



observations

Observations by the German Trade Union Confederation
(Deutscher Gewerkschaftsbund – DGB)
in relation to the

40th Report of the Government of the Federal Republic of Germany concerning the European Social Charter for the period 1 January 2018 - 31 December 2021
Group 4 – Children, families and migrants

Children, families and migrants need more targeted protection and support

30.06.2023

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The German Trade Union Confederation (Deutscher Gewerkschaftsbund – DGB) and its affiliated unions welcome the opportunity to submit its Observations in relation to the 40th Report of the Government of Germany on the implementation of the accepted obligations under Group 4 named ‘Children, families and migrants’ (i.e. Articles 7, 8, 16, 17, 19, 27 and 31 of the European Social Charter¹ (hereinafter: the ‘Report’).

Before going into any details on the specific provisions it appears important to provide the European Committee of Social Rights (ECSR or Committee) with General Observations concerning the framework within which the ESC, the supervisory machinery and the specific provisions in question operate.

1 General Observations

The following Observations will not deal with the important social achievements in Germany having taken place during the reference period (2018 – 2021) which are highly welcomed. Rather they concentrate on problems in relation to the full implementation of the requirements imposed by the provisions of the ESC which Germany has accepted.

1.1 Ratification issues

1.1.1 European Social Charter and related instruments

At the ESC’s origins, Germany played an important role when ratifying the original as one of the five first States thus allowing the entering into force of the original ESC (1961).

Against this background, the DGB welcomes in general the ratification of the RESC (1996) which took place in 2021² and for which it had called ever since this latter instrument had been adopted.

However, in the process of ratification the DGB had strongly advised to also

- accept all RESC provisions, in particular those containing collective rights,
- refrain from ‘interpretative declarations’ and
- ratify additionally
 - o the Turin Amending Protocol (1991) and in particular
 - o the Collective Complaints Procedure Protocol (CCPP, 1995).³

Against the Government’s refusal to ratify in particular the latter, the DGB would reiterate that this demand is all the more necessary because it offers the possibility in particular for representative trade unions to require a more detailed, timely and quasi-judicial analysis of situations in respect of ESC obligations (beyond the current reporting cycles of four years). By ratifying the CCPP Germany could and, indeed, would set an important example to take social rights seriously.

For the other demands which were also rejected by the Government the DGB would reiterate its strong appeal to the Federal Government to provide workers in Germany with all available and necessary international protection which the Council of Europe provides in relation to the system of the ESC.

¹ All following references to ‘Articles’ without further specification refer to the ESC in its revised version of 1996.

² Germany ratifies Revised European Social Charter (9.3.2021), <https://www.bmas.de/EN/Services/Press/recent-publications/2021/germany-ratifies-revised-european-social-charter.html>.

³ See for more details: [Stellungnahme - Deutscher Gewerkschaftsbund](#) (13.3.2020, in German).



Concerning the acceptance of provisions not yet accepted, the DGB feels strongly supported in its demands by the Council of Europe's Committee of Ministers (CM) which in its decision of 15 March 2023 (Decision) looked for ways how to achieve the acceptance of all ECS provisions as well as the ratification of the CCPP. In relation to the rights contained in Group 4 the following provisions are concerned:

- Article 7§1 (admission to employment)
- Article 31 (right to housing).

Moreover, this Decision specifically addressed Germany by 'encouraging the four States Parties to the Charter which have not yet done so to ratify the 1991 Protocol amending the European Social Charter'⁴ (Turin Amending Protocol).

1.1.2 Other pertinent international instruments

The problem of non-ratification on international instruments securing social rights is not limited to the ESC. Because human rights protection is of utmost importance for workers and their trade unions the ratification of all respective international instruments by Germany appears necessary.

Therefore, it is suggested to consider to address general recommendations to the Government to ratify the pertinent international instruments in particular in relation to the 'Group 4' articles. The following 'Specific Observations' will address the respective (non-ratified) instruments in more detail.

1.2 Reporting obligations

In order to be effective rights must be coupled with procedures ensuring their proper implementation and effective enforcement in law and practice. In the specific framework of the ESC this is aimed by the CCPP and the reporting procedure. As long as Germany denies ratifying the CCPP the effectiveness depends only – and even more so – on the reporting procedure.

As explained in more detail in its previous Observations,⁵ the DGB is of the opinion that full reports on all accepted provisions should be provided at two-yearly intervals. Nevertheless, based on CM's 2014 decisions the Government's report should at least contain information on all accepted provisions in Group 4 if there are any changes during the reference period (2018 -2021).

Particularly for the purpose of Article 19 §6 and §10 (cases of non-conformity, see below) it appears important to recall that the ECSR, in its Conclusions 2019 concerning Germany, had made a clear statement stressing the necessity to provide the required information in the following terms:

The Committee considers that the absence of the information required amounts to a breach of the reporting obligation entered into by Germany under the 1961 Charter. The Government consequently has an obligation to provide the requested information in the next report from Germany on this provision.⁶

⁴ See Decision, 15.3.2023, Improving the European Social Charter system: long-term substantive and procedural issues, CM/Del/Dec(2023)1460/4.1, in particular footnote 1. Concerning the (new system of) reporting obligations further comments might be provided in the next cycle.

⁵ [Comments by the German Trade Union Confederation](#), on 'Group 3' rights, 30.6.2022, RAP/Cha/DEU/39 (2022), pp 3-4 (1.2.)

⁶ In general, indented texts (without indents) represent quotes (without quotation marks).



1.3 Further general obligations

In line with the experience of other international Human rights bodies, the ECSR should consider clarifications in relation to further general obligations.

1.3.1 Relevance in the internal legal order

In general, it might be advisable to issue also recommendations to the Contracting Parties. This would appear particularly helpful in relation to the legal and practical relevance of the ESC in the German legal order.

Such an approach might be assisted by the inspiration drawn from other international supervisory bodies. In this respect, at least two UN bodies in the 'Concluding Observations' to Germany have stressed the importance of embedding respective instruments in the internal legal order in following terms:

First, the Committee on the Elimination of Racial Discrimination (CERD):

In addition to reiterating its previous recommendation (*ibid.*, para. 15), the Committee urges the State party to:

(a) Incorporate the Convention into the legal system in ways that ensure its direct application before German courts in order to afford all individuals its full protection;...⁷

Second, the Committee on the Rights of Persons with Disabilities (CRPD):

The Committee recommends that the State party guarantee that:

(a) All relevant existing domestic laws are examined by an independent body of experts and harmonized with the Convention accordingly;

(b) All future laws and policies are aligned to the Convention;

(c) Existing and future legislation incorporate measures to ensure that the rights of persons with disabilities under the Convention are invocable before the courts, with concrete effective remedies.⁸

It is therefore suggested to use this approach *mutatis mutandis* for the ESC.

1.3.2 Dissemination

In its previous Observations the DGB recommended very much to ask Contracting Parties to disseminate the ECSR's 'Conclusions' as results of the examination of State reports by referring to examples of UN Committees.⁹ The DGB feels supported in its demand, at least in general, by the CM's request for the Governmental Committee to prepare a recommendation i.a. in relation to:

ways to enhance communication and awareness raising about the Charter and European Committee of Social Rights decisions and conclusions at national level.

2 Specific Observations

This new Report of the German Government is unique in the sense that it is required for the first time under the framework of the Revised European Social Charter. Accordingly, the ECSR has specified the reporting obligations as follows:

⁷ CERD, Concluding Observation, 30.6.2015, ([CERD/C/DEU/CO/19-22](#)), para. 7.

⁸ CRPD, Concluding Observations, 13.5.2015 ([CRPD/C/DEU/CO/1](#)), para. 11.

⁹ See footnote 5, p. 4.



In this respect it should be particularly noted that Germany has ratified the Revised European Social Charter in 2022. Accordingly, this is the first time Germany will report on the Revised Charter, notably on Articles 8§1, 8§2, 8§4, 8§5, 19§11 and 27, Germany has been required to provide a full report on these provisions based on the respective form.

Moreover, specific reporting obligation exist in relation to Group 4 as the previous Conclusions XXII-4 (2019) contained

- 3 conclusions of non-conformity: Articles 7§5, 19§6 and 19§10
- 5 situations concerning Articles 7§3, 7§4, 19§1, 19§4 and 19§8, in which the Committee has asked for further information in order to assess the situation.

Accordingly, they require specific attention.

Against the background of the reporting obligations in general (as described above) the DGB will now turn to its specific comments on the Report as well as information about the respective provisions having been accepted by Germany for Group 4 rights but primarily in relation to those provisions which appear particularly important.

For the purpose of each provision on which the DGB wishes to comment, it will be proceeded as follows:

- Previous assessment by the ECSR (i.e. summaries or quotations taken from Conclusions XXII-4, 2019)
- Government's replies (i.e. summaries or quotations taken from the Report)
- Observations (by the DGB)
- Conclusions (i.e. suggestions by the DGB for the formulation of the ECSR's Conclusions)

2.1 Article 7 – The right of children and young persons to protection

2.1.1 General considerations

From the outset, it should be noted that this Article has become part of 'hard core' of the ESC provisions pursuant to Article A§1(b). Accordingly, it is of high relevance to properly implement its provisions in the national legal order.

Generally speaking, illustrative background material might be found in the 'DGB Training Report' (2022)¹⁰ giving young people a voice and shedding light on the weak points in the dual training system.

2.1.2 Para. 2 - Prohibition of employment for dangerous and unhealthy activities under the age of 18 (Art. 7§2 1961 ESC - minimum age higher than 15)

Previous assessment by the ECSR¹¹

While concluding that the situation in Germany is in conformity in respect of Article 7§2

¹⁰ (in German) <https://jugend.dgb.de/meldungen/ausbildung/++co++563db1ba-ebc1-11ec-bb6f-001a4a16011a/file/Ausbildungsreport%202022.pdf> ; for previous reports see <https://jugend.dgb.de/meldungen/ausbildung/++co++63d3a226-ebc1-11ec-b518-001a4a16011a>

¹¹ All references to 'Previous assessment by the ECSR' are related to Conclusions XXI-4 (2019).



[t]he Committee asks the next report to provide up-to-date information concerning the activities and findings of the authorities, including the number of violations detected and the sanctions imposed in practice on the employer in cases of violations concerning the employment of young people in dangerous or unhealthy occupations.

Government's reply

The main statistical information on the number of inspections is provided as follows:

The Federal Government thus made enquires to the highest-level occupational health and safety authorities of the Länder concerning their experiences and findings as regards the reporting period. Within the framework of workplace inspections, **3,335 companies** were inspected by the supervisory authorities of all the Länder, i.e. nationwide, for compliance with the provisions concerning the protection of young people (and children) at work in 2019. For 2020, this number was **2,184**; for 2021, **2,225** ...

adding a table (Inspected companies and uncovered violations in Germany (2019, 2020, 2021) with more precise information coming from the respective Länder authorities.

Concerning the violations, the Government is of the opinion that the 'violations detected are usually not serious'.

Finally, as regards sanctions, the Report indicates that the amount of fines has been doubled in in two respects (for certain cases from 15,000 to 30,000 € and for certain other cases from 2,500 to 5,000 €).

Observations

For the DGB, the statistical data provided by the Government is insufficient. But even its (limited) results show a severe lack in enforcement.

At least the following elements have to be taken into account:

Number of 'inspected workplaces'¹²

- First of all, the number of *inspections* has clearly **decreased** during the reference period without any explanations (from 2019 to 2021 about 1/3). Even acknowledging certain practical difficulties due to COVID-19 this cannot explain the extent of the decrease, even more so as several Länder even increased the respective numbers between 2019 and 2021.¹³
- Moreover, the *figures* are **unclear**, i.e. it is not clear whether they relate to companies (as indicated in the title of table 1 – below: 'Alternative 1') or to workplaces within the companies (as indicated in the titles of columns 2, 4 and 6: 'Inspected workplaces' – below: 'Alternative 2').
- The **percentage** of the number of inspections (2019: 3,335) is **absolutely minimal** in relation to the total number of companies and/or workplaces nationwide.

¹² The report does not contain any information on the size of the companies or the branches inspected, nor on the quality of inspections.

¹³ Hamburg, Lower Saxony and Thuringia.



- Alternative 1: If the number relates to the inspected companies the total number of companies of 2,180,620¹⁴ the respective percentage would be 0,015%.
- Alternative 2: But even if the number relates to the inspected workplaces the total number of respective workplaces of 1,044,000,¹⁵ the respective percentage would be 0,32%.¹⁶
- The serious lack of precise information on the one hand and the clearly insufficient number of inspections on the other hand transpose the problems of enforcement to its **subsequent elements** (see just below). Moreover, no information is provided in relation to the quality of the inspections.

Violations

- The Government's indication that the detected violations were 'usually not serious' describes a situation which is based on clearly insufficient inspections and therefore, in itself, insufficient. It appears obvious that the dangers for young persons at work are especially in SMEs which are very often not inspected at all.
- Even taking the numbers of violations provided by the Government, there is no explanation as to their decreasing numbers (from about 19% in 2019 to about 13% in 2021). At least one reason might lie in the practical difficulties during the COVID period as thorough inspections on the ground might have been less effective.

Sanctions

- The report does not provide any information on sanctions (besides the doubling of fines which appears more than due after nearly 25 years').
- It is illustrative, that for the whole Youth Employment Act only 7 (in words: seven) criminal convictions were pronounced in 2021.¹⁷

In conclusion, it appears obvious that the enforcement is clearly insufficient.

¹⁴ Establishments with at least one employee subject to social security contributions in main employment ('Betriebe mit mindestens einem sozialversicherungspflichtig Beschäftigten in Hauptbeschäftigung, in: Bundesanstalt für Arbeitsschutz und Arbeitsmedizin, Sicherheit und Gesundheit bei der Arbeit - Berichtsjahr 2021. Unfallverhütungsbericht Arbeit, 1. Auflage. Dortmund: 2022, DOI: 10.21934/baua:bericht20220718, ([Herunterladen](#)), p. 250. Additionally, it should be borne in mind that companies with 1 - 5 workers is much more than 1.402.608, i.e. in cases micro enterprises in which young workers might be easily employed under difficult situations are extremely rarely inspected.

¹⁵ Employed persons from main residential households (2020), 15 - 20 years old, (<https://www-genesis.destatis.de/genesis/online?sequenz=tabelleErgebnis&selection-name=12211-0001&startjahr=2020#abreadcrumb>)

¹⁶ Even if the assumption is that only 'young workers' (i.e. below 18 years of age) could be taken into account, an estimation of one half (i.e. between 15 and 20 years) would still be much below 1%.

¹⁷ Persons sentenced and convicted according to type of offence and age groups (2.1 Abgeurteilte und Verurteilte nach Art der Straftat und Altersgruppen, JArbSchG, [Strafverfolgung - Fachserie 10 Reihe 3 - 2021](#), p. 56).



Conclusions

On the basis of the above, it is suggested that the Committee concludes that the situation in Germany is not in conformity with Article 7§2 on the ground that the minimum age of admission to employment is not sufficiently enforced.

2.1.3 Para. 3 - Prohibition of employment during compulsory education

Previous assessment by the ECSR

Whereas the ECSR found that this situation in relation to work during holidays was in conformity with Article 7§3 it stated for the lack of information in relation to the

Agricultural sector

The Committee wishes to receive information on the type of agricultural work children are allowed to perform within the agricultural family-owned businesses and on the conditions under which such work is monitored in practice by the national authorities.

Enforcement

The Committee notes that the current report does not provide specific information on activities and findings of the authorities in relation to the prohibition of employment of young persons subject to compulsory education. The Committee asks to receive disaggregated data concerning the monitoring activities and findings of the authorities in relation to the prohibition of employment of young persons subject to compulsory education, including the number of violations detected and sanctions applied in practice.

Conclusion

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

Government's reply

The Government's report describes the legal situation in relation to the **agricultural sector** by adding certain information on its monitoring. While it provides examples from some Länder authorities it states:

The inspections also covered farms or family farms and during the reporting period no significant violations of youth occupational safety and health requirements in family farms were found in the Länder. The authorities did not receive any reports or complaints about employment of children on family farms that was too long.

For the **enforcement** it describes the situation in general terms and, additionally, refers to its 'comments under Article 7§2 with regard to this question and request of the Committee'.

Observations

While providing certain information on the legal background in the **agricultural sector**, the Report lacks at least one important element concerning the permissible extension of working hours in harvest times (compared to the general rule of eight hours per day and 40 hours per week). Section 8(3) Youth Protection Act provides:



In agriculture, juveniles over 16 years of age may not be employed for more than nine hours a day during harvest time and not more than 85 hours in a double week.¹⁸

Moreover, although harvesting is generally considered as 'light' work according to Section 2(1) No. 3 a) of the Ordinance on the Protection Against Child Labour (Kinderarbeitsschutzverordnung, KindArbSchV), several elements of harvesting might easily overstep the threshold of 'light work' like manual handling of loads, awkward posture or involving accident risks as defined in Section 2(2) Nos. 1 – 3 of the same Ordinance. This extension of working time has to be put into relation with the requirements of holidays (Article 7§7). Generally, these requirements should be specifically monitored by the competent authorities, but there is no indication about effective enforcement:

Concerning the **enforcement**, the Government refers to several examples of inspection visits, one being '661 farms were visited during inspections in North Rhine-Westphalia in the reporting period', which would amount to 165 visits per year. Compared to the 33,630 farms in 2020¹⁹ in the Federal State the respective percentage would only be 0,5%. In other Länder this rate might even be much lower, let alone the question whether called 'audits' can be understood as real inspections. If not, the percentage would be even lower.²⁰

In as far as the Government refers to its information on Article 7§2 it was demonstrated above that the respective enforcement is clearly insufficient (see above). In relation to insufficient data it appears illustrative that also the ILO Committee of Experts of the Application of Conventions and Recommendations (CEACR) has, in its Direct Request to Germany on ILO [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#), recently requested more pertinent information:

The Committee requests the Government to provide information on the progress made by the Länder working group in order to improve the reporting of labour inspection activities in the agricultural sector, in particular concerning the requirements of Articles 27(d) and (e) of Convention No. 129 on statistics of inspection visits conducted and of violations and penalties imposed in agriculture.²¹

Conclusions

On the basis of the above, it is suggested that the Committee concludes that the situation in Germany is not in conformity with Article 7§3 ESC on the ground that the provisions related to persons who are still subject to compulsory education should not be employed in such work as would deprive them of the full benefit of their education is not sufficiently enforced.

2.1.4 Para. 4 - Working time under age 18 (Art. 7§4 1961 ESC - under age 16)

Previous assessment by the ECSR

In its previous Conclusions 2019 the ECSR stated:

¹⁸ Translations from documents in German into English are not 'official', unless indicated otherwise.

¹⁹ [Landesbetrieb IT.NRW Statistik und IT-Dienstleistungen](#), Erste Ergebnisse der Landwirtschaftszählung 2020 (21.1.2021).

²⁰ An additional question would be whether the included so-called 'audits' can be understood as real inspections. If not, the percentage would be even lower.

²¹ [Direct Request](#) (CEACR) - adopted 2021, published 110th ILC session (2022), Germany, [Labour Inspection Convention, 1947 \(No. 81\)](#) (Ratification: 1955), [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#) (Ratification: 1973)



The Committee notes that the report does not provide specific information on activities and findings of the authorities in relation to the legislation concerning the length of working time for young persons under 16. The Committee asks to receive disaggregated data concerning the monitoring activities and findings of the authorities in relation to the length of working time for young persons under 16, including the number of violations detected and sanctions applied in practice.

Conclusion

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

Government's reply

The Government's report is describing the legal framework.

Observations

The Report does not contain any specific data as requested by the ECSR. In this respect it should be recalled also that the ECSR in its Conclusions XX-4 already had asked the Government to provide relevant information not only in relation to the legal situation but also in practice:

It asks the next report to provide a full and up-to-date description of the situation in law and in practice.

Additionally, it should be taken into account that the enforcement of the Youth Protection of Young People at Work Act was considered as clearly insufficient (see above paras. 2 and 3).

In any event, the lack of the required information amounts to a breach of the reporting obligations (see above).

Conclusions

On the basis of the above, it is suggested that the Committee concludes that the situation in Germany is not in conformity with Article 7§4 ESC on the ground that it has not been established that the working hours of the young workers have been limited in accordance with their needs.

2.1.5 Para. 5 – Fair pay

In its Conclusions XXII-3 (2019) the ECSR has concluded negatively in the following terms:

The Committee concludes that the situation in Germany is not in conformity with Article 7§5 of the 1961 Charter on the ground that the allowances paid to apprentices are inadequate.

Question a)

a) Please provide updated information on net minimum wages and allowances payable to persons under 18 years of age. Please provide information on measures taken to ensure that fair remuneration is guaranteed to young workers:

Government's reply

While stating that the amount of the minimum wage raised from 8.83 € (01/01/2017) to on 9.60 € (01/01/2021) the Government refers to the structural increase from 01/10/2022 with 12 €.



However, it notes that

According to Section 22 (2) of the Minimum Wage Act, however, persons who have not yet reached the age of 18 and have not completed vocational training as well as persons employed for their vocational training according to Section 22 (3) alternative 1 of the Minimum Wage Act are excluded from the statutory minimum wage entitlement. The minimum wage does apply without exceptions for minors who have completed vocational training, though.

It refers to certain justifications and contains several measures aimed at compensating this exclusion (collective agreements, training remuneration, allowance for vocational training support).

Observations

The fair pay of young workers and apprentices is a long-standing issue. Accordingly, it will be addressed in some more detail.

Concerning the **statutory minimum wage**, the important increase since 1 October 2022 illustrates that during the (prior) reference period its amount was not sufficient.

Moreover, there are – as mentioned in the report - two **main exclusions** in respect of

- young workers under the age of 18 (section 22 para. 2 Minimum Wage Act)
- several types of internships (mandatory internships and, under certain conditions, orientation and training-related internships of up to three months)²²

These exceptions leave the persons concerned without a guarantee for even the general minimum wage, thus lacking the required protection under Article 7§5 ESC.

As regards the measures indicated by the Government, they **do not compensate the exclusion** from the statutory minimum wage:

Collective agreements

- The table on 'training remuneration and wages in selected collective bargaining areas' contains an illustrative last column titled 'Lowest amount for young workers without training'. This table shows that there is nearly no coverage by collective agreements: out of the about 40 branches/regions of activity only the chemical industry (2 regions) and confectionary industry (2 regions) do indeed contain specific minimum pay for unskilled young workers. This demonstrates that there is virtually no protection for this category of workers.
- Moreover, it should be taken into account that according to official statistical data the coverage of collective agreements is below 50% and still decreasing:

'For around 43% of employees in Germany, the employment relationship was regulated by a collective agreement in 2021. However, there are differences between the old and new federal states. For 45% of workers in the old federal states, the employment relationship in 2021 was regulated by a sectoral collective agreement. ... In the new countries, the number of contracts was significantly lower. Here, 34 % of the employees were covered by sectoral collective agreements. ... The development of collective

²² People who have completed compulsory internships, which are a prerequisite for admission to university, are not entitled to the statutory minimum wage. This was decided by the Federal Labour Court (BAG) (judgement of 19 January 2022, ref. 5 AZR 217/21).



agreements shows a decline in collective bargaining in both the old and the new states. ...²³

Training remuneration

- Compared to the minimum wage the training remuneration is extremely low and does not compensate the respective exclusion.
- The compilation of the (gross) minimum monthly remuneration does not indicate the figures for the years 2018 and 2019.
- As far as the Government denies the possibility to 'estimate' the net remuneration, it should have indicated at least the percentage of the deductions for the social security contributions (the 'tax brackets' might be irrelevant because of the very low income).

Vocational training allowance

- The personal conditions for the safety net to receive this allowance are difficult to fulfil. If the trainee lives (or could live) at home no such allowance will be paid (section 60 of the Code of Social Security, Book III (para. 1)²⁴).
- From 01/09/2019 asylum seekers are excluded, however a supplementary asylum seekers' benefits for persons granted asylum are also possible in the case of training, possibly with a lower level of protection.
- In principle, the income of the parents is to be imputed thus reducing the level of protection to an important degree.

Moreover, the Government does not provide any data as to the number of (young) workers concerned.

In conclusion, the legislation does not provide for 'fair wage' or 'appropriate allowances', at least not for young workers under the age of 18.

Question b)

Please provide information on measures taken to ensure that this right is effectively enforced (e.g., through Labour Inspectorates and similar enforcement authorities, trade unions) (General question, Conclusions 2019).

Government's reply

Compliance with the statutory minimum wage is monitored by the authorities of the customs administration, in particular the Federal Customs Administration unit responsible for enforcing the law on illegal employment and benefit fraud.

Observations

It is illustrative that the Report does not contain any sort of detail or specification for answering this question, even more so when taking into account that young workers are excluded from the statutory minimum wage (see above). This means in practical terms that the Report refers to an enforcement for a situation which is out of the competence of the respective authority and thus not pertinent.

²³ <https://www.destatis.de/DE/Themen/Arbeit/Arbeitsmarkt/Qualitaet-Arbeit/Dimension-5/tarifbindung-arbeitnehmer.html>

²⁴ 'The trainee is eligible for financial assistance in the case of vocational training if he or she

1. lives outside the household of his or her parents or one of his or her parents, and
2. he or she cannot reach the training place from the home of the parents or one of the parents within a reasonable time.'



Moreover, in its previous Observations on Group 3, the DGB had pointed out to the severe lack of enforcement by referring to official statistical data (which also fall within the reference period for the provisions in Group 4).²⁵

Finally, there is no enforcement authority dealing with the effective implementation of collective agreements or training remuneration.

On question c)

c) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Government's reply

In reaction to the negative Conclusions (XXII-4 (2019)) criticizing that the situation in Germany was not in conformity with Article 7§5 of the Charter, because the training remuneration paid to apprentices is insufficient, the Government does

not agree with the conclusion that training remuneration at the end of the training is not compliant with Charter requirements. The Committee's interpretation of Article 7 (5) of the Charter does not sufficiently take into account the special aspects of the dual training system in Germany.

Additionally, it points out that

[a]ssuming a weekly working time of 38 hours, with 4.33 weeks per month, a minimum wage of 10.45 euros per working hour would result in a gross monthly salary of 1,719 euros. The target of 2/3 of this amount is met by most of the collectively agreed training allowances in the 3rd year of training listed in the table above.

Observations

Even accepting that the Government's main argument about the 'special aspects of the dual training system in Germany' in the context of Article 7§5 as general justification it is obvious that **in practice** there are **serious problems**, in particular in times of shortage of qualified workforce (particularly in the health and care as well as catering trade sectors), trainees are to a probably large extent (mis)used as (cheap) workers in order to compensate as much as possible this shortage.

Concerning the Government's additional argument of mainly **reaching the threshold** of 1,146 € (2/3 of 1,719 €) this is **not convincing**:

- Generally speaking, the coverage of collective agreement is very low (see above) and it appears obvious that the information is provided does not include all sectors and all regions (bearing in particular in mind that only in a few cases of national-wide collective agreements are mentioned).
- More specifically, the statement that 'most' of the collectively negotiated training allowances reach this threshold is not correct: about 50% of the examples included in the table are not reaching it. This means that in the 1st and 2nd years²⁶ and in about the half of the 3rd year in all sectors listed by the Government 1.146 € are not reached, (i.e. in 5/6 of all cases mentioned).

²⁵ See footnote 5, p. 6 seq. (Article 2§1).

²⁶ With the exemption of Privat insurance and Public Service – care – sectors.



In conclusion, the allowances paid to apprentices are inadequate (continuation of the negative conclusion in 2019).

Conclusions

On the basis of the above, it is suggested that the Committee concludes that the situation in Germany is not in conformity with Article 7§5 ESC on the grounds that

- the allowances paid to apprentices are inadequate (continuation of the negative conclusion in 2019),
- the wages of young workers are inadequate.

2.2 Article 16 - The right of the family to social, legal and economic protection

2.2.1 General considerations

The right of the family to social, legal and economic protection is considered by the Charter as very important because it is included in the category of 'hard-core'-Articles pursuant to Article A§1(b). This high rank should accordingly be taken into account when assessing the conformity with its requirements.

In substantive terms, the discussion about the inclusion of parenthood as a characteristic in the General Equal Treatment Act (AGG) has made it clear that many workers with children are exposed to disadvantages in the working world. These may already begin when the employment relationship is initiated: all candidates who identify themselves in an interview as a mother of young children has fewer chances than a childless candidate or someone who is perceived as a family man in a conventional role and partnership model. Often, the disadvantages due to pregnancy and parental leave as well as care work manifest themselves in everyday life in a higher risk of discharge, a lower probability of promotion and a perception of being less resilient and capable.

Women are affected by actual disadvantages significantly more often and more severely than men. It is known that it is primarily the criterion of pregnancy and motherhood that causes the disadvantages, which does not exclude the fact that working fathers also experience disadvantages - for example, through the longer-term claiming of parental allowance months. In this respect, the criterion of parenthood can contribute to obscuring the structural causes of the different degrees of disadvantage experienced and hinder their overcoming.

2.2.2 Specific considerations in relation to the ECSR's questions

Previous assessment by the ECSR

The ECSR addressed this provision by asking the Government to provide additional information on:

Domestic violence against women

While taking note that, according to the report, the reform of 2009 has proven its worth, the Committee notes that the report does not provide any information on the prevention measures enacted (training, awareness-raising, rehabilitation...), on the existence of helplines, shelters or emergency centres, on the effective implementation of restraining orders and the prosecution of domestic violence against women or the implementation of integrated policies involving all levels of government and all relevant agencies and institutions.

It accordingly asks the next report to provide comprehensive and updated information on all these points, the measures enacted and their impact on reducing domestic violence against women, also in the light of the concerns expressed in the Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW) of 2017 about "a) the prevalence of domestic violence against women and the absence of a comprehensive strategy of prevention and early intervention, along with the prevailing attitudes among judicial authorities that cases of domestic violence are a private matter; (b) Underreporting of gender-based violence to the police, and low prosecution and conviction rates; (c) Reports suggesting that women with disabilities, in particular those living in residential institutions, are two to three times more likely to be exposed to violence than other women; (d) Reported incidents of sexual and domestic violence against women in refugee shelters by their partners, shelter staff or security staff; and the legal restrictions on their freedom, which often force them to wait several months before they can be transferred to an alternative safe shelter; (e) Incidents of hate crimes and attacks on refugees and asylum seekers in both shelters and camps, causing injury to women and girls; (f) Gender-based stereotypes and myths surrounding rape within society and among legal professionals; (g) The fact that, in certain cases, women encounter difficulties in achieving recognition of their situation of particular hardship, which, according to the Residence Act, leads to the abandonment of the requirement for cohabitation in marriage of at least three years to gain an independent right of residence, or their being forced to remain married to a violent spouse to avoid losing their derived right of residence".

Childcare facilities

The Committee recalls that States Parties are required to ensure that childcare facilities are available, affordable and of good quality (coverage with respect to the number of children aged 0-6, ratio of staff to children, staff training, suitable premises and cost of childcare to parents, etc.). The report does not provide any information on this point, despite the repeated requests for detailed and up-to-date information (Conclusions XIX-4 (2011), XX-4 (2015)). The Committee therefore reiterates its request. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter in this respect.

Housing for families

The Committee wishes that the next report provides detailed information and figures (demand and supply) on the various types of housing support for vulnerable families, including social housing and housing allowances. In this regard, it notes from another source (Housing Europe, The State of Housing in the EU 2017, p. 68) that while the social housing stock has been decreasing over the past two decades, in recent years (2014-2015) the number of new completed social housing has risen again for the first time. The Committee further observes that the United Nations Committee on Economic, Social and Cultural Rights, in its Concluding observations on the sixth periodic report of Germany adopted on 12 October 2018 (outside the reference period), expressed concern about the very high level of rents and rent increases, the acute shortage of affordable housing, coupled with the decreased number of apartments available as social housing, as well as the situation of homeless families in metropolitan areas (§ 54). In this connection, the Committee also asks for information in the next report on



whether the offer of emergency accommodation (shelters or other centres) corresponds to the demand.

The Committee previously asked (Conclusions XIX-4 (2011), XX-4 (2015); with reference to the comparative report on "Housing conditions of Roma and Travellers in the European Union" (October 2009), European Union Agency for Fundamental Rights (FRA)) information on conditions in accommodation provided to Roma asylum-seekers from non-EU Member States, particularly as regards children. The report does not provide any information in this respect. The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015). In this connection, it notes that during the reference period Germany has been particularly affected by the refugee movements across Europe, experiencing a very high number of arrivals of asylum-seekers or persons seeking protection, particularly from Syria. The Committee therefore asks the next report to indicate which measures are taken to ensure adequate housing for refugee families and whether they have access in practice to social housing schemes and housing allowances after leaving reception centres. It wishes to be provided with any figures and statistics available on this issue.

Pending receipt of the information requested, the Committee considers that the situation is in conformity with Article 16 of the 1961 Charter on this point.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 16 of the 1961 Charter.

Question a)

- a) Please provide updated information on measures taken to reduce all forms of domestic violence against women including information on incidence and conviction rates.

Government's reply

When ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence (the so-called Istanbul Convention), Germany committed itself at all levels of the state to doing everything to combat violence against women and domestic violence, to provide protection and support for affected persons and to prevent violence. ...

The Federal Government has ambitious plans also in the new legislative period to considerably advance the protection of women and the implementation of the Istanbul Convention at the federal level.

This includes setting up an independent reporting body. Since February 2020, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has provided funding for a project at the German Institute for Human Rights. The aim of the project is to develop a blueprint for independent reporting bodies on gender-specific violence and human trafficking. Further projects include setting up a public coordination body and the development of an interministerial overall political strategy for the prevention and combating of violence. The needs of vulnerable groups such as women with disabilities or female refugees as well as queer persons should be taken into account. The time schedules for the two projects and the details of their implementation are still being coordinated. Developing the overall strategy will be the first task of the coordination body. The coalition agreement also provides for the introduction of a uniform legal framework



for the protection against violence in Germany. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth is in the process of drafting key points. On that basis the Federal Government will agree on how to proceed.

To support the Länder even more strongly in their efforts to establish a nationwide network of assistance services, the federal programme “Working together to prevent violence against women” (“Gemeinsam gegen Gewalt an Frauen”) was launched, among other things. To reach this aim, two ways of funding are possible in the context of the federal programme: On the one hand, funds from the federal innovations programme are available for innovative projects to reach all women affected by violence and their children and to support them in a target-group-oriented way. On the other hand, funds from the federal investment programme are used to finance building measures to expand capacities and to improve access to women’s shelters and specialised counselling centres. For the investment-related part, a total of 150 million euros are available until 2024 (30 million euros each year from 2020-2024). For the other part of the programme, a last slice of 5 million euros was earmarked for 2022 (from 2019-2021 already 5 million euros each year).

However, as in the past (over the past decades), the Federal Government will continue to initiate and finance measures in the subject area “violence against women” in the context of the Federation’s competence to provide support. One focus will be the further implementation of the Istanbul Convention.

The Federal Criminal Police Office has published special evaluations of crime statistics on violence in partnerships annually since 2015. They provide a comprehensive overview of acts of violence in (ex-) relationships. Starting in the reference year 2023, the special evaluations will be expanded and include information on violence within families.

No data is available on convictions in the context of domestic violence. Criminal prosecution statistics differentiate only according to the elements of a criminal provision of the Criminal Code (Strafgesetzbuch) and other criminal provisions outside the Criminal Code. Other criminologically relevant data relating to the way in which the offence was committed is not recorded. This applies in particular to the place where the offence was committed and the offender-victim relationship. As regards physical injuries, for example, it is not possible to identify domestic violence offences.

By virtue of Article 19 of the Act to further develop the German Code of Criminal Procedure and to amend other provisions (Gesetz zur Fortentwicklung der Strafprozessordnung und zur Änderung weiterer Vorschriften) dated 25 June 2021 (Federal Law Gazette I 37/2099), the protected right of “sexual self-determination” was included in Section 1 of the Act on Protection against Violence (Gewaltschutzgesetz). The Act entered into force on 1 July 2021.

In 2021, 47,806 proceedings relating to measures under Sections 1 and 2 of the Act on Protection against Violence were settled by the local courts (a slight increase compared to 2016: 47146).

By virtue of Article 2 of the Act to amend the German Criminal Code - more effective fight against stalking and better coverage of cyberstalking as well as measures to improve the criminal law protection against forced prostitution (Gesetz zur Änderung des Strafgesetzbuches - effektivere Bekämpfung von Nachstellungen und bessere Erfassung des Cyberstalkings sowie Verbesserung des



strafrechtlichen Schutzes gegen Zwangsprostitution) dated 10 August 2021 (Federal Law Gazette I 53/3513), the range of penalties under Section 4 of the Act on Protection against Violence was raised from “up to one year” to “up to two years”. The Act entered into force on 1 October 2021.

The measures will improve the protection of sexual self-determination and have a stronger deterrent effect.

Observations

While welcoming very much the ratification of the Istanbul Convention to which the Government refers in its Report as well as the very recent ratification of the ILO [Violence and Harassment Convention, 2019 \(No. 190\)](#) on 14 Jun 2023 there are still **serious problems** in relation to domestic violence. For the Year 2021 the Federal Statistical Office states (20.6.2023) concerning female victims of intimate partner violence:

Overall, the number of violent offences by the (former) partner recorded by the police decreased slightly last year - from 119,164 in 2020 to 115,342 female victims of intimate partner violence in 2021. This means that more than 80 percent of the victims of intimate partner violence were women. In the case of the offences of threats, stalking and coercion in the partnership, around 86 percent of the victims were female.²⁷

This official information reveals that still more than 100,000 women are victims of intimate partner violence in 2021. Additionally, it should be taken into account that there is a very high probability of a much higher number of unreported cases.

Moreover, in Germany, there was a dramatic increase of domestic violence after the years of the Corona pandemic. Significantly more cases of domestic violence were registered in 2022; nationwide, there are now almost 180,000 victims (9.3 percent more than in the previous year), two-thirds of them women.²⁸

One in four women in Germany experiences physical or sexualized violence at least once in her life at the hands of her partner or former partner. Statistically, one partner or ex-partner tries to kill his wife every day and succeeds in doing so every third day. Two-thirds of female victims did not go to the police or seek help elsewhere, even after the most severe violence.²⁹

²⁷ <https://de.statista.com/statistik/daten/studie/1121554/umfrage/weibliche-opfer-von-gewalt-in-der-partnerschaft-in-deutschland/>. However, it should be noted that the number has increased again in 2022 (‘Significantly more cases of domestic violence were registered in Germany in 2022: ‘According to “Welt am Sonntag”, there were almost 180,000 victims nationwide - 9.3 percent more than in the previous year. A study is underway on a much higher estimated number of unreported cases.’ This result is based on official data. (<https://www.tagesschau.de/inland/gesellschaft/haeusliche-gewalt-120.html>)

²⁸ „Zuhause ist mehr Gewalt eingezogen“. <https://www.tagesschau.de/inland/gesellschaft/haeusliche-gewalt-120.html>, 18.06.2023.

²⁹ „Zuhause ist mehr Gewalt eingezogen“. <https://www.tagesschau.de/inland/gesellschaft/haeusliche-gewalt-120.html>, 18.06.2023; https://www.zeit.de/news/2023-06/16/paus-will-einheitlichen-rahmen-fuer-mehr-schutz-fuer-frauen?utm_referrer=https%3A%2F%2Fwww.google.de%2F.

Primary source: Lisa Paus, Bundesfrauenministerin, auf der Konferenz der Gleichstellungs- und Frauenministerinnen- und -minister im Juni 2023.

The Federal Government must therefore equip all state institutions to combat effectively domestic violence, by providing the necessary human resources and ensuring that competent workers have the necessary qualifications to perform the relevant tasks.

Therefore, the federal, state and local governments should

- grant all victims of domestic violence a legal right to immediate protection and assistance in the event of violence,
- ensure that judicial authorities (public prosecutors and courts) and youth welfare offices are always available (24/7) and that foreigners and migration authorities are on call,
- ensure that persons concerned are better informed how they can more easily document signs of violence in a court-proof manner without being obliged to report on them individually ,
- create binding nationwide regulations to ensure a broad-based support system that meets the needs of victims of domestic violence. This includes, for example, the expansion of digital counseling and the permanent provision of shelters,
- ensure the establishment of outpatient clinics for victims of violence through independent federal legislation and establish binding minimum standards for the states and municipalities,
- ensure the livelihood of people affected by violence for the time they are housed in a protection facility, regardless of their residence status,
- in accordance with the Istanbul Convention, bring about an agreement among the federal states on a uniform definition of the phenomenon of "domestic violence", which is urgently needed for the collection of data,
- establish uniform parameters for the collection and evaluation of statistical figures for the phenomenon of "domestic violence",
- develop and implement concepts for the prevention of violence against women in shelters (for refugees, among others),
- Counseling centers must be funded in such a way that campaigns and services for the prevention of sexualized violence can be expanded and made permanent,
- Promote research on the occurrence, causes and effects of gender-based violence and femicides.

Question b)

- b) For States Parties not having accepted Article 31, please provide updated information on the availability of adequate affordable housing for families.

Government's reply

In Germany, social housing benefits households - and thus also families - that, in particular because of their income, are not able to provide themselves with adequate housing on the market and need support in accordance with Länder law provisions. Upon application, these households receive a certificate of eligibility for subsidised housing that entitles them to rent subsidised housing, if available. If several holders of such a certificate apply for one and the same subsidised accommodation, it is up to landlords to decide on their future tenants, as a rule; in cases where a particular need for assistance prevails, the landlord's freedom to decide may be restricted by the competent authority. Furthermore, housing allowances are an effective means to reduce the burden of the costs of housing. They are granted as a rent subsidy to households with low incomes just above the level of basic income support. The majority of housing allowance recipients are pensioners and families (especially single parents).



Observations

Concerning the availability of adequate affordable housing for families the Report does not provide any concrete information, although the Committee had explicitly asked 'that the next report provide detailed information and figures (demand and supply) on the various types of housing support for vulnerable families.'³⁰

Moreover, the Federal Statistical Office states that '[t]he housing market is becoming increasingly unsocial'; according to

official figures of the federal government ..., the number of social housing units in Germany has almost halved in the last 15 years. The reasons for this development: social housing construction in Germany is largely perceived as unattractive by companies in the real estate industry. The lower returns compared to privately financed housing, rent control and the deterrent effect of the socially weak tenant group make many investors reluctant to invest in social housing. The subsidy programmes are also criticised by the companies as insufficient.³¹

According to the same source,³² the number of social rented flats ('Anzahl der Sozialmietwohnungen') was as follows

- 2007: 2,034,000;
- 2019: 1,137,000;
- 2021: 1,102,000.

These figures not only show the important decrease calculated from 2007 but even within the years concerning the reference period (2019 and 2021).

Question c)

- c) Are family or child benefits provided subject to a means-test? If so, what is the percentage of families covered?

Government's reply

In Germany, there are different forms of financial support and relief for families. Some of them are means-tested (for example, basic income support benefits, child **supplement**, housing allowance), others are not (child **benefit**, tax relief measures, family-related elements in the social insurance systems).

A family is entitled to a child **supplement** if that supplement, when added to the parents' income to be taken into account, the child benefit and, if applicable, a housing allowance under the Housing Allowances Act (Wohngeldgesetz), helps to prevent a situation of need as described in Section 9 of Book Two of the Social Code (Sozialgesetzbuch Zweites Buch, SGB II). Since 1 January 2020, a family is entitled to a child supplement also in cases where tests show that their income exceeds the threshold where need would arise by not more than 100 euros. A family applying for a child supplement must not be in receipt of basic income support for job seekers. The standard needs of the parents and the children, any additional needs and the total costs of housing and heating are taken into account as needs under Book Two of the Social Code. Currently, child supplements are paid for 790,000 children (November 2022).

³⁰ Even the reply to question h) (see below) does not contain the respective data.

³¹ <https://de.statista.com/infografik/12473/immer-weniger-sozialwohnungen-in-deutschland/>

³² Referring itself to the 'Deutscher Bundestag' as source.

More information on child **supplements** and child **benefits** is supplied in the following comments.

Observations

Despite the legal framework as described by the Report the reality is that there is **child poverty**. This is confirmed by the latest CESCR's Concluding Observations:

50. The Committee is concerned that 19.7 per cent (2.55 million) of children are living in poverty, the majority of whom are living with a single parent or in families with two or more siblings. It is also concerned that the level of child benefits remains insufficient to meet their basic needs. It is also concerned at reports that some parents, including migrant parents, do not apply for child benefits owing to bureaucratic hurdles or a lack of information about benefits and that the State party does not effectively assess the reasons for people not taking up benefits (arts. 9 and 10).

51. **The Committee recommends that the State party continuously review the adequacy of the child benefit schemes, including standard child benefits, supplementary child allowances and the education and participation package, with a view to eradicating child poverty. It also recommends that the State party collect data on child benefits schemes, including take-up rates, and take the measures necessary to address the difficulties faced by eligible households in accessing the benefits.**³³

It should be recalled that also CRC had already addressed this problem before in its latest Concluding Observations.³⁴

Question d)

d) Please provide information about the amounts paid in child/family benefit as well as the median equivalized income for the reference period.

Government's reply

The child benefit is the major financial support for families. Currently, it is graded according to the number of children. It amounts to 219 euros per month for a first and second child each, to 225 euros for a third child and to 250 euros per month for a fourth and any further child. As from 1 January 2023, child benefits will rise to 250 euros per month and per child.

The child supplement supports families with up to 229 euros (including immediate supplement) per child and per month - in addition to child benefits. A family receiving child supplements is also entitled to education and participation benefits and can be exempted from the fees payable for child day-care.

As from January 2023, the maximum amount of the child supplement will rise to up to 250 euros per month and per child (relief package III, "Entlastungspaket III"). The child supplement is index-linked. It is calculated taking into account the current subsistence level report and the level of child benefits which means that it rises automatically, if necessary.

³³ CESCR, Concluding Observations, 27.11.2018, ([E/C.12/DEU/CO/6](#)).

³⁴ CRC, Concluding Observation, 25.2.2014, ([CRC/C/DEU/CO/3-4](#)), paras. 64 ('The Committee is concerned about the rise in the poverty rate and the at-risk-of poverty rate among children, with children from single-parent families, large families and families from ethnic minority backgrounds being particularly affected, above all when the adults are unemployed or in a precarious job situation.') and 65 (with respective recommendations).



It is expected that the take-up of child supplements will go up in 2023 because of the increase of the monthly maximum amount and the coming housing allowances reform. According to the SILC micro-census, the median of the equivalence-weighted net income amounted to 25,015 euros in 2021; this corresponds to a monthly value of 2,085 euros.

Observations

The Report does not contain data to how many children the different forms of financial support is provided. Moreover, child poverty is an actually existing problem (see above, Observation to question c)).

Question e)

- e) Is there a length of residence requirement imposed on nationals of other States Parties lawfully resident in your country for eligibility to child/family benefits?

Government's reply

Foreign nationals can claim child benefits if they

- are nationals of a member state of the European Union (EU), the European Economic Area (EEA) or Switzerland,
- are nationals of one of the following states: Algeria, Bosnia-Herzegovina, Kosovo, Morocco, Montenegro, Serbia, Tunisia or Turkey and, in addition, hold a job subject to compulsory social insurance contributions or are in receipt of unemployment benefits or sickness benefits in Germany,
- hold a valid settlement or residence permit that allows them to work in Germany or belong to the group of incontestably recognized refugees and persons entitled to asylum.

There are no uniform regulations on the required length of residence in Germany for the various groups of foreign nationals.

Foreigners may be entitled to a child supplement if they are inter alia entitled to child benefits and have a minimum income.

Observations

The Report refers to the eligibility of nationals from EU, EEA or some further Contracting Parties (like Bosnia-Herzegovina and Montenegro) for child benefits. However, nationals from other Contracting Parties (like Albania, Andorra, Armenia, North Macedonia) are not covered by the personal scope. This discrimination is not in conformity with Article 16.³⁵

Question f)

- f) What measures have been taken to ensure that vulnerable families can meet their energy needs, in order to ensure their right to adequate housing (which includes access to essential services)?

³⁵ In relation to problems of 'equality before the law provision' in the Basic Law (Article 3(1)), see also the Federal Constitutional Court' decision 28.6.2022 - 2 BvL 9/14 -, Rn. 1-116, http://www.bverfg.de/e/ls20220628_2bvl000914.html.



Government's reply

Further measures were taken in view of the strong energy price increases in 2022. They are not described in this report because they were taken outside the reference period from 1 January 2018 to 31 December 2021.

Observations

The Report does not contain any information in reply to the question concerning the reference period.

Question g)

- g) If specific temporary measures were taken to financially support vulnerable families during the Covid-19 pandemic, will they or are they expected to they been maintained or withdrawn? If they have been withdrawn, what effect is this expected to have on vulnerable families?

Government's reply

During the Covid-19 pandemic, the child supplement has been adjusted several times with the aim to simplify and speed up the provision of support for entitled families. To a large extent, these simplifications have been maintained.

Observations

The Report does not contain any precise information in reply to the question concerning the adjustments during the COVID-19 period.

Question h)

- h) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

Government's reply

Support for social housing

In Germany, no statistics are available at the federal level on support for social housing. Annual reports of the Länder may be used as data sources. However, they do not contain any specific data on housing support for vulnerable families.

Housing allowances are an effective means to reduce the burden of the costs of housing. They are granted as a rent subsidy to households with low incomes just above the level of basic income support. About 48 per cent of the households where all members receive housing allowances are families (as of: 2019).

Emergency accommodation

In Germany, the local authorities are responsible for the provision of emergency accommodation for homeless persons. No statistics are available on the number of places for emergency accommodation in Germany. Consequently, it cannot be said whether that number is adequate.

Refugees and other vulnerable groups

Asylum-seekers who have been recognized as refugees are residing permanently in the Federal Republic of Germany. If they are in need (in general, this can be assumed for asylum-seekers due to a lack of income) they receive a certificate of



eligibility for subsidised housing upon application that entitles them to rent subsidised housing. If several holders of such a certificate apply for one and the same subsidised accommodation, it is up to landlords to decide on their future tenants, as a rule; in cases where a particular need for assistance prevails, the landlord's freedom to decide may be restricted by the competent authority.

As a result of the influx of refugees and the related need for additional accommodation, the payments made by the Federation to the Länder from 2007 to 2019 to compensate for the withdrawal of federal financial assistance in social housing were raised (withdrawal in the context of the federalism reform I of 2006). Originally, about 0.5 billion euros were paid per year. First, this amount was raised to 1.0 billion euros in 2015 and then to 1.5 billion euros each year from 2016 to 2019. (NB: Due to another constitutional amendment, financial assistance granted by the Federation to the Länder was reintroduced in 2020.)

No information is available to the Federal Government on the number of refugee families that had access to social housing or were in receipt of housing allowances after leaving reception centres.

Observations

Compared to the detailed questions of the Committee (see above) the answers do not (or only to a minimal extent) contain the information wished by the Government.

Conclusions

On the basis of the above, it is suggested that the Committee concludes that the situation in Germany is not in conformity with Article 16 ESC on the grounds that

- equal treatment is not guaranteed to nationals of all States Parties to the Charter in respect of the granting child benefits,
- it is not shown that the situation in relation to prevention of domestic violence and sufficient social housing is in conformity with the Charter.

2.3 Article 19 – The right of migrant workers and their families to protection and assistance

General observations

In relation to Article 19, several general observations appear necessary:

Specific importance of Article 19

First, it does not appear justifiable to refrain from targeted questions to the Governments since this Article 19 is one the 'hard core' articles (Article 20(1)(b) ESC) and together with other hard-core article (Articles 7 and 16) 'Group 4' is titled 'Children, families and migrants'. The Committee is encouraged to review its practice in this respect.

Need for recommendations to ratify pertinent international instruments

In relation to the ratification status of international instruments (see above) Germany has ratified only the ILO [Migration for Employment Convention \(Revised\), 1949 \(No. 97\)](#). Ratification is still lacking for the following international instruments protecting migrant workers:

- ILO: [Migrant Workers \(Supplementary Provisions\) Convention, \(No. 143\)](#) (1975),



- UN: [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) (1990),³⁶
- CoE: [European Convention on the Legal Status of Migrant Workers](#).

It is suggested that the Committee recommend to ratify those instruments.

Reporting obligations

In concretising the reporting obligations (See above), the ECSR reminds the Governments as follows:

No information required. However, if the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

This obligation is of utmost importance in relation to the negative conclusions in respect of paras. 6 and 10 of Article 19 (see below).

2.3.1 Para. 1 - Assistance and information

Previous assessment by the ECSR

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee noted that Germany had an Action Plan against racism dating back to 2008 and not revised using a participatory approach and that it did not include practical measures or officials responsible for their implementation, nor timetables or control indicators. It asked for information on any further evaluation or update of the Action Plan. It further requested complete and up-to-date information on any measures taken to target illegal immigration and in particular, trafficking in human beings. It also asked what monitoring systems existed to ensure the implementation of anti-discrimination regulations.

The report does not address the above mentioned issues and does not reply to the Committee's queries. The Committee thus recalls its questions and underlines that should the next report not provide comprehensive information in this respect, there will be nothing to show that the situation is in conformity with the Charter on this point.

Conclusion

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

Government's reply

Concerning the National Action Plan against Racism the Report states:

³⁶ See also:

- CEDAW, Concluding Observations, 31.5.2023, CEDAW/C/DEU/CO/9, para. 60 ('encourages the State party to ratify'),
- CESCR, Concluding Observations, 27.11.2018, ([E/C.12/DEU/CO/6](#)), para. 62 ('recommends that the State party consider ratifying'),
- CERD, Concluding Observation, 30.6.2015, ([CERD/C/DEU/CO/19-22](#)), para. 22 ('encourages the State party to consider ratifying'),
- CRC, Concluding Observation, 25.2.2014, ([CRC/C/DEU/CO/3-4](#)), para. 80 ('recommends that ... the State party ratify').



Against the background of the UN World Conference Against Racism in Durban in 2001 and the National Action Plan issued in 2008 for the first time, the National Action Plan against Racism (NAP-R) was expanded and relaunched in 2017. ... The NAP-R is not to be understood as a static programme, but – within the framework of federal competence – as a framework set by the Federal Government, open to further discourse. The coalition agreement for the 20th legislature states for example that the NAP-R has to be adjusted and further developed. This will be implemented by the Federal Government Anti-Racism Commissioner within the meaning of a participatory approach.

Observations

The Report does not contain practical measures, nor timetables or control indicators in relation to the updated NAP-R (2017). The same applies to the activities of the responsible Federal Government Anti-Racism Commissioner and their results.

Obviously, there is again a lack of information. Following its indication that 'should the next report not provide comprehensive information in this respect, there will be nothing to show that the situation is in conformity with the Charter on this point.'

Conclusions

On the basis of the above, it is suggested that the Committee concludes that the situation in Germany is not in conformity with Article 19§1 ESC as it is not shown that the situation is in conformity with the Charter.

2.3.2 Para. 4 - Equal treatment in employment conditions, right to organise, accommodation

Previous assessment by the ECSR

In its Conclusions XXII-3 (2019) the ECSR has deferred its conclusion asking several questions concerning:

- **Remuneration and other employment and working conditions**

The Committee asks the next report to provide additional information on any practical measures taken to implement the legislative framework, such as awareness-raising measures or training for employees.

- **Monitoring and judicial review**

The report does not provide any information in this respect. In its previous conclusion ([Conclusions XXI-2 \(2017\)](#)), the Committee noted that Germany set up the Office for the Equal Treatment of EU workers under the Federal Government Commissioner for Migration, Refugees and Integration in May 2016 with the objective of the Equal Treatment Office is to support EU citizens and their family members with their rights with respect to the principle of freedom of movement for workers. It asked for relevant information to be provided. Furthermore, there is no information about the protection of non-EU migrant workers in this respect....

and concluded in the following terms:

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

Government's reply

The Government's Report provides information about the



- Office for the Equal Treatment of EU Workers (EU Equal Treatment Office)
- General Act on Equal Treatment and Federal Anti-Discrimination Agency
- Project 'Fair Mobility' and
- Other practical steps.

Observations

The Government's Report appears sometimes insufficient if not (at least in one respect) misleading:

Posting of workers

There is a fundamental problem with the limitations on equality in relation to posted workers. According to the ECSR's case law³⁷ those workers have to be considered as 'migrant workers', thus profiting from all rights to equality according to Article 19§4. This is not the case in Germany.³⁸ According to the Act on the Posting of Workers (Arbeitnehmer-Entsendegesetz, AEntG)³⁹ legal minimum standards are in principle secured (Section 2), however, collective agreements (section 3) assumed to go above those minimum standards are applicable only if they are

- concluded (or applied) nationwide
- generally applicable (*erga omnes*) either by a ministerial recognition (Allgemeinverbindlicherklärung) or by a regulation (Sections 7 and 7a).

General Act on Equal Treatment

Concerning the **General Act on Equal Treatment** (AGG) and the Federal Anti-Discrimination Agency the Government's report on the one hand correctly refers to the objective of the Act which is to prevent or eliminate discrimination on grounds of race or on grounds of ethnic origin, gender, religion or belief, disability, age or sexual identity. This list does not contain 'nationality' whereas Article 19§4 clearly requires a 'treatment not less favourable than that of nationals'. This is underlined by Article 3(2) of the EU Directive 2000/78⁴⁰ clearly stating:

This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

³⁷ [Decision on admissibility and the merits: Swedish Trade Union Confederation \(LO\) and Swedish Confederation of Professional Employees \(TCO\) v. Sweden, Complaint No. 85/2012](#), para. 141.

³⁸ Act on the Posting of Workers (Arbeitnehmer-Entsendegesetz - AEntG). See for example, Annette Jensen, Die Entsendung wird missbraucht, um den Mindestlohn zu umgehen, <https://www.boeckler.de/de/magazin-mitbestimmung-2744-die-entsendung-wird-missbraucht-um-den-mindestlohn-zu-umgehen-5901.htm>: Eastern European companies use a variety of tricks to cheat their employees. But most of the controls come to nothing. (Mit vielfältigen Tricks prellen osteuropäische Firmen ihre Beschäftigten. Doch die meisten Kontrollen laufen ins Leere.)

³⁹ https://www.gesetze-im-internet.de/aentg_2009/BJNR079900009.html (no official translation being available).

⁴⁰ This Directive is transposed into the German legal order by the said Act.



Accordingly, migrant workers can only complain on one of the eight grounds quoted above but not on the ground of nationality, i.e. that they are discriminated as migrant workers.

Therefore, all further information in the Report on the Federal Anti-Discrimination Agency and the workers' rights is in principle not pertinent.⁴¹ However, they are pertinent in the sense that they show which avenues and remedies are missing if migrant workers want to prevail themselves with the same procedural protection when it comes to discrimination on the – currently not accepted in the AGG – ground of 'nationality'.

Particularly vulnerable groups of migrant workers

The CESCR in its latest Concluding Observations has criticized in particular the situation of domestic workers, primarily women migrant workers being in need for protection:

Domestic workers

42. Noting that approximately 163,000 caregivers, primarily women migrant workers, are employed in private households in Germany, the Committee is concerned that they are required to work excessive hours without regular rest and are vulnerable to exploitation, that labour inspections are insufficient and that these workers have access to limited and fragmented complaint mechanisms (art. 7).

43. **The Committee recommends that the State party ensure that domestic workers, who are mainly employed as caregivers, enjoy the same conditions as other workers as regards remuneration, rest and leisure, limitation of working hours and protection against unfair dismissal. It also recommends that the State party protect them from exploitation and abuse. It further recommends that the State party improve the complaint mechanisms so as to make them easily accessible to these workers and that the State party ensure effective inspection mechanisms to monitor their conditions of work. The Committee draws the attention of the State party to paragraph 47 (f) of its general comment No. 23 (2016) on the right to just and favourable conditions of work.**⁴²

Conclusions

On the basis of the above, it is suggested that the Committee concludes that the situation in Germany is not in conformity with Article 19§4 of the Charter on the ground that it has not been established that adequate practical measures have been taken to eliminate all discrimination concerning remuneration and other employment and working conditions.

⁴¹ Moreover, the information that 'employment and working conditions including work remuneration and conditions of dismissal' is not correct in the sense that not this Act but only the normal legislation concerning the protection against unfair dismissal applies (Section 2(4)): 'The provisions on general and special protection against dismissal shall apply exclusively to dismissals.' (The 'official' translation (https://www.gesetze-im-internet.de/englisch_agg/englisch_agg.html) reads as follows: '(4) Only the provisions governing the protection against unlawful dismissal in general and specific cases shall apply to dismissals.')

⁴² 27.11.2018, E/C.12/DEU/CO/6, <https://undocs.org/E/C.12/DEU/CO/6>.



2.3.3 Para. 6 - Family reunion

Previous assessment by the ECSR

The Committee concludes that the situation in Germany is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:

- the requirement for migrant workers to hold a temporary residence title for two years in certain circumstances before being entitled to family reunion is too restrictive;
- the requirements to prove language proficiency for family reunion of children over 16 wishing to move to Germany with one parent without the consent of the other, present an obstacle to family reunion;
- spouses do not enjoy an independent right of residence in case of expulsion of a migrant worker.

Government's reply

Reference is made to previous reports.

Observations

Against the background of the Committee's recalling of the reporting obligation (see in the beginning of section 2 above), it would appear that the Government ignored its obligation to report on negative conclusions. As no new information is provided there is no other possibility than to once again conclude negatively.

Conclusion

On the basis of the above, it is suggested that the Committee concludes that the situation in Germany is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:

- the requirement for migrant workers to hold a temporary residence title for two years in certain circumstances before being entitled to family reunion is too restrictive;
- the requirements to prove language proficiency for family reunion of children over 16 wishing to move to Germany with one parent without the consent of the other, present an obstacle to family reunion;
- spouses do not enjoy an independent right of residence in case of expulsion of a migrant worker.

2.3.4 Para. 8 - Guarantees concerning deportation

Previous assessment by the ECSR

While noting i.a. 'that the conclusion has been one of non-conformity for several cycles on the grounds that legislation permitted expulsion of non-EU nationals on grounds unrelated to national security or the public interest, namely lack of resources to ensure subsistence, repeated convictions for drug abuse and being homeless for long periods' the ECSR asks the Government to provide information in several respects (emphases added):

The Committee considers that such regulation [permissible **expulsion** according to Section 54 of the Residence Act] as a whole may meet requirements of reasonableness and proportionality under Article 19§8, however, it needs a comprehensive description of the legal framework and the pertinent procedures, in order to be able to reach a conclusion to this end. It thus requests the next report to provide it with exhaustive information in this respect.



As regards the **expulsion of EU nationals and their family members**, the Committee has assessed the relevant Free Movement Act/EU in its previous conclusion ([Conclusions 2011](#)). It asks that the next report specifies whether any amendments were adopted in the framework of the recent reform.

Finally, the Committee repeats its requests for information on the **rights of the dependents** of the migrant worker to be expelled, both in respect of EU nationals and non EU nationals.

Conclusion

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

Government's reply

In relation to all questions the Report limits its explanations to the following statement:

The requirement from Article 19 (8) is fulfilled. In Section 53 et seq. of the Residence Act (Aufenthaltsgesetz - AufenthG), expulsion law provides for the expulsion of persons only if the interest in expulsion (Section 54 of the Residence Act) outweighs the person's wish to remain (Section 55 of the Residence Act). A case-by-case assessment is therefore always required. Facts backing up the interest of the state to expel a foreigner are set out in the list in Section 54 of the Residence Act. This list complies with the requirement of Article 19 (8) as it only includes facts that may be subsumed under the term that "they endanger national security or offend against public interest or morality".

Observations

First of all, it should be recalled that the Committee has found Germany in breach of this provision continuously since Conclusions XV-2 (reference period 01/01/1997 - 31/12/1998), i.e. more than 20 years. Already against this background, the few lines devoted in the Report to this provision do not appear appropriate.

Even more so, since the Report does not reply to the specific questions addressed by the Committee to the Government:

Expulsion and deportation for foreigners in general

The description of the **legal situation** appears insufficient. A more complete picture would at least contain the following provisions reading as follows:⁴³

Section 5

General prerequisites for granting residence titles

(1) As a rule, a residence title is granted subject to the following **conditions**:

1. the foreigner's subsistence is secure; ...

Section 7

Temporary residence permit

(1) The **temporary residence permit** (*Aufenthaltserlaubnis*) is a residence title which is limited in time. It is issued for the purposes of residence stated in the following Parts of this Act. In justified cases, a temporary residence permit may also be issued for a purpose of residence which is not covered by this Act. The

⁴³ The translation is provided by the Ministry of Interior (https://www.gesetze-im-internet.de/englisch_aufenthg/index.html). All emphases in grey are added.



residence permit defined in sentence 3 does not entitle the holder to pursue an economic activity; such activity may be permitted under section 4a (1). ...

Section 8
Extending the temporary residence permit

(1) Extending the temporary residence permit is subject to the same regulations as granting it...

Section 50
Obligation to leave the federal territory

(1) Foreigners are required to leave the federal territory if they do not or no longer possess the necessary residence title and no right of residence exists or no longer exists under the EEC/Turkey Association Agreement.

(2) Such foreigners must leave the federal territory without delay or, if a period has been allowed for departure, by the end of this period. ...

Section 51
Termination of lawful residence; continued validity of restrictions

(1) The residence title expires in the following cases:

1. when its period of validity expires, ...
5. when the foreigner is expelled, ...

Section 53
Expulsion

(1) Foreigners whose stay endangers public safety and order, the free democratic basic order or other significant interests of the Federal Republic of Germany will be expelled if, after weighing the interest in their departure against their individual interest in remaining in the federal territory, taking into account all the circumstances of the particular case, there is an overriding public interest in the foreigners' departure. ...

Section 54
Interest in expulsion

(2) The public interest in expelling the foreigner within the meaning of section 53 (1) is serious where the foreigner ...

3. has committed or attempted to commit, as a perpetrator or participant, the offence under section 29 (1) sentence 1 no. 1 of the Narcotics Act,
4. uses heroin, cocaine or a comparably dangerous narcotic drug and is not prepared to undergo the necessary treatment for rehabilitation, or evades such treatment, ...

Section 58
Deportation

(1) Foreigners are to be deported if the obligation to leave the federal territory is enforceable, no period has been allowed for departure or such a period has expired, and voluntary fulfilment of the obligation to leave is not assured or supervision of departure appears necessary on grounds of public security and order. If one of the conditions stipulated in section 59 (1) sentence 2 becomes applicable within the period allowed for departure, the foreigner is, as a rule, to be deported before the period expires. ...



Accordingly, there are two ways by which the foreigner has to leave the country and 'are to be deported' (Section 58(1), see above) in case of

- ***Obligation to leave the country because of termination of residence title***
Normally, a foreigner would get a temporary residence permit if all conditions are fulfilled, i.e. also the condition that the ***subsistence must be secure*** (Section 7 in combination with Section 5, see above). If the foreigner is not any more able to secure his or her subsistence at least the temporary residence permit will not be renewed (Section 8, see above). Accordingly, the foreigner has to leave the country (Section 51 in combination with Section 50).
- ***Expulsion***
Besides the termination of the lawful residence according to Section 50(1) No. 1 (see above) the foreigner has to leave the country if being expelled (Section 50(1) No. 5). According to Section 53(1) besides the permissible grounds under Article 19§8 ESC ('national security or offen[se] against public interest or morality') there is a vague formulation ('other significant interests') which obviously allows to expel also because of other reasons. Section 54 defines elements which have to be taken into account as being 'very serious' (para. (1)) or 'serious' (para. (2)), the latter include not only drug offences (or attempts) (No. 3) but also the simple use of drugs (with certain additional conditions, No. 4).

Accordingly, foreigners who do not any longer fulfil the requirement of secure subsistence or are expelled are to be deported on grounds which are even not permitted under Article 19§8.

The Government report does not provide any information on the **situation in practice** although it was requested by the Committee to do so (see above).

Further questions raised by the Committee

The Committee requested the Government to provide information on

- rights of the dependents of the migrant worker
- EU nationals and their family members.

The Government report does not provide any information on those questions.

Conclusions

On the basis of the above, it is suggested that the Committee concludes that the situation in Germany is not in conformity with Article 19§8 ESC as certain grounds for deportation laid down by the Residence Act (like not being able to meet own needs or those of dependants without recourse to social assistance, using heroin, cocaine and other drugs) go beyond the grounds permitted by this provision of the Charter.

2.3.5 Para. 10 - Self-employed migrant workers

Previous assessment by the ECSR

The Committee concludes that the situation in Germany is not in conformity with Article 19§10 of the 1961 Charter as the grounds of non-conformity under Article 19§6 applies also to self-employed migrant workers.

Government's reply

No information available.



Observations

Against the background of the Committee's recalling of the reporting obligation (see in the beginning of section 2 above), it would appear that the Government ignored its obligation to report on negative conclusions. As no new information is provided there is no other possibility than to once again conclude negatively.

Conclusion

On the basis of the above, it is suggested that the Committee concludes that the situation in Germany is not in conformity with Article 19§10 of the Charter as the grounds of non-conformity under Article 19§6 applies also to self-employed migrant workers.

2.4 Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

2.4.1 General considerations

General considerations

Although Article 27 is not a 'hard-core'-Article it is of great importance for the protection of workers with family responsibilities. This is underlined by the ILO [Workers with Family Responsibilities Convention, 1981 \(No. 156\)](#) which formed the basis for Article 27.⁴⁴ However, Germany has not ratified this Convention although being recommended to '[r]econsider its position' in this respect.⁴⁵

In general, the official statistical authority describes that situation as follows:

Reconciling family and career is an ongoing challenge for many working parents and is often a decisive argument when choosing between a full-time and part-time job. But the question of work-life balance can also play an important role in the fundamental decision about a job or whether to use a childcare service.⁴⁶

Despite reforms in family and gender equality policy in recent years, traditional role models and structural conditions continue to contribute to the unequal distribution of unpaid care work and paid work in Germany. Women continue to take on most of the care and housework and reduce their working hours to do so. In the long term, this unequal participation in the labor market prevents women from securing their own livelihoods over the course of their lives, reduces their opportunities for advancement and further education, and increases the risk of poverty in old age.

Although fathers are now more likely to want to participate in childcare and education, they are much less likely than mothers to reduce their working hours and are much less likely to take parental leave, especially for much shorter periods.

Wide scope

In substance, the wide scope should be recalled:

⁴⁴ together with ILO [Workers with Family Responsibilities Recommendation, 1981 \(No. 165\)](#), see [Explanatory Report to the European Social Charter \(Revised\)](#), para. 102.

⁴⁵ CEDAW, Concluding Observations, 31.5.2023, CEDAW/C/DEU/CO/9, para. 44(g) ('Reiterating its previous recommendations (see [CEDAW/C/DEU/CO/7-8](#), para. 36) the Committee recommends that the State party... (g) Reconsider its position on ratifying the Workers with Family Responsibilities Convention, 1982 (No.156) of the International Labour Organization.').

⁴⁶ <https://de.statista.com/themen/5855/vereinbarkeit-von-familie-und-beruf/#topicOverview>



The appendix to this Article gives a definition of men and women workers with family responsibilities. It refers to national legislation for a definition of the terms "dependent children" and "other members of their immediate family who clearly need their care and support".⁴⁷

Looking at the Government's replies in general it has to be noted that they are largely based on childcare thus neglecting the other important element of family responsibilities, i.e. other immediate family members needing care.

2.4.2 Para. 1 - Participation in working life

Question a)

a) Please provide information on whether the Covid-19 crisis had an impact in particular on the possibilities for and the consequences of remote work on the right of workers with family responsibilities to equal opportunities and treatment.

Government's reply

The original intention being to reduce person-to-person contacts at work, the crisis increased the role of working from home. In total, 41 percent of companies expanded or introduced working from home during the pandemic. Although this was implemented out of necessity, the majority of companies want to continue doing so. In particular, there has been a change of attitude among companies that were sceptical about work-from-home policies. They now see the benefits in terms of managing family life and career that working from home can offer when childcare is also taken care of. From a business perspective, working from home allows more mothers to work more hours by eliminating commuting time. (Source: Aus der Corona-Krise lernen: Erfahrungen und Impulse für die betriebliche Vereinbarkeitspolitik, Prognose 2021).

Observations

The Government's positive description on the COVID-19 situation is neglecting the serious difficulties, specifically in relation to child care:

The situation has recently come to a head in the wake of the Corona pandemic at the beginning of 2020, when childcare and classes in daycare centers and schools were largely suspended.⁴⁸

The Corona pandemic and expanded possibilities to work from home have contributed to a strengthening of the traditional division of labor. Those who work at home spend more time on care work - and this applies more strongly to women than to men. According to an expert report for the Third Report on Equal Opportunities of the German Federal Government, the average weekly time spent on care work changes by 1.7 hours for women and by 0.6 hours for men when they switch to a home office.⁴⁹

Women were particularly affected by the pandemic: by the challenges of employment in systemically important professions, by the double burden of care work at home, and by

⁴⁷ [Explanatory Report to the European Social Charter \(Revised\)](#), para. 103.

⁴⁸ <https://de.statista.com/themen/5855/vereinbarkeit-von-familie-und-beruf/#topicOverview>

⁴⁹ Claire Samtleben, Kai-Uwe Müller, Yvonne Lott: [Auswirkungen der Ort-Zeit-Flexibilisierung von Erwerbsarbeit auf informelle Sorgearbeit im Zuge der Digitalisierung](#), Expertise im Rahmen des Dritten Gleichstellungsberichts der Bundesregierung, Februar 2020; vgl. auch [Homeoffice stärkt tradierte Arbeitsteilung - Hans-Böckler-Stiftung \(boeckler.de\)](#).



the loss of income associated with time off, short-time work and unemployment. Growing financial pressure, additional care work and increased housework weighed heavily on the shoulders of women.

In this context, the effects of the pandemic affected all areas of coexistence. The crisis highlighted the existing structural inequalities between women and men as if under a magnifying glass and made the gender gaps even more visible.

The pandemic exacerbated the deficits of equality in working life:

The economic consequences of the crisis affected employees, their income, their working conditions and their job prospects in very different ways. Due to the horizontal and vertical segregation of the labor market, women were (and still are) in a significantly worse starting position than men: Women are more often employed in small and medium-sized (service) companies without collective bargaining agreements or representation of interests. They often work for low wages and in (involuntary) part-time jobs, and they are less often represented in management positions. Even where they earn well, the gender pay gap of 18 percent (measured by the average gross hourly wage) reduces their income compared to that of male employees.

Against this backdrop, the structural disadvantage faced by women as a result of the pandemic has been reproduced and reinforced: Workers with low incomes, working part-time and in companies without a collective agreement or works council were disproportionately burdened during the crisis. This was especially true for women - because the gender pay-gap and tax class V also significantly reduced the crisis-related compensation benefits.

Against the backdrop of the structural discrimination of women in the labor force, even the compensation benefits, which are in themselves correct and effective, unintentionally reproduced the existing inequalities between women and men; this was also true of the compensation benefits created against the backdrop of the pandemic for parents who were unable to pursue their gainful employment due to daycare and school closures. By their gender-political design flaw, they even reinforced the differences: Both insurance benefits were calculated on the basis of net pay. In conjunction with tax class V, in which many women still find themselves in the "supplementary earner" employment model and in which deductions are particularly high, net earnings are especially low. On this basis of calculation, the amount of the transfer for tax class V falls considerably, thus exacerbating the gender (net) pay gap.

This not only has a massive impact on women's independent livelihoods, but also on the division of labor in couple relationships: The loss of income due to unemployment, short-time work or time off weakened the negotiating position of many women in intra-family disputes about the division of care work. Often, families simply did not have the possibility to do without the - usually higher - salary of the man.

Mini-jobbers - two-thirds of whom are women - were completely left out of the equation when it came to compensating for loss of income: Mini-jobbers are not entitled to unemployment benefits and do not receive state support in the form of short-time working allowances because they are not subject to social insurance contributions. During the crisis, mini-jobbers were particularly at risk of unemployment: By the end of March 2020, the number of marginally employed persons in the commercial sector had already fallen sharply compared to the previous year. Across all sectors, almost twice as many women lost their mini-job as men.

Women in the workforce have safeguarded services of general interest



Women make up the majority of workers in the so-called system-relevant professions: The cashier, the cleaner, the geriatric nurse, the educator, and the nurse. They saved lives in the Covid-19 pandemic and provided normalcy for others in crisis. Yet they worked under poor working conditions and with low incomes because their industries are characterized by weak collective bargaining, low wages and a high degree of (involuntary) part-time work. The pandemic exacerbated their situation: in addition to worries about livelihoods, work stresses and health risks increased due to direct and frequent contact with people, coupled with a lack of protective measures.

Corona bonuses for workers in individual system-relevant areas expressed appreciation, but they did not do justice to the social value of the work. Structural and sustainable improvements for workers, fair working conditions and higher incomes are crucial. This would also contribute to closing the pay gap and helping women secure their own livelihoods.

Question 1 (Full report)

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Government's reply

An introductory paragraph

In order to foster the pension entitlements of persons raising children, it is necessary to promote the labour force participation rate of parents by improving the reconciliation of work and family life and family-friendly working conditions. The Federal Government aims to increase the labour force participation rate of women. The Federal Government's labour market, gender equality and family policies serve this objective.

is followed by information about the statutory pension insurance.

Observations

In the employment-centered pension system of the Federal Republic of Germany, the pension amount results from the duration of employment and the amount of income earned (subject to social security contributions) over the course of a lifetime. The lack of independent livelihood security of women in the employment phase thus has a direct effect on their income at retirement age: In 2021, the pension gap between men and women was around 34 percent - in eastern Germany, it was significantly smaller at 16 percent than in western Germany at 39 percent.

The obstacles that women face in their employment phase are therefore directly reflected in their pension provision. In order for women to be able to live on their pensions in the future and to reduce the pension gap between the sexes, egalitarian employment behavior must be supported and the traditional division of roles overcome. Additionally, the statutory pension insurance system must be strengthened, because it is the only way to ensure social equality

The Report only contains very general political aims without addressing any specific details in relation to para. (1)(a) requiring to take appropriate measures:

to enable workers with family responsibilities to enter and remain in employment, as well as to reenter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;

Thus, this important element remains without any information.



The same applies to further family responsibilities for 'other members of the immediate family' (Appendix to Article 27).

Conclusions

There is a clear lack of information.

Question 2 (Full report)

(2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Government's reply

Increasing the number of child day-care facilities and improving their quality is a central concern of the Federal Government. The Federation, Länder and municipalities share the aim of establishing a demand-oriented and good quality supply of childcare places throughout Germany. With the entry into force of the Child Day-Care Promotion Act, the legal entitlement to a childcare place from the child's first birthday was enshrined in law. The Länder and municipalities are responsible for implementing the legal entitlement to a day-care place at local level. In the federal system of the Federal Republic of Germany, the municipalities are responsible for the provision and financing of childcare places, either in all-day nurseries or by private childcare providers. The basis for this is Book VIII of the Social Code and the childcare laws of the Länder. The districts and cities act within the framework of local self-government and are subject to the legal supervision of the competent Land authorities. The Federal Government has no possibility to issue instructions to them or influence their decisions in any other way. As a rule, the Länder are responsible for financing according to Section 74a of Book VIII of the Social Code.

Observations

Government remains responsible for the implementation of the requirements stemming from international obligations of Germany.

Question 3 (Full report)

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Government's reply

Additionally on the situation of the expansion of child day-care in Germany:
„Kindertagesbetreuung Kompakt. Ausbaustand und Bedarf 2021.“⁵⁰

Observations

The importance of early childhood education and care for society as a whole is undisputed - both for the participation and educational opportunities of children and for the life and career planning of parents. Quantitative expansion has progressed over the past decade. Despite several measures taken by the competent authorities child-care facilities are still not sufficient.

⁵⁰ <https://www.bmfsfj.de/resource/blob/198582/91782a04c2b2f916dae909998bf38208/kindertagesbetreuung-kompakt-ausbaustand-und-bedarf-2021-data.pdf>



In quantitative terms: important lack of numbers

The Report itself does not contain any concrete information, it only refers to a publication by the respective Ministry. But even this official information by the Government states the lack of facilities as follows:

Accordingly, in contrast to the Child Day-Care Promotion Act with the legal entitlement to a childcare place from the child's first birthday the practice is by no means sufficient.⁵¹

Additionally, it should be referred to a study analyzing the situation in relation to child daycare places calculates the missing child-care places by 383,600 for 2023⁵² in the following terms:

Germany still has too few daycare places to meet demand. Measured against childcare demand, there is likely to be a shortfall of up to 383,600 places nationwide next year: 362,400 in the west and 21,200 in the east. This is the result of our new calculations for the current state monitoring of early childhood education systems.⁵³

Concerning the childcare wishes of parents the study reveals the big discrepancy between the wishes of the parents and the missing places for child day-care.

Even 10 years after the introduction of the legal right to daycare for children from the age of one, this right cannot yet be met for all children whose parents have a need. The differences between the childcare rate and parents' childcare wishes are particularly large in the western states. There, almost 31 percent of under-threes used daycare in 2021, but 44 percent of parents expressed a desire for care. In eastern Germany, the situation is different: in 2021, more than 52 percent of children under three were already attending daycare. But here, too, parents' needs are not yet met: 60 percent want daycare for their child.⁵⁴

Also, the offer of care times during the day, in the so-called off-peak hours and during vacations has not yet met parents' childcare needs. The periods of admission to a daycare center but usually very tight timeframes also often do not meet parents' childcare needs.

Accordingly, the situation in relation child-care services does not appear sufficient to fulfil the requirements of Article 27(1)(c).

In qualitative terms:

It should be recalled that the CEDAW in its latest Concluding Observations concerning Germany recommended to

Provide skills training and incentives to orient women and men to non traditional career paths, strengthen remuneration of women providing care to family members and ensure that caregiving and childrearing periods are counted increasingly towards women's pension benefits, adopt and monitor compliance with

⁵¹ Ibid, p. 15.

⁵² On the basis of the numbers for 2021 ('To determine the number of missing daycare places in all federal states, we matched the daycare rates of daycare children in 2021 with the share of parents who expressed a need for daycare in the same year in the childcare study of the German Youth Institute (DJI)').

⁵³ <https://www.bertelsmann-stiftung.de/de/themen/aktuelle-meldungen/2022/oktober/2023-fehlen-in-deutschland-rund-384000-kita-plaetze>

⁵⁴ <https://www.bertelsmann-stiftung.de/de/kita-personal-braucht-prioritaet>



statutory quota for women's representation in managerial positions in the private sector and encourage companies to create part time opportunities in high-level positions;

Continue improving staffing ratios for day-care centres and ensure high-quality and reliable childcare and after-school care for children, if necessary for the entire duration of the working day;

Develop a national plan to address the care deficit at old age with a gender lens in relation to both care recipients and formal and informal care providers;⁵⁵

Ensure that an adequate childcare infrastructure is in place, provide training opportunities as a means of increasing diversification and alternative forms of employment for women to encourage young women to stay in rural areas and increase the provision of care services for older persons.⁵⁶

In general, there has been an increasing focus on the qualitative development of early childhood education, care and education in Germany. With the „Act on the Further Development of Quality and the Improvement of Participation in Day Care Facilities and in Child Day Care“ (the so-called „Gute-KiTa-Gesetz“) of 2019 the quantitative and qualitative expansion of day-care centers has been anchored in federal law for the first time. This laid the foundation for nationwide standards and the creation of equal living conditions.

In addition to the structural and material equipment, the group sizes and an appropriate amount of time for the management of the facilities, the staffing ratio and the qualification level of the pedagogical staff are considered to be the yardsticks for good daycare center quality. In this context, a child-friendly staffing ratio has a direct impact on the working conditions of the workers (smaller group sizes, fewer simultaneous demands, less noise, more pedagogical interaction and educationally stimulating activities).

Here, too, differences in the east-west comparison become apparent: While in the east, in purely quantitative terms, significantly more children can take advantage of care, the educators in the west care for arithmetically two children less.

All children in Germany must have access to childcare that meets their needs and is appropriate for them. The report does not show that the requirements of the so-called „Gute-KiTa-Gesetz“ are met.

It should also be taken into account, according to the Bertelsmann Foundation's Skilled Worker Radar, there will be a shortage of more than 230,000 childcare and elementary school specialists by 2030. Others assume a need of about 372,000 professionals in early education (educators and childhood educators) until 2025 to be able to realize the expansion and the legal claim.

Conclusions

On the basis of the above, it is suggested that the Committee concludes that the situation in Germany is not in conformity with Article 27§1 ESC on the ground that

- it has not been established that "other members (than children) of their immediate family who clearly need their care and support",
- women were particularly affected by the pandemic: by the challenges of employment in systemically important professions, by the double burden of care

⁵⁵ CEDAW, Concluding Observations, 31.5.2023, [CEDAW/C/DEU/CO/9](#), para. 44 (c), (d) and (e).

⁵⁶ Ibid. para. 50 (b).



- work at home, and by the loss of income associated with time off, short-time work and unemployment,
- there is still a clear lack of quantitative and qualitative sufficient child daycare facilities.

2.4.3 Para. 3 - Illegal ground for dismissal

Question 1 (Full report)

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Government's reply

As a general rule, an employer must not dismiss an employee because he or she lawfully exercises a right. Under Section 612a in conjunction with Section 134 of the Civil Code (Bürgerliches Gesetzbuch - BGB), such so-called disciplinary or retaliatory dismissal is prohibited and invalid. Furthermore, within the scope of the Protection against Dismissal Act (Kündigungsschutzgesetz - KSchG), dismissals must be socially justified by person-related, behavioural or operational reasons (cf. Sections 1 and 23 of the Protection Against Dismissal Act).

Employees may bring an action for protection against dismissal before the Labour Court to achieve a decision that the employment relationship was not terminated by the notice of termination (cf. Section 4 of the Protection against Dismissal Act). The employer's obligation to continue the employment relationship and to retroactively pay any unpaid salary or wages provides full compensation for the damage suffered by the employee as a result of an invalid dismissal. In addition, employees may apply for the termination of the employment relationship in return for compensation if they cannot be expected to continue the employment relationship (cf. Section 9 (1) sentence 1 of the Protection against Dismissal Act) despite the fact that the dismissal has been declared invalid by the court. If there are reasons why further cooperation between the employer and the employee for the purposes of the employer's business cannot be expected, the employer may also apply for the termination of the employment relationship (cf. Section 9 (1) sentence 2 of the Protection against Dismissal Act). The severance pay to be determined by the court has the purpose of compensating employees for the socially unjustified loss of employment. The severance pay serves as an equivalent for the continuation of the employment relationship. The amount of the severance pay is to be determined by the court after due consideration of the circumstances of the individual case. The statutory maximum amount of severance pay is 12 monthly wages. For employees over 50 or 55 years of age and where the employment relationship lasted either 15 or 20 years, the severance pay equals 15 or 18 monthly wages. This is important for reasons of legal certainty and equality of rights (cf. Section 10 of the Protection against Dismissal Act). Because leaving the amount of severance pay entirely to the court's discretion would permit inequalities which would be difficult to justify. The courts already have a wide margin of discretion.

In addition, Sections 9 and 10 of the Protection Against Dismissal Act apply only to the severance pay to be determined by the court and individual agreements. Court settlements or out-of-court termination agreements may exceed the maximum limit set out in Section 10 of the Protection against Dismissal Act.



Observations

First, the report does not give an answer whether workers with family responsibilities are protected as required by Article 27(3). The reference to Section 612a Civil Code deals primarily with a different situation, i.e. if the employer would have dismissed a worker because he had, for example, claimed before a Labour Court a right not to be discriminated in relation to family responsibilities, and would thus be dismissed by the employer. It does not address the right not to be dismissed on the ground of family responsibility. The further reference to the Protection against Dismissal Act only deals with the general situation rather than with the specific ground of family responsibilities.

Instead, the report could have referred on the one hand to the Parental Allowance and Parental Leave Act (Bundeselterngeld- und Elternzeitgesetz - BEEG) which provides

Section 18 Protection against Dismissal

(1) The employer may not terminate the employment relationship as of the date from which parental leave has been requested. ...

Section 19 Termination at the end of parental leave

The employee may only terminate the employment relationship at the end of parental leave by giving three months' notice.

On the other hand, the Nursing Care Leave Act (Pflegezeitgesetz - PflegeZG) provides as follows:

Section 5 Protection against dismissal

(1) The employer may not terminate the employment relationship from the announcement, but no more than twelve weeks before the announced start date, until the end of the short-term prevention of work pursuant to Section 2 or the leave of absence pursuant to Section 3. In the case of an agreement on a leave of absence pursuant to Section 3(6a) of this Act or pursuant to Section 2a(5a) of the Family Care Leave Act, the protection against termination shall commence at the beginning of the leave of absence. ...

But even these more pertinent provisions, do not clearly stated that 'family responsibilities shall not, as such, constitute a valid reason for termination of employment' (Article 27(3)). They only prohibit dismissals during specified periods of time related family responsibilities.

Additionally, the situation in practice still poses many difficulties. As mentioned above, according to Section 18 BEEG, mothers and fathers enjoy special protection against dismissal at the beginning of and during parental leave. However, workers and employers often have different ideas about working conditions, in particular working time arrangements and the return to the same or an equivalent job after parental leave, which cannot always be resolved without conflict and can also result in termination after parental leave. The points of contention are usually the agreement on part-time work and its distribution and the question of returning to the old job or an equivalent one.

Finally, the upper limit in Sections 9 and 10 of the Protection against Dismissal Act has for a long time been criticized by the Committee in relation to Article 4§3. This would also apply to the situation at hand.

Conclusions

On the basis of the above, it is suggested that the Committee concludes that the situation in Germany is not in conformity with Article 27§3 of the 1961 Charter on the grounds that



- there is an upper limit on compensation for employees who are dismissed on the ground of family responsibilities or as a result of making a claim of discrimination which may preclude damages from making good the loss suffered and from being sufficiently deterrent,
- the existing employment protection legislation to protect employees with family responsibilities is not sufficiently implemented in practice.