- studies have proven that too long a period of unemployment benefits reduces unemployed persons' willingness to seek new employment and may be used by employers as an "early retirement fund".

However, the report also indicates that new regulations to extend the duration of unemployment benefits entered into force in January 2008 (outside the reference period) with the adoption of the Seventh Act amending the Third Book of the Social Code and Other Statutes. The Committee therefore asks that further information be provided in the next report on the implementation and concrete impact of the above reforms.

The Committee also notes the new labour market policy tool ("*JobPerspektive*") introduced in section 16a of the Second Book of the Social Code of October 2007. According to the report, the tool is aimed at improving employment opportunities for persons that are particularly hard to place (long-term unemployed and persons over 50). In accordance with *JobPerspektive*, employers willing to employ long-term unemployed may benefit of a non-time limited employment subsidy amounting to up to 75% of the gross remuneration paid. The Committee asks the next report to inform it about the results obtained (including by providing figures) through this new tool.

Old age

The Pensions Insurance Sustainability Act ("*RV-Nachhaltigkeitsgesetz*"), which entered into force in January 2005, established statutory contribution rates ceilings and goals to safeguard pension levels. New pension adjustment rules modified the formula for the adjustment of pensions by introducing the sustainability factor (*Nachhaltigkeitsfaktor*) and the private retirement provision

factor ("*Riesterfaktor*"). The Committee notes that during the reference period, due to favourable economic developments, the application of the *Nachhaltigkeitsfaktor*, which produced a higher adjustment, and the *Riesterfaktor*, which reduced the adjustment by 0.63%, resulted in a pension adjustment of 0.54% as from 1 July 2007.

However, the Committee notes from Resolution CM/ResCSS(2008)7 adopted by the Committee of Ministers in May 2008 that the new pension adjustment rules may lead to the loss of purchasing power for pensioners as, the combined application of the above mentioned factors might have the effect of reducing monthly pension payments.¹⁸ The Committee asks the next report to contain up-to date information on the impact of this reform on pensioner's purchasing power.

The Pensions Insurance Age Adjustment Act ("*RV-Altersgrenzenanpassungsgesetz*"), which was adopted in March 2007 and will enter into force in 2012, has increased the pensionable age under the public social insurance retirement system from 65 years to 67 years. The increase will be implemented gradually starting from 2012. Members of the scheme with 35 years of contributions will be able to take an early retirement pension from age 63. A reduction of 0.3 % of pension amount for each month of early retirement before age 67 applies. Members of the scheme with 45 years of contributions will be able to take an early retirement pension from age 65 without reductions.¹⁹

Invalidity, survivors and employment injury

The Committee notes that invalidity and survivors' pensions were not adjusted in 2004-2006, while in that period the consumer prices index increased by 1.80% and the index of wages by 0.91%. Employment injury pensions (*Verletztenrenten*) provided by the statutory accident insurance were also not adjusted on 1 July 2006.²⁰

Conclusion

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

¹ *MISSOC Comparative Tables on Social Protection in the 27 Member States of the European Union, in the European Economic Area and in Switzerland - Situation on 1 January 2007 in GERMANY.*

² *Committee of Ministers Resolution CM/ResCSS(2008)7 on the application of the European Code of Social Security and its Protocol by Germany (Period from 1 July 2006 to 30 June 2007).*

³ *International Social Security Association (ISSA) Country Profile on GERMANY available at: <http://www.issa.int/aiss/Observatory/Country-Profiles/Regions/Europe/Germany#>*

⁴ *Committee of Ministers Resolution CM/ResCSS(2008)7 on the application of the European Code of Social Security and its Protocol by Germany (Period from 1 July 2006 to 30 June 2007).*

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 Germany.

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

Right to equal treatment

Pursuant to Article 12§4, EU member States must guarantee to at least those nationals of the other States Parties, which are not members of the EU, equal treatment with respect to social security rights, provided that they are legally resident on their territory. The Committee requested information about the extension in practice of the equal treatment principle to third country nationals. According to the report, in pursuance of Council Regulation (EC) No. 859/2003, Germany does in practice apply equal treatment to third country nationals who hold a residence permit or the right of unlimited residence.

In respect of the payment of family benefits, the Committee previously considered that, under Article 12§4, any child resident in a country is entitled to these benefits on the same basis as the citizens of the country concerned. Whoever the beneficiary may be under the social security scheme – the worker or the child – the States Parties are obliged to guarantee, through unilateral measures, effective payment of family benefits to all children resident on their territory. In other words, the requirement for the child concerned to reside on the territory of the state concerned is compatible with Article 12§4 and with its Appendix. However, as not all the countries apply such a system, the states which impose a child residence requirement are under an obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle. The Committee asked whether such agreements existed with the following countries: Albania, Armenia, Georgia and Turkey, or whether they were planned and on what timescale. According to the report, the nationals of these States with which there is no agreement receive family benefits for their children if they and their children have their habitual residence in Germany, and if it may be assumed, on the basis of their residence status, that their residence is permanent. If the child is not resident in Germany, its parents benefit from tax relief for each child on a portion of their taxable income. In the absence of any information, the Committee asks for the next report to provide information on any agreements that are being planned with these countries and the time span for their negotiation. 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 also asked whether, in respect of the nationals of States Parties which are not members of the EU or parties to the European Economic Area (EEA), the grant of social security benefits -other than family benefits- is in

general subject to length of residence or employment requirements. In the absence of a reply in the report, the Committee reiterates the question.

Right to retention of accrued rights

The Committee asked about the retention of accrued rights with respect to social security benefits other than old-age pensions and unemployment benefits. Where sickness insurance is concerned, the principle of the retention of accrued rights is safeguarded by adding the insurance period in Germany to the insurance period abroad in accordance with bilateral agreements. These are concluded only on the basis of the principle of reciprocity, equivalence and financial balance, if the appropriate need exists in practice. The adoption of unilateral measures cannot be considered by the Federal Government because of the principle of reciprocity. As for accident insurance, the benefits of German statutory insurance are also granted to insured persons who have their habitual residence abroad. Insured persons receive cash benefits, particularly pensions, and refunds of their medical expenses. The protection and scope of the insurance are determined by the insured person's situation at the actual time at which the insured contingency occurs.

Right to the maintenance of accruing rights (Article 12.4b)

The Committee points out that the fact of having changed country of employment without having completed the period of employment or insurance necessary under that state's legislation to qualify for certain benefits and for determining the amount thereof should not be prejudicial. Implementation of the principle presupposes that, if necessary, the technique of accumulating the periods of employment or insurance spent abroad and, in respect of long-term benefits, the pro rata technique, be used for the opening, calculation and payment of benefits. States have the choice of means: multilateral convention, bilateral agreement or any other method, such as unilateral, legislative or administrative measures.

The Committee, in its two previous conclusions (Conclusions XVII-1 and XVIII-1), noted that the accumulation of insurance or employment periods was guaranteed only in pursuance of Community legislation or bilateral agreements, and considered that the situation was not therefore in conformity with Article 12§4.

According to the report, the situation has not changed. At the meeting of the Governmental Committee in April 2007, the representative of Germany stated that it was impossible to accumulate the periods of insurance or employment completed by nationals of states which were not members of the European Union or the European Economic Area, or of states with which Germany was not bound by bilateral agreements. Agreements had been concluded with Turkey, Bulgaria, "the former Yugoslav Republic of Macedonia" and Romania. Negotiations were also under way with Ukraine and Russia, but new bilateral agreements would be planned only if they were of mutual benefit for the countries concerned and if there were significant population movements between them.

The Committee notes that no bilateral agreement currently exists with Albania, Andorra, Armenia, Azerbaijan, Georgia or Moldova, so the situation is still not in conformity with the Charter.

Conclusion

The Committee concludes that the situation of Germany is not in conformity with Article 12§4 on the ground that nationals of States Parties not covered by Community regulations or bound by agreements with Germany are not provided with the possibility of accumulating periods of insurance or employment completed in other countries.

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 Germany.

Types of benefits and eligibility criteria

The Committee notes the entry into force on 1 January 2005 of the new Social Code. Social assistance which was previously regulated by the Federal Social Assistance Act (*Bundessozialhilfegesetz-BSHG*) now comes under the Twelfth Book of the Social Code.

In its previous conclusion (Conclusions XVIII-1) the Committee asked whether the reform of the retirement pension system considered under Article 12§3 had had an impact on social assistance to elderly persons. In this connection the Committee notes that the basic security benefits in old age and in case of reduced earning capacity were introduced as of January 2003. Since January 2005 they have become an element of the social assistance law in the Fourth Chapter of the Twelfth Book of the Social Code. Beneficiaries of basic security benefits in old age and in case of reduced earning capacity are needy persons who do not have sufficient resources of their own and who are resident in Germany. The amount of assistance is the same as the standard amount of social assistance. According to the report the number of claimants of the basic security benefit has amounted to 682,000 individuals in 2006. The average amount paid was € 627, which will usually include benefit payment at the standard rate as well as costs of housing and further supplementary benefits in individual cases. The Committee notes that 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 was estimated at € 650 in 2006. In the light of this information, the Committee notes that the amount of benefit paid to needy elderly persons is adequate on the basis that the minimum level of assistance that may be obtained is adequate in relation to the poverty threshold.

Level of assistance

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

- basic benefit: according to the report as of 1 January 2007 a standardised rate of € 345 for a single person was applied nationwide (old *Länder* and new *Länder*). The Committee notes from MISSOC database that a couple without children received € 622 whereas a couple with one child € 829. A single parent with one child received € 593;

- supplementary benefits: in addition to basic benefits, the real costs for housing and heating are paid which, in 2007 amounted to € 338 for a single person and to € 441 for a couple;

- medical assistance: special assistance for persons without resources in the case of illness has been examined by the Committee in Conclusions XIV-1 and was found to be in conformity;
- poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value was estimated at € 737 per month in 2007.

In the light of the above data, the Committee considers that the level of social assistance in Germany is adequate when the standardised rate of benefit and housing and heating allowance are compared to the poverty threshold as assessed.

Personal scope

In its previous conclusion (Conclusions XVIII-1) the Committee found that the situation was not in conformity with Article 13§1 of the Charter on the ground that foreign nationals legally resident in Germany were not granted the same social assistance benefits as nationals. More specifically, the Committee referred once again to Germany's reservation when ratifying the 1953 Convention on Social and Medical Assistance which limited the scope of Section 120§1 of BSHG, namely by stating that Germany does not undertake to grant to nationals of other Parties to the 1953 Convention equally and under the same conditions as to its own nationals, assistance designed to enable the beneficiary to make a living (assistance referred to in Section 30 of BSHG). In this connection the Committee notes from the report that the Regulation on Social Assistance for Foreigners (*Regelung zur Sozialhilfe für Ausländer*, Section 120 of BSHG) was taken over unchanged by Section 23 of the Twelfth Book of the Social Code and guarantees that foreigners receive the same treatment as nationals when it comes to social assistance towards living expenses, food, housing, clothing, household goods etc. Care in the event of sickness is also provided to the same degree. Importantly, the former benefits in accordance with Section 30 of the Federal Social Assistance Act (assistance to build up or safeguard the source of livelihood) have been abolished as there is no longer any practical need for them in view of the decreasing number of claimants.

The Committee notes that by the legislative amendments the situation has been brought into conformity with the Charter and therefore the ground of non-conformity relating to Section 30 of BSHG no longer exists. However, the Committee notes that the reservation formulated by Germany when ratifying the 1953 Convention on Social and Medical Assistance, which limited the scope of Section 120§1 BSHG as concerns the benefit under Section 30 of BSHG, still holds. Therefore it asks whether Germany intends to withdraw this reservation.

The Committee examines 'the other assistance' referred to in the reservation, i.e. assistance to overcome particular social difficulties (Section 72 of BSHG) in its conclusion under Article 13§3.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 13§1 of the Charter.

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 Germany.

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

Conclusion

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

The Committee notes that in its previous conclusion (Conclusions XVIII-1) the situation in Germany was found not be in conformity with the Charter as the reservation made in respect to the 1953 Convention on Social and Medical Assistance limited the scope of Section 120§1 of the Federal Social Assistance Act (BSHG), in particular with regard to Section 72 of BSHG (assistance for overcoming particular social difficulties). The previous report failed to demonstrate that foreign nationals legally resident in Germany are granted this assistance on an equal footing with German nationals.

In this connection the Committee notes from the report that the content of Section 120 has been incorporated into Section 23 of the Twelfth Book of the Social Code, unchanged. As regards the regulation contained in Section 72 BSHG, it can now be found in Sections 67-69 of the Twelfth Book of the Social Code. The Committee notes that these legislative amendments have not demonstrated that foreign nationals lawfully resident or regularly working in Germany now have the same eligibility for former Section 72 assistance benefits as nationals. There is no evidence that the authorities now apply the same criteria to both.

According to the report in the new Social Code, social assistance and advice on how to access social assistance are of great importance and are dealt with Sections 10 and 14 of the Twelfth Book of the Social Code, whereby assistance seekers as a rule have a legal right to advice on matters related to social assistance. The Committee asks whether help and personal advice services and institutions are adequately distributed on a geographical basis and whether these are provided with sufficient means to give appropriate assistance as necessary.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 13§3 of the Charter on the ground that it has not been established that foreign nationals legally resident or regularly working in Germany enjoy equality of treatment with German nationals regarding the eligibility to assistance to overcome particular difficulties.

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 Germany.

The Committee has previously (Conclusions XVIII-1) noted that according to Section 120 of the Federal Social Assistance Act (BSHG) all foreigners who are legally present in Germany are entitled to emergency assistance, with the exception of those who have entered Germany for the purpose of obtaining social assistance who are not entitled to receive such assistance. Nevertheless such persons will receive necessary medical care in case of life-threatening situations.

In its previous conclusion (Conclusions XVIII-1) the Committee asked whether emergency social and medical assistance was granted to everyone, in case of need, whether legally present or unlawfully present.

In reply the Committee notes from the report that a foreigner who has no residence permit or residence right may receive benefits sufficient to cover necessary subsistence and medical assistance in accordance with the Asylum-Seekers Benefit Act where this legislation applies. However, the report states that foreigners who are unlawfully present in Germany do not fall within the personal scope of Article 13§4.

As regards foreign nationals lawfully present in Germany, the Committee considers that the situation is in conformity regarding the granting of emergency social and medical assistance to such persons. However, concerning foreign nationals unlawfully present in Germany, the Committee notes that such persons who are not currently applying for asylum or other forms of refugee status would not appear to be covered by the provisions of the Asylum-Seekers Benefit Act: as

a result, the information presented in the report concerning asylum-seekers is not relevant to this group of persons.

Moreover, the Committee recalls that in its decision on the merits of September 8, 2004 of the Complaint No.14/2003, International Federation of Human Rights Leagues (FIDH) v. France, it concluded that legislation or practice which denies all entitlement to medical assistance to foreign nationals who are within the territory of a State Party, even if they are there illegally, is contrary to the Charter. Similarly, legislation and practice which denies all entitlement to emergency social assistance to such individuals is also contrary to the Charter. As the report does not establish that emergency medical and social assistance is available in such circumstances, the Committee considers that the Government has failed to demonstrate that foreign nationals unlawfully present in Germany are granted emergency medical and social assistance in case of need.

Conclusion

The Committee concludes that the situation in Germany is not in conformity with Article 13§4 of the Charter as it has not been established that all persons, without resources, unlawfully present in Germany may be granted emergency medical and social assistance.

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 in the German report.

Organisation of the social services

The report describes the social welfare system in Germany. The German system is unusual in that part of the social services are run jointly by public bodies, private firms and voluntary organisations and part is run independently by the voluntary sector (national non-statutory welfare associations). About 1.4 million people are employed in the various social welfare bodies, which are organised differently in the different *Länder*. The report points out that, as the *Länder* and the local authorities are responsible for the provision of social services, they may set up facilities themselves to meet a specific need, such as specialist integration services for severely disabled people.

Germany's social services are divided into two groups: Local services (including general advice services, personal services such as educational support and pregnancy counselling, home-help services, support facilities for migrants and rehabilitation centres) and services provided by specialised establishments such as children's homes, homes for the elderly, etc.

The Committee notes that special attention is paid to the rehabilitation of prisoners under the Prisons Act. Former prisoners may seek help in finding employment, housing and personal assistance.

Social assistance for the elderly is also a priority. Municipalities and associations work together to offer the elderly both general and specific advice.

The Committee asks whether access to social services is free of charge in certain cases. With regard to services for which there is a charge for access, it asks whether the economic situation of the beneficiary is taken into account.

The report describes several new projects such as the "Local Alliances for the Family", launched in 2004 with a view to helping families, particularly disadvantaged ones. There were over 500 such alliances during the reference period, whose common aims were improved reconciliation of work and family life, increased provision of childcare services, improved publicity about the social services on offer and easier access to facilities catering for specific needs. The main participants in these local partnerships are representatives of the business community and civil society, working alongside various associations.

Effective and equal access

According to the report, citizens do have a legal right to some services but this depends on the nature of the service offered.

The Committee asks what measures are taken to ensure that German nationals and nationals of other States Parties are treated equally.

When access is denied, applicants may appeal the administrative decision before the administrative authority which has taken the decision. If the objection is rejected, applicants may lodge an appeal before the competent administrative jurisdiction. A complaint relating to discrimination under the General Equal Treatment Act may also be made.

Quality of services

Quality standards have been defined by legislation. Inspections are carried out by the agencies which fund the service. These are not regular and can be made without prior notice. The conclusions of the reports on these inspections are made public.

The Committee asks whether there is any legislation on personal data protection.

Conclusion

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

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 contained in the report submitted by Germany.

According to the report, voluntary social welfare associations make an important contribution to the social welfare system because of the large number of employees and volunteers that work for them.

The deployment of volunteers – which is a major feature according to the report – brings flexibility and helps to prevent administrative inertia. For example, private individuals joining the board of an association, taking an active part in the activities of a church parish or providing free legal and mediation services for the disadvantaged, have very different main functions which are nevertheless generally linked to tasks of preparation, support, co-ordination and supervision. The public sector supports volunteers by helping them to acquire the qualifications they need through training courses and an Internet platform.

According to the report, there was a total of 133 760 welfare bodies and services run by national associations in 2004. 32 923 of these were established by the users themselves. On the same date, these bodies employed some 1.4 million people.

The Committee notes from another source²¹ that legislation in Germany provides for user involvement in several service sectors²². For instance, as the result of a health service reform in 2003, a post of patient commissioner was set up and one

of this person's roles is to enhance the potential for user involvement. Representatives of patients' organisations now have seats on the federal health board (the central body in charge of health policy and administration) and it was decided recently that outsiders would be allowed to be elected to the advisory boards of nursing homes.

The Committee refers to its conclusion under Article 14§1 for a description of the system of quality control of the welfare services.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 14§2 of the Charter.

¹ *Report on user involvement in personal social services, Council of Europe, 2007, p. 24*

² *Biennial report of the European Commission on social services of general interest, July 2008, p.*