



January 2010

European Social Charter

European Committee of Social Rights

Conclusions XIX-2 (2009)
(DENMARK)

Articles 3, 11, 12, 13 and 14
of the Charter and
Article 4 of the 1988 Additional Protocol

This text may be subject to editorial revision.

Introduction

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

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

The European Social Charter was ratified by Denmark on 3 March 1965 and the 1988 Additional Protocol on 27 August 1996. The time limit for submitting the 28th report (6th report on the Additional Protocol) on the application of this treaty to the Council of Europe was 31 October 2008 and Denmark submitted it on 4 November 2008. On 25 May 2009, a letter was addressed to the Government requesting supplementary information regarding Article 13§4. The Government submitted its reply on 24 June 2009

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

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

Denmark has accepted all of these articles.

The applicable reference periods were:

- 1 January 2003 – 31 December 2007 for Article 11, 14 and Article 4 of the Additional Protocol;
- 1 January 2005 – 31 December 2007 for Article 3, 12 and 13.

The present chapter on Denmark concerns 17 situations and contains:

- 12 conclusions of conformity: Articles 3§1, 3§2, 3§3, 11§1, 11§2, 11§3, 12§2, 12§3, 13§2, 13§4, 14§1 and 14§2;
- 3 conclusions of non-conformity: Articles 12§4, 13§1 and Article 4 of the Additional Protocol.

In respect of the 2 other situations concerning Articles 12§1 and 13§3, the Committee needs further information. The Government is therefore invited to provide this information in the next report on the articles in question.

The next Danish report deals with the accepted provisions of the following articles belonging to the third thematic group “Labour rights”:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

The deadline for the report was 31 October 2009.

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

Article 3 - The right to safe and healthy working conditions

Paragraph 1 - Issue of safety and health regulations

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

Content of the regulations on health and safety at work

As noted in its last conclusion (Conclusions XVIII-2) the general legal framework in the field of occupational health and safety is contained in the Working Environment Act. The latest version of this Act for the reference period is the Consolidated Act of 2005, as amended in 2006 and 2007. The report indicates that the Act is intended to create the basis for enterprises themselves to solve problems related to safety and health issues, with guidance from social partners as well as guidance and supervision of the labour inspectorate (Danish Working Environment Authority or DWEA). From another official source¹, the Committee notes that the Working Environment Act is supplemented by executive orders which further describe how the purpose of the Act can be achieved in specific areas (e.g. register of substances and materials, work with chemical agents, measures to protect workers from risks related to exposure to carcinogenic substances and materials at work, working conditions on construction sites and at similar places of work). Executive Orders are legally binding and usually contain rules on penal sanctions.

The report gives a list of the main health and safety legislative provisions issued during the reference period. These provisions concern, inter alia, smoke-free environments, certificates for cranes and fork-lift trucks, measures for preventing risks of cancer regarding the use of certain substances and materials, use of pressure vessels and piping systems under pressure. The Committee considers that the general requirement under Article 3§1 that Parties should cover by regulation a large majority of the risks listed in the General Introduction to Conclusions XIV-2 has therefore been met.

Protection against dangerous agents and substances

Protection of workers against asbestos

The Committee notes from the report that Directive 2003/18/EC² of the European Parliament and the Council of 27 March 2003 which amends Council Directive 83/477/EEC³ on the protection of workers from the risks related to exposure to asbestos by introducing new limits on exposure as well as minimum health and safety measures, has been transposed into domestic law by Order No. 1502 of 21 December 2004. The situation is therefore in conformity with Article 3§1.

However, in reply to the Committee's question about measures taken to draw up an inventory of all contaminated buildings and materials, the Committee notes that while the report indicates that any kind of activity (e.g. demolition, repairing, maintenance) where materials containing asbestos are handled must be reported to the DWEA, no mention is made of an inventory of contaminated buildings. Bearing in mind the importance of this question in the light of the right to health of

the population (Article 11), the Committee asks for the next report to provide specific information on steps taken to this effect.

Protection of workers against ionising radiation

The Committee noted in its previous conclusion (Conclusions XVIII-2) that maximum doses of exposure to ionising radiation in the workplace as well as in respect of the general public have been set in accordance with Council Directive 96/29/Euratom⁴ of 13 May 1996 which lays down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation. The Committee considers that the situation is in conformity with Article 3§1.

Protection of temporary workers

The Committee noted in its last conclusion (Conclusions XVIII-2) that Order No. 559 of 17 June 2004 on the performance of work took into account the special nature of temporary work in the protection provided to workers and thus considered that the situation was in conformity with Article 3§1.

Further to the Committee's request for further information on medical supervision for temporary workers, the report indicates that several orders as well as the order on occupational medical examinations provide that employers should ensure that employees, irrespective of whether they are working on a temporary basis or not, whose work may involve health risks have access to occupational medical examination. In addition, medical surveillance for all workers exposed to ionising radiation is foreseen, including temporary workers, by Working Environment Service Order No. 206 of 23 March 1990. National Board of Health Order No. 663 of 12 July 1996 regulates the monitoring of exposure of external workers and the information flow between the outside undertakings and the operators of radiation sources regarding exposure and medical surveillance of outside workers.

In response to the Committee's question as to whether non-permanent workers are entitled to representation at work, the report indicates that the Order on health and safety activities of enterprises which deals with representation at work also covers non-permanent workers. The Committee considers that the situation concerning the protection of temporary workers is in conformity with Article 3§1.

Personal scope of the regulations

The Committee notes that the Working Environment Act is in principle designed to cover all work performed for an employer. Although not all provisions of the Act apply to work executed in an employer's home, work exclusively carried out by a member of the employer's family from the same household, and work of a military nature carried out by the military (e.g. military operations and exercises), the report indicates that a number of basic provisions, in particular about performance of work (including the application of safety and health standards to the planning and organisation of work), technical equipment, and substances and materials, also extend to these specific situations as well as to

self-employment. The Committee thus considers that this aspect is in conformity with Article 3§1.

Conclusion

The Committee concludes that the situation in Denmark is in conformity with Article 3§1 of the Charter.

¹Danish Working Environment Authority's website <http://www.at.dk/sw12173.asp>

² Official Journal No. L 097 of 15/04/2003.

³ Official journal No. L 263 of 24/09/1983.

⁴ Official journal No. L 159 of 19/06/1996.

Article 3 - The right to safe and healthy working conditions

Paragraph 2 - Provision for the enforcement of safety and health regulations by measures of supervision

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

Occupational accidents and diseases

The Committee notes from the report that, after a decrease between 2002 and 2003, the total number of reported occupational accidents has increased between 2004 and 2007 (from 43 678 to 48 882). After a significant diminution of fatal accidents between 2002 and 2004 (from 61 to 45), figures have been on the increase during the reference period and reached 66 in 2007. According to Eurostat, in 2005 the incidence rate of fatal accidents at work per 100 000 workers was 71, which remains well below the average of the EU-27 states (86). The report shows that other serious accidents figures have increased from 38 626 in 2004 to 43 273 in 2007. The Eurostat incidence rate for serious accidents shows that in 2005 Denmark's rate was 83, while the average of the EU-27 countries was 78. As regards occupational diseases, the report indicates that the number of claims for compensation based on occupational diseases was 18 368 in 2006 and 19 448 in 2007. The Committee invites the next report to be more complete and specify the number of industrial accidents and occupational diseases for all categories of workers, along with the origin of the accident or illness. While drawing attention to the increase of occupational accidents and claims for compensation on account of occupational diseases after several years of decrease, the Committee notes that the aforementioned rates of serious and fatal accidents remain below or close to the EU average and recalls that during the last reference period the overall incidence rate of accidents at work was well below the EU average. The Committee therefore considers that the situation is still in conformity with Article 3§2 on that point.

Activities of the Labour Inspectorate

The Committee takes note of the information provided in the report on the activities and working methods of the Danish Working Environment Authority (DWEA). The report states that since 2005 additional resources have been received by the DWEA to allow it to screen all Danish enterprises with employees by the end of 2011 in order to identify enterprises with the most problematic working environment and give priority to those enterprises for future inspections. After 2011, enterprises will be inspected on average every 3 years, while enterprises presenting more problematic environments will be screened approximately every 2 years.

The report indicates that enterprises are divided into two categories following a screening procedure which consists of a short inspection of health and safety conditions in all enterprises in order to assess whether the situation is satisfactory or requires closer inspection (“adapted inspection”). Such adapted inspections are normally carried out shortly after the so-called screening of the enterprise, in the light of the working environment problems identified during the screening. They are based on dialogue with the employers and the employees. Follow-up visits are organised in those enterprises where adapted inspections have been carried out, usually two years later and sometimes without prior warning. Control inspections may also take place with a view to assessing whether an enterprise has solved in a satisfactory manner the problems which had been identified at an earlier stage. In addition, detailed inspection may be undertaken to examine a specific problem, further to an accident or complaint for example, without examining the enterprise’s work environment as a whole. Inspection of suppliers can also be carried out to assess the impact on health and safety of the products of an enterprise’s supplier. Inspection can also be led into the obligations of project planners and consultants. Finally, special inspections include the supervision of elevators, boilers, container tanks, pipeline systems, natural gas plants, high-risk enterprises, and genetic laboratories.

According to the report the number of inspection visits by the DWEA staff during 2007 was 51 300, up from 30 600 in 2004. The Committee takes note of the substantial increase of inspection visits.

As regards the system of penalties, the report shows that several types of action are possible depending on the working environment problem: (i) prohibition notices are imposed in case of imminent and great danger and involve that all activities are stopped until the situation is remedied (4 033 notices in 2007 as compared to 1 979 in 2004); (ii) improvement notices may also be issued. Depending of the seriousness of the problem, they can be immediate – in which case the problem will need to be addressed straight away – or with a deadline. Notices can also be issued to request a report on the psycho-social working environment of an enterprise, giving the enterprise the opportunity to draw up a timetable and action plan to remedy the situation (19 074 notices in 2007, up from 16 972 in 2004); (iii) Consultancy notices requires enterprises to use a safety and health advisor to help solve a working environment problem; (iv)

Investigation notices can be issued where there is a strong presumption that a problem exists without documented evidence (122 notices in 2007); (v) Guidelines constitute non legally binding information on relevant regulations and recommendations as to how a specific problem can be addressed (5 189 guidelines in 2007); (vi) administrative fines can be imposed without a court decision whenever there has been a clear violation, e.g. if notices have been ignored (23 fines in 2007); (vii) police reports may also be drawn up in case of violations. The number of cases filed with the public prosecutor in 2007 was 616 (88% of cases leading to a conviction), up from 490 in 2004.

The Committee notes that in 2007 the number of staff within the DWEA who were assigned to occupational safety and health tasks was 762 (compared to 730 in 2004), including 575 inspectors (430 in 2004). The Committee takes note of the increase of staff involved with safety and health, especially inspectors.

Conclusion

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

Article 3 - The right to safe and healthy working conditions

Paragraph 3 - Consultation with employers' and workers' organisations on questions of safety and health

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

The Committee considered the machinery and procedures for consultation at national level and enterprise level in its last conclusion (Conclusions XVIII-2) and concluded that they were in conformity with Article 3§3 of the Charter. The report gives additional information on safety representatives and safety committees at the enterprise level. It indicates that the core of the internal safety organisation is the safety group which consists of the supervisor and the employee's safety representatives. An enterprise can decide to conclude an agreement between the employer and employees on how to organise the safety and health work.

The report also indicates that the Working Environment Council in which participate representatives of the Government, the employers' organisations, trade unions and local authorities was consulted to identify which working environment problems should be given priority as part as of a global strategy running until 2010 which aims at reducing occupational accidents. The following targets were agreed: industrial accidents reduced by 20%; problematic psychological working environment reduced by 10%; noise-related problems by 15% when it results in hearing damage and 10% when it constitutes nuisance; musculoskeletal disorders, reduce by 10% absence due to musculoskeletal injuries. In order to reach these goals, inspections will be intensified in sectors

where there is a special risk of burnout, preventive guidance will be organised for enterprises of those sectors, and preventive initiatives will be taken for enterprises with high stress environments.

Conclusion

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

Article 11 - The right to protection of health

Paragraph 1 - Removal of the causes of ill-health

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

State of health of the population - General indicators

The right to health protection is enshrined in the Health Care Act, which came into force in January 2007. This new legislation does not change the rights granted to citizens. It is linked with local government reform and gives municipalities responsibility for more types of health care.

Life expectancy and principal causes of death

Life expectancy at birth has continued to increase since the last conclusion (Conclusions XVII-2) since in 2006 it was an average of 76.1 for men and 80.7 for women⁵ (the EU 27 average in 2004 was 75.2 for men and 81.5 for women⁶). The mortality rate in 2005 was 6.82 per 1 000 inhabitants⁷ (the EU 27 average in 2006 was 6.48 per 1 000 inhabitants⁸).

The main cause of death is still cancer, although the number of deaths from cancer decreased (from 219 people per 100 000 inhabitants in 2001 to 206 people per 100 000 inhabitants in 2005). Cardiovascular diseases are also still a major cause of death although numbers decreased considerably between 1994 and 2005 (by 36%). The other main causes of death are diseases of the respiratory system and suicide⁹.

Infant and maternal mortality

The infant mortality rate has continued to decrease since the last conclusion (Conclusions XVII-2) – in 2007 it was 4.0 deaths per 1 000 live births¹⁰ (the EU 27 rate in 2006 was 4.7 per 1 000¹¹). The Committee asks for the next report to describe the main causes of infant mortality.

The Committee notes that the maternal mortality rate was 3 deaths per 100 000 live births in 2005 according to WHO¹² – which would be one of the lowest in Europe – and 7.7 deaths per 100 000 live births according to the report. The Committee asks for the next report to explain this difference and describe the main causes of maternal mortality.

Health care system

Access to health care

The system of access to health care is described in the report and the appended document, “Health Care in Denmark”, to which the Committee refers. Anyone residing in Denmark is entitled to use the health care system. Emergency care is provided free of charge, even to irregular migrants.

There are two types of data on waiting times, retrospective and prospective data. Retrospective data relate to waiting times actually experienced and make it

possible to determine whether waiting times have increased or decreased. For instance, according to the report, waiting times for operations have decreased from 90 to 60 days. The Committee asks for the next report to provide the data on waiting times recorded for the main types of care so as to be able to determine whether waiting times have increased or decreased. The second type of data, prospective data, reflect predicted waiting times. They are broken down according to hospital and kept on a central Internet site (**Error! Hyperlink reference not valid.**), on the basis of which patients can choose the hospital in which they wish to be treated. Since 1 October 2007, patients have been free, if the waiting time exceeds one month and the chosen hospital has an agreement with the Association of Regions, to go to a private hospital or a hospital abroad. The report mentions nonetheless that this possibility will now be suspended until June 2009. It is also planned to give patients suffering from cancer and certain types of heart disease the right to be treated abroad (and claim reimbursement of the costs up to the amount usually reimbursed for the same treatment in Denmark).

According to another source¹³, the privatisation of health care led in practice to unequal access to health care, in particular between workers and people who do not work. The Committee asks for next report to study the consequences of the privatisation of health care on equal access.

According to the report, the programme of action set up in March 2002 by the Ministry of Social Affairs for the most vulnerable population groups has made it possible among other things for persons suffering from drug and alcohol problems to be given treatment.

The State health care budget in 2006 was 9.5% of GDP, which was one of the highest in Europe¹⁴.

Health care professionals and facilities

There were 3.62 hospital beds per 1 000 inhabitants in 2006 (the average number of hospital beds in Europe (EU 27) was 5.90 per 1 000 inhabitants in 2005¹⁵). The Committee notes that this number is low, has been steadily decreasing. To attempt to put the number into perspective, the report points out that hospital beds are used very efficiently and that the average length of stay per in-patient is one of the lowest in the OECD, having decreased from 6.1 days in 2001 to 5.2 days in 2007. The Committee asks if measures are planned to halt the decrease in the number of hospital beds and if the decrease in length of stay stems from the lack of beds or from other causes.

There were 0.62 beds in psychiatric hospitals per 1 000 inhabitants in 2006¹⁶ (the average number of beds in psychiatric hospitals in Europe (EU 27) was 0.60 per 1 000 inhabitants in 2005¹⁷).

There were 19 287 physicians in 2004, amounting to 36 physicians per 10 000 inhabitants¹⁸.

In 2004, there were 4 530 dentists (8 per 10 000 inhabitants) and 3 564 pharmacists (7 per 10 000 inhabitants)¹⁹, as well as 54 073 nurses and midwives

(101 per 10 000 inhabitants)²⁰, a density comparable to that observed in other European countries. The Committee asks for the next report to provide more recent data.

Conclusion

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

¹ Eurostat

² Ibid

³ Report "Health Care in Denmark", appended to the Report, p. 44

⁴ Eurostat

⁵ Report "Health Care in Denmark", appended to the Report, p. 44

⁶ Eurostat

⁷ Ibid

⁸ WHO

⁹ Projekt Udenfor, shadow report on the report of Denmark on Article 11 of the Charter

¹⁰ Ibid

¹¹ Eurostat

¹² Ibid

¹³ Ibid

¹⁴ WHO

¹⁵ Ibid

¹⁶ Ibid

Article 11 - The right to protection of health

Paragraph 2 - Advisory and educational facilities

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

Health education

Public information and awareness-raising

The Committee refers to the document "Health Care in Denmark" appended to the report for a description of Denmark's preventive care and health promotion measures (see chapter 5, pp. 22-29). Of particular significance is the "Healthy throughout life" programme, which focuses on risk factors such as smoking, alcohol, accidents, poor eating habits and lack of physical exercise, as well as preventive measures linked to HIV/AIDS and drugs, and advice on contraception methods, pregnancy and maternity. Since 2007, the main responsibility for preventive health care and health promotion lies with the municipalities. The Committee asks for the next report to describe and assess the measures taken since 2008.

The Committee refers to the report for detailed descriptions of various other campaigns designed, among other things, to promote physical activity and

spread information on alcohol, passive smoking, child obesity, flu, sexually transmitted diseases and the effects of alcohol on pregnant women. There has also been a campaign since 2001 to encourage people to eat more fruit and vegetables.

The Committee asks if there are public information campaigns on the environment.

Health education in schools

The National Health Board has produced an education pack designed to discourage 13 to 15-year-olds from smoking, drinking or taking drugs. It was tested in 150 schools in six geographical areas between 2005 and 2008.

Healthy eating and the need for physical activity are taught in primary schools and the initial years of secondary school, along with health and sex education, which are compulsory subjects.

The Committee asks if road safety is taught at school and, if so, whether it is taught to all pupils.

Counselling and screening

Population at large

Screening programmes for cancer and cardiovascular diseases have been set up as these are the two main causes of death. The Committee notes the existence of the document on National Cancer Plan II (2005), appended to the report. Using two particular types of cancer as examples, namely cervical and breast cancer, the report highlights the high participation rate among people to whom screening was proposed, which has led in turn to a decrease in mortality rates, amounting to as much as 37% for women taking part in breast cancer screening.

Pregnant women, children and adolescents

The regions are responsible for the free medical checkups performed by doctors and midwives before and just after pregnancy, which are an opportunity to give women advice on their lifestyles (work, diet, stimulants, etc.) and their impact on pregnancy. Four consultations with a doctor are provided for, as well as seven with a midwife. Most women have ultrasound scans done during their pregnancy and amniocentesis is available to all women over 35, or whose foetus is suspected to have defects or have contracted an illness. Screening for hepatitis B and group B streptococcus is also available to all pregnant women. Testing for HIV or syphilis may also be carried out on women deemed to be at risk following an individual assessment of their situation.

All children of school age are entitled to seven preventive health examinations by a general practitioner, the costs of which are covered by the region and the purpose of which is to give the child the best conditions in which to develop healthily from a physical, psychological and social viewpoint. Local authorities are responsible for providing schoolchildren with free advice, assistance and health examinations to check that they have no health problems until the end of

their schooling. They also cover the cost of a checkup by a doctor for all children in their first and last years of school. Furthermore, throughout the school year, a doctor or nurse is on hand to examine any child that needs examining.

Lastly, all children and adolescents under the age of 18 are entitled to free dental care.

Conclusion

The Committee concludes that the situation in Denmark is in conformity with Article 11§2 of the Charter.

Article 11 - The right to protection of health

Paragraph 3 - Prevention of diseases

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

Policies on the prevention of avoidable risks

Reduction of environmental risks

The Ministry of Environment has laid down provisions for air quality in accordance with the EU directives. Air quality is monitored at 12 monitoring stations. In order to reduce air pollution a number of measures have been implemented:

- Environmental zones have been introduced in the five most densely populated municipalities. Here heavy lorries and busses are required to maintain the newest vehicle standards or retrofit particle traps.
- Tax subsidies have been introduced in 2006 for light duty and passenger vehicles fitted with particle traps.
- Low sulphur fuel have received a tax subsidy since 2005 leading to a 100 % market share for both gasoline and diesel.
- 32 million DKK has been allocated to reduce pollution from wood fired domestic stoves and boilers. New standards have also been introduced for these installations.

Further initiatives are under preparation.

Water - The report provides information on the legislation and guidelines in force on the regulation and monitoring of drinking water. The Committee finds the situation to be in conformity with the Charter. Likewise the measures in place to prevent and remedy soil pollution are in conformity with the Charter.

Noise - The information provided in the report on the measures in place to reduce noise pollution enables the Committee to conclude that the situation is in conformity with the Charter on this point.

Ionising radiation - The Committee previously found the situation to be in conformity with the Charter on this point.

Asbestos - The use of asbestos in construction has been prohibited for many years. The Danish Working Environment Service has issued rules on the use of asbestos setting out clear and strict requirements for all types of work with asbestos (cf. the Danish Working Environment Service order no. 1502 of 21 December 2004).

New rules on asbestos waste were expected to come into force in 2008.

Food safety

The report provides detailed information on food hygiene. The rules relating to food hygiene cover the production process as well as the sale of food stuff. Nearly 2,000 staff work full time on food safety and animal health and another 400 or so work on feed and plant health.

Measures to combat smoking, alcoholism and drug addiction

Smoking - The Smoke-free Environments Act No. 512 of 6 June 2007 prohibits smoking as a general rule in all public and private workplaces, institutions for children and adolescents, educational institutions, indoor facilities to which the public has access, including public transport and hospitality establishments.

In January 2002, a law which banned tobacco advertising – both direct and indirect – entered into force (Act No. 492 of 7 June 2001) and in September 2003, more stringent rules concerning the manufacture, presentation and sale of tobacco products were implemented (Act No. 375 of 6 June 2002). The act transposes the EC Directive 2001/37/EC concerning the manufacture, presentation and sale of tobacco products into Danish law.

In 2004, it was prohibited to sell tobacco to persons below the age of 16 (Act No. 213 of 31 March 2004). In 2008 the age limit for selling tobacco to persons was raised to the age of 18 (Act No. 536 of 17 June 2008). These legal changes have been accompanied by a number of public campaigns to prevent smoking and encourage people to stop smoking. Local tobacco addiction treatment clinics have been established in many municipalities.

There is a declining in number of daily smokers in Denmark – from 43 % in 1990 to 25 % in 2006.

Alcohol - Act No. 213 of 31 March 2004 prohibiting the sale of alcohol to persons below 16 years entered into force during the reference period. The Committee notes that alcohol consumption per capita which is fairly high has remained static for the last number of years despite continuing information campaigns and stricter legislation on the sale of alcohol.

Prophylactic measures and Epidemiological monitoring

The Committee previously found the situation in conformity with the Charter.

Immunisation

The vaccination coverage remains the same as in previous reference periods: for MMR between 88 and 90 % and for DTaP-IPV/Hib between 84 and 88 %.

For influenza vaccinations the coverage of free vaccinations for persons over the age of 65 has been as follows: 2003: 47 %, 2004: 52 %, 2005: 55 %, 2006: 54 % og 2007: 47 %.

The vaccination coverage for Pneumococcal vaccination which was introduced as from 1 October 2007 the coverage is only marginally lower compared with the coverage of DTaP-IPV/Hib.

As from 1 October 2008 all females over the age of 12 who are Danish nationals or are resident in Denmark may be vaccinated free of charge against cervical cancer (HPV vaccination).

Conclusion

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

Article 12 - The right to social security

Paragraph 1 - Existence of a social security system

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

The Committee notes that at the end of the reference period as well as in 2008, Acts regulating the entitlement to sickness, unemployment, old age, maternity and invalidity benefits were amended. The Committee refers to its assessment under Article 12§3 in this respect.

Risks covered, financing of benefits and personal coverage

The Committee refers to its previous conclusions for the description of the Danish social security system (Conclusions XVII-1 and XVIII) and notes that it continues to cover the branches of social security corresponding to all traditional risks: medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors. It also continues to rest on collective funding: it is funded by taxation, with the exception of unemployment insurance which is voluntary but largely subscribed to by employees and self-employed.

To assess whether a significant proportion of the total and/or active population in Denmark is guaranteed an effective right to social security with respect to the benefits provided under each branch, the Committee asked for figures in percentage indicating the personal coverage of each branch of social security.

In reply, the report highlights that in 2007:

100% of the population (lawfully resident) is entitled to public health care in kind, to old age pensions and to family benefits.

100 % of the active population (regularly working) is covered for sickness, maternity, unemployment, work accidents and occupational disease and:

- 16% of the workforce claimed sickness benefits;
- 5% of the workforce claimed maternity/paternity benefits;
- 8% of the workforce claimed unemployment benefits;
- 0,7% of the workforce claimed compensation benefits for accidents at work;
- 0,67% of the workforce claimed compensation benefits for occupational diseases. As to the latter compensation benefits, the report underlines that the percentage coverage recognised for accidents at work as well as for occupational disease increased in 2007 as compared to 2006.

On the basis of the above, the Committee notes that the personal coverage of the social security system is satisfactory and requests that the next report continue to provide the relevant up-to-date figures.

Adequacy of benefits

The Committee notes that the level of income replacement benefits does not fall below the poverty threshold defined as 50 % of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. It therefore considers that the level of such benefits is adequate.

However, as regards unemployment benefits in particular, adequacy is also established by considering whether there is a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching his/her previous skills without losing his/her unemployment benefits. In its last conclusion (Conclusions XVIII-1), the Committee concluded that the situation in Denmark was not in conformity with Article 12§3 on this ground.

The Committee notes that pursuant to the Unemployment Benefit Act, an unemployed person must in principle be prepared to take up a reasonable job offer from the first day of unemployment and that, in the absence of a valid ground, a sanction will be imposed for refusal to take up such an offer. It follows from Section 8§2 of Legislative Order No. 179 of 19 February 2007 and the Ministerial Guideline to the Order (Guideline No. 17 of 19 February 2007) that the notion of a "reasonable job" is very broad and covers any job that the person concerned is able to perform without physical or legal obstacles (i.e. independently of previous experience or qualifications). Valid grounds for refusal of a job offer include the person's health, transport time to the place of work (at the outset it cannot exceed 3 hours in total per day by public transport) and family obligations. Under Legislative Order No. 178 of 19 February 2007, the ordinary sanction in case of refusal of a reasonable job offer will be loss of benefits for three weeks (so-called "quarantine"). In case of a second refusal of a reasonable job offer within a 12 months period the right to benefits is forfeited entirely. Similar rules apply in the event an unemployed employable person refuses training or participation in activation measures he/she might be offered.

The Government points out that all employable unemployed persons must draw up a CV describing their own qualifications and previous work history. Within at the latest one month since their last employment, this CV should be fed into the digital CV Bank which is used by all relevant labour market actors to ensure an effective and precise matching of job vacancies and jobseekers. Moreover, before a job offer is actually made, a series of preventive steps are undertaken including: (i) consultation between the potential employer and the Public Employment Service to verify whether the best suited has actually been chosen; (ii) pre-interviewing of the potential employee on the vacancy that might be offered. According to the Government, this procedure allows the unemployed person who might be selected for the job offer to decline the offer before it is officially made. Thus, according to the Government, when an official offer is made in practice the unemployed person will not refuse it as it will match with his/her professional history.

The Committee asks the next report to indicate how often an official job offer is declined and unemployment benefits are suspended. The report should also

contain information on any relevant case law. Meanwhile, the Committee reserves its position as to the actual guarantee of the unemployment risk for which every worker has contributed during his working activity.

Conclusion

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

Article 12 - The right to social security

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

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

The Committee notes from Resolution ResCSS(2008)4 of the Committee of Ministers on the application of the European Code of Social Security by Denmark (period from 1 July 2006 to 30 June 2007) that Denmark continues to give full effect to the parts of the Code it has accepted. In so doing, Denmark maintains a social security system that meets the requirements of ILO Convention No. 102.

Conclusion

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

Article 12 - The right to social security

Paragraph 3 - Development of the social security system

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

The Committee recalls that when it last assessed the situation, it found the situation to be in conformity with Article 12§1 (Conclusions XVIII-1), whilst it held it not to be in conformity with Article 12§3 on the ground that there is no reasonable initial period during which the unemployed may refuse a job not matching with his/her previous occupation and skills without losing his/her unemployment benefits. The Committee refers to its assessment under Article 12§1 for its conclusion in this regard.

The Committee notes that in the second half of 2007 as well as in 2008 new legislation amended the social security system with respect to entitlement to sickness, unemployment, old age and maternity benefits. Since the changes

occurred at the end of the reference period (or outside the period), the Committee will assess their impact in practice on the effective social protection of all members of society against social and economic risks when it will next assess Article 12. The Committee recalls that it will consider the impact of such changes in the light of the criteria listed in the General Introduction to Conclusions XVI-1 using the previous levels of social protection provided as a point of reference

As to the changes concerning maternity benefits, since Denmark has ratified Article 8§1 of the Charter, the Committee will assess the scope and level of such benefits when it will next examine compliance with this article. Meanwhile it notes that the rules on maternity/paternity benefits have been moved out of the Sickness Benefits Act and are now set out in the Maternity/Paternity Act.

Sickness

The Daily Cash Benefits (Sickness) Act was amended in June 2006 by Act No. 563. According to the report, employers' obligation to pay sickness benefit was extended from 15 to 21 days; the period during which an employer with a chronically ill employee can have his expenses for the sickness benefits covered was doubled from 1 to 2 years; the sickness benefit entitlement period for employees awaiting or undergoing medical treatment may be extended up to 2 years beyond the usual 52 weeks.

The report also indicates that in June 2008 (outside the reference period), the Government presented a strategy to deal with sickness absence focusing on the following four target areas: (i) preventing sick leave; (ii) proactive stance against long term absence; (iii) increased use of labour market activation of unemployed workers on sick leave and (iv) better coordination between Ministry of Health and Ministry of Employment.

The Committee asks the next report to inform it of the results of these reforms in practice, bearing in mind that any changes to a social security system must nevertheless ensure a basic compulsory social security system which is sufficiently extensive (Conclusions XIV-1, Statement of Interpretation on Article 12 and *Sindicato dos Magistrados do Ministério Público (SMMP) v. Portugal*, Complaint n° 43/2007, decision on the merits of 3 December 2008, para. 42).

Unemployment

The report lists various Acts adopted between December 2006 and June 2008 to amend the Act on unemployment insurance and the Act on active employment measures. The Committee notes that an aim of these amendments is to adjust retirement to longer life expectancy. The report states that more flexible early retirement schemes should strengthen employment. The Committee asks the next report to provide details, including figures, in this regard.

Old age

The report highlights that within the context of the Jobplan agreement concluded by the Government, the Act on Social Pension was amended in 2008 (outside the reference period) to encourage seniors to work longer. Incentives to re-enter

the labour market or to defer anticipated retirement include: disregarding the first 30,000 Danish Crowns (DKK, about € 4,000) of earned income when calculating personal allowances; reducing from 1,500 to 1,000 the number of compulsory annual working hours.

Invalidity

The report highlights that the new scheme for early retirement pensions in case of invalidity, which was introduced in 2003 (see Conclusions XVIII-1) has not been modified by the above mentioned Jobplan agreement concluded by the Government.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Denmark is in conformity with Article 12§3 of the Charter.

Article 12 - The right to social security

Paragraph 4 - Social security of persons moving between states

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

Equal treatment and retention of accrued rights (Article 12§4a)

Right to equal treatment

The relations with other member states of the enlarged European Union (EU) as regards social security are governed by Regulation (EEC) No. 1408/71 and Regulation (EEC) No. 574/72. Council Regulation (EC) No. 859/2003 allows Regulation No. 1408/71 to be applied to nationals of third countries and members of their families provided they are legally resident in the territory of a member state and are in a situation which is not confined in all respects within a single member state (Article 1). However, Council Regulation No. 859/03 does not apply to Denmark. According to the report, Denmark has negotiated bilateral agreements on social security with Turkey (in 1976 and 1999) and with Croatia (in 2005). The Committee recalls that EU member states must at least guarantee nationals of other States Parties that are not EU members equal treatment with respect to social security rights if they are legally resident in their territory (Conclusions XVIII-1). It notes that, given that Council Regulation n° 859/03 is not applied in Denmark, the principle of equal treatment for nationals of other States Parties is not guaranteed in matters of social security. The situation is therefore not in conformity with the Charter on this point.

With regard to the payment of family benefits, the Committee has considered previously that under Article 12§4, any child resident in a country is entitled to family benefits on an equal footing with nationals of the country concerned. Whoever is the beneficiary under the social security system, i.e. whether it is the

worker or the child, states party are required to ensure through unilateral measures that family benefits are actually paid to all children residing on their territory. In other words, requiring the child concerned to reside in the state in question is compatible with Article 12§4 and its Appendix. However since not all countries apply such a system, states applying the “child residence requirement” are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to negotiate within a reasonable time bilateral or multilateral agreements with those states which apply a different entitlement principle. The Committee asked whether such agreements had been negotiated with Albania, Armenia, Georgia or Turkey and, if not, whether it was planned to do so and by when. In the absence of any information, the Committee asks for the next report to provide information on any agreements that are being planned with these countries and the time span for their negotiation. It also asks whether the conclusion of such agreements is foreseen with States which have ratified the Charter outside the reference period, i.e. Serbia and the Russian Federation.

In its previous conclusion, the Committee noted that there was a residence requirement for the following benefits: rehabilitation benefit (permanent residence); early retirement pension for people with disability and standard retirement pension (ten years) From the current report and the information provided by the Danish representative at the meeting of the Governmental Committee in April 2007 it has become clear that the ten-year residence requirement applies only to nationals of states party not bound by Community regulations or by bilateral agreements negotiated with Denmark that guarantee equal treatment between Danes and nationals of the countries concerned; nationals of a very small number of countries (Albania, Moldova, Armenia and the part of Cyprus which is not a member of the European Union). The ten-year residence requirement must be assessed in the light of the specific features of the Danish pension system. The state old-age pension system is a universal, fixed-rate pension scheme designed to ensure that everyone will have a reasonable income during their retirement. It does not depend on one’s previous occupational activity, or contributions or taxes paid. Entitlement to pension payments therefore depends solely in principle on citizenship and length of residence (though these conditions may be waived under certain circumstances). The universal nature of the system implies that it gives precedence to persons with a close link with Denmark because of their status as citizens or because they have lived in Denmark for a long time. The Committee points out that, where non-contributory benefits are concerned, the section of the Appendix relating to Article 12§4 allows a residence requirement to be imposed on foreign nationals, but it reserves the right to assess the proportionality of the length of residence to the objective pursued. All of the aforementioned benefits are non-contributory. However, in view of the fact that both types of pension are basic benefits, the Committee considers the ten-year residence requirement to be excessive.

Right to retain accrued benefits

In its previous two conclusions (Conclusions XVII-1 and XVIII-1), the Committee considered that the situation was not in conformity because the legislation failed

to provide for the retention of accrued benefits where persons moved to a state party not covered by Community regulations or bound by an agreement with Denmark. In the absence of any new information on the subject in the report, it confirms this conclusion.

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

In its previous conclusion the Committee noted that Danish legislation did not provide for the aggregation of insurance or employment periods completed by the nationals of States Parties not covered by Community regulations or bound by bilateral agreements with Denmark. In the absence of any new information in the report, it confirms its finding of non-conformity in this regard.

Conclusion

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

- the principle of equal treatment for nationals of other States Parties is not guaranteed in matters of social security;
- the residence requirement imposed on nationals of states not covered by Community regulations or bound by bilateral agreement with Denmark for entitlement to an early retirement pension for persons with disabilities or to ordinary old-age pensions is excessive;
- the retention of accrued benefits for persons moving to a State Party which is not covered by Community regulations or not bound by an agreement with Denmark is not guaranteed;
- nationals of States Parties not covered by Community regulations or bound by agreements with the Denmark are not provided with the possibility of accumulating periods of insurance or employment completed in other countries.

Article 13 - The right to social and medical assistance

Paragraph 1 - Adequate assistance for every person in need

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

Types of benefits and eligibility criteria

The Committee notes that the situation which it has previously found to be in conformity with the Charter has not changed.

Level of assistance

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

- cash benefit: according to MISSOC, in 2007 the basic social assistance allowance (*kontanthjælp*) amounted to € 1,201 for a single person over 25 years of age and € 774 for a single person under 25 years living separately from parents. The same allowance paid to persons supporting at least one child amounted to € 1,596. The starting allowance (*starthjælp*) payable to persons who do not meet the length of residence requirement (7 years) amounted to € 774 for a single person aged 25 or over and to € 642 for a person under 25 not living with parents. In this connection the Committee wishes be informed about the exact circumstances under which the entitlement to starting allowance may be terminated or withdrawn.

- supplementary benefits: in its previous conclusion (Conclusions XVIII-1) the Committee asked about the amount of housing allowance paid to persons under 25 living away from their parents. In this connection the Committee notes from MISSOC that supplements are paid to persons over 25 years who have to cover substantial accommodation costs in accordance with the legislative Act No 75 of 19 January 2005 on individual housing benefits. The Committee further notes from the report a supplement (€ 125) determined by needs, may be paid to persons under 25, recipients of cash benefits, not living with parents. The Committee observes that according to Chapter 4, Section 34 of the Act on Active Social Policy special allowances are not paid to persons on starting allowance, under 25 years of age, not living with their family. In this context the Committee observes that persons under 25 years of age, in receipt of starting allowance, only receive € 642 in social assistance. Moreover, the Committee notes that even among recipients of cash benefit under 25 years of age only those with particular housing needs obtain additional benefits. Therefore it considers that there is no evidence that all persons in need are paid supplementary benefits.

- medical assistance: the Committee notes that the situation regarding medical assistance to persons without resources has not changed; medical assistance continues to be provided free of charge.

- the poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value: estimated at € 972 per month in 2007.

In the light of the above data, the Committee considers that the amount of cash benefit paid to single persons under 25 years of age, living separately from parents as well as the amount of starting allowance paid to persons both under and over 25 years are not adequate on the basis that the minimum level of assistance that may be obtained is not compatible with the poverty threshold.

Right of appeal and legal aid

The Committee notes that the situation which it has previously found to be in conformity with the Charter (Conclusions XVIII-1) has not changed.

Personal scope

The Committee notes that the situation wherein nationals of other States Parties not members of the EEA or not covered by bilateral agreements with Denmark legally resident in Denmark may be repatriated on the sole ground of being in receipt of social assistance for more than six months, unless they have resided in Denmark for more than seven years or are covered by the Nordic Convention on Social Assistance and Social Services, has not changed. In this connection the Committee recalls that under the Charter foreign nationals legally resident or regularly working in the territory of another State Party cannot be repatriated on the sole ground that they are in need of assistance. So long as they are lawfully resident or regularly working in a state concerned, they should be entitled to equal treatment with nationals. Once the residence and/or work permit has expired, States are no longer bound by the obligation to provide social assistance within the meaning of Article 13§1 of the Charter. However, the authorities cannot withdraw residence permits solely on the ground that individuals have no means of support and cannot meet their families' needs. Therefore the Committee reiterates its previous finding of non-conformity on this ground.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 13§1 of the Charter on the following grounds:

- the level of the basic social assistance allowance (*kontanthjælp*) paid to persons under 25 years of age is not adequate,
- the level of starting allowance (*starthjælp*) paid to persons both under and over 25 years of age is not adequate;
- nationals of other States Parties not bound by the European Economic Area agreement or not covered by agreements concluded by Denmark may be repatriated on the sole ground of being in receipt of social assistance for more than six months, unless they have resided in Denmark for more than seven years.

Article 13 - The right to social and medical assistance

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

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

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

Conclusion

The Committee therefore concludes that the situation in Denmark is in conformity with Article 13§2 of the Charter

Article 13 - The right to social and medical assistance

Paragraph 3 - Prevention, abolition or alleviation of need

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

It notes the measures taken in the framework of the Act on Social Services which sets out the general legal framework for the target group of socially disadvantaged adults. In its previous conclusion (Conclusions XVIII-1) Committee asked about specific information concerning the number of employees engaged in services covered by Article 13§3, namely services offering advice and personal assistance to persons without adequate resources or at risk of becoming so. The Committee recalls that these services are different from those covered by Article 14 as they should be specifically designed to inform individuals of their rights concerning social assistance and enable them to overcome difficulties arising from their need, avoid benefit dependency and re-establish their autonomy.

The Committee now asks the following questions:

- what mechanisms exist to ensure that those in need may receive advice and personal help services;
- are services and institutions adequately distributed on geographical basis;
- are services and institutions provided with sufficient means to give appropriate assistance as necessary.

The Committee asks whether foreign nationals legally resident or regularly working in Denmark are guaranteed equality of treatment with nationals regarding access to advice and personal help services.

Conclusion

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

Article 13 - The right to social and medical assistance

Paragraph 4 - Specific emergency assistance for non-residents

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

In its previous conclusion (Conclusions XVIII-1) the Committee asked what form of social and medical assistance foreign nationals lawfully present but not resident in Denmark were eligible for following the entry into force of the Active Social Policy Act of 10 June 1997 as amended. The report states that any lawful resident of Denmark is entitled to assistance under the Act on Social Services, including general services. As regards the Committee's question asked in the General Introduction to Conclusions XVIII-1 whether unlawfully present foreign nationals, including persons whose applications for refugee or stateless person status have been rejected, are eligible for emergency social and medical assistance in case of need, the report states that in accordance with Part 7 of the Danish Aliens Act necessary social and medical assistance is provided to asylum seekers and rejected asylum seekers who cannot support themselves.

The Committee recalls that the personal scope of Article 13§4 differs from that of other Charter provisions. The beneficiaries of this right to social and medical assistance are foreign nationals who are lawfully present in a particular state but do not have resident status and ones who are unlawfully present. States are required to provide for those concerned to cope with an immediate state of need (accommodation, food, emergency care and clothing). They are not required to apply the guaranteed income arrangements under their social protection systems.

From the supplementary information provided by the Danish Government the Committee observes that foreign nationals present in Denmark, either lawfully or unlawfully, are entitled to emergency hospital care free of charge in the event of accident, sudden illness, aggravation of chronic diseases etc. As regards emergency social assistance, any foreign national in need is entitled to such assistance. For lawfully present persons, it is the relevant local municipality which provides assistance towards unforeseen expenses which cannot be met by the person him/herself. The Danish Immigration Service provides assistance to unlawfully present persons. The Committee asks what is the nature and extent of the assistance which is provided in such situations, and whether a clear legal basis exists in law for the provision of this form of social assistance.

Conclusion

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

Article 14 - The right to benefit from social welfare services

Paragraph 1 - Provision or promotion of social welfare services

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

Organisation of the social services

It refers to its previous conclusions (Conclusions XV-2 and XVII-2) for a general description of the Danish social welfare system. It also notes that following the local government reform of 2006, local authorities now have exclusive responsibility for providing social welfare services.

The report provides a list of the social welfare services available including information and advice services with regard to social assistance within the meaning of Article 13§3 of the Revised Charter. They are aimed in particular at elderly people, people with disabilities, disadvantaged children or young people, families, homeless people, alcoholics, drug addicts, victims of domestic violence and former prisoners.

The Committee notes that under the new Integration Act of 2007, refugees have access, for three years after their arrival, to specific employment and training programmes, as well as language courses set up by local authorities.

Effective and equal access

The Committee recalls that it previously found the situation in conformity in this respect. There has been no change in the situation.

With few exceptions, decisions taken by the local authorities under the 2007 Integration Act can be appealed against to the Employment Board or the National Social Appeals Board.

The Committee refers to its previous conclusion (Conclusions XVII-2) for a description of the procedures for appealing to the National Social Appeals Board.

Quality of services

At regional level, the county authorities regularly monitor the provision of social services in accordance with the Act on Social Services. Monitoring arrangements differ according to whether the services are for elderly people, persons with particular needs (people with disabilities, homeless people or drug addicts) or children.

As to people with particular needs (people with disabilities, homeless people or drug addicts), authorisation for private service providers to offer housing or care facilities is issued by county authorities in accordance with quality standards laid down in the Act on Social Services, according to users' needs.

Provision of social services in particular for children is mainly monitored by the National Social Appeals Board, which publishes regular studies and statistics on this subject. The report also states that five state prefects supervise social

service provision by the local authorities. The Committee asks for further information on the subject.

The state also monitors the activities of local authorities in the area of the integration of refugees, under the Integration Act of 2007. Every year, the local authorities are required to submit a report on the use of the funds granted to them by the state for this purpose. There is a system of financial incentives and grants for municipalities which succeed in placing refugees in work. The state carries out a general survey every four or five years on the implementation of the Integration Act by the local authorities.

The Committee asks how much is spent on social services in total. It also asks whether there is any legislation on the protection of users' personal data.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 14§1 of the Charter.

Article 14 - The right to benefit from social welfare services

Paragraph 2 - Public participation in the establishment and maintenance of social welfare services

The Committee notes the information in the Danish report.

Following the local government reform of 2006, local authorities have exclusive responsibility for supporting voluntary social organisations and NGOs in the social sphere and must report on this annually to the Ministry of Social Welfare (formerly the Ministry of Social Affairs).

The Government continues to attach great importance to the voluntary sector, in which a significant part of the population is involved. To strengthen the voluntary sector and co-operation between voluntary social organisations, private providers and the public sector, the Government has launched the following initiatives in 2007:

- cohesive volunteer policies in local authority areas;
- experience in voluntary work is of value in connection with public sector employment;
- all people enrolled in youth education programmes must be offered voluntary work.

The centre for voluntary social work, which was founded in 1992, and the council for volunteer action, set up in 1983, are state funded and offer advice and training to voluntary social organisations in the social sector. These two organisations are independent and aim to, respectively, develop volunteer work as well as the cooperation between public providers, private providers and voluntary organisations.

As an example, local authorities work in co-operation with NGOs to provide refugees with training programme and language courses under the 2007 Integration Act. On this point, the Committee refers to its conclusion under Article 14§1.

Voluntary social organisations and NGOs can provide social welfare services on an equal footing with private bodies¹. County councils have considerable discretion in choosing service providers, according to the type of service requested. In most cases under the existing procedure, voluntary social organisations or NGOs enter into a contract with the relevant county authority to provide specific social services. In other cases, users are free to choose their service provider.

According to the report, in 2005 the state paid nearly 127 million Danish Kroner (DKK, or about € 17 million) in grants to foster support for voluntary social work, in addition to the annual state financial support to voluntary social organisations via the PUF fund for voluntary social work to assist vulnerable groups. They also receive a certain sum each year from the state from betting and lottery funds.

Turning to civil society participation in framing social services policies, the report states that some municipalities have established integration councils with representatives from different ethnic minorities, which local authorities can consult on their integration policies.

As to quality control of publicly and privately delivered services, the Committee refers to its conclusion under Article 14§1.

Conclusion

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

¹Biennial report of the European Commission on social services of general interest, July 2008, p. 6

Article 4 of the Additional Protocol – Right of the elderly to social protection

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

Legislative framework

The Committee recalls that the focus of Article 4 of the Additional Protocol is on social protection of elderly persons outside the employment field. Questions of age discrimination in employment are primarily examined by the Committee under Articles 1§2 (non-discrimination in employment) and 24 (right to protection in cases of termination of employment).

As regards the protection of elderly persons from discrimination outside employment, the Committee has previously noted that no specific legislation for this purpose existed in Denmark (Conclusions XVII-2). The report states that the Government currently has no plans to legislate in respect of age discrimination.

The Committee recalls that Article 4 of the Additional Protocol requires States Parties to combat age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services. The European Older People's Platform and other sources point to the existence of pervasive age discrimination in many areas of society throughout Europe (health care, education, services such as insurance and banking products, participation in policy making/civil dialogue, allocation of resources and facilities) which leads the Committee to consider that an adequate legal framework is fundamental to combat age discrimination in these areas. As it has not been established that there exists anti-discrimination legislation on the ground of age outside the field of employment, or an equivalent legal framework, the Committee considers that the situation in Denmark is not in conformity with Article 4 of the Additional Protocol.

The Committee recalls that the Act on Social Services is the main piece of legislation related to the social protection of elderly persons. Overall responsibility for the elderly in Denmark lies with the Ministry of Social Welfare (formerly the Ministry of Social Affairs) but implementation of concrete measures belongs to local authorities. There is a senior citizens' council within each local authority that supervises the manner in which personal and practical assistance is provided to elderly persons.

Concerning the Committee's request for information on assisted decision making for elderly persons, the report makes reference to the possibility of appointment by the regional state administration of a legal guardian under the Legal Guardianship Act. This applies, for example, in situations where the person concerned has reduced mental functions. The Committee asks the next report to provide additional information on whether there are safeguards to prevent the arbitrary deprivation of autonomous decision-making by elderly persons.

Adequate resources

The Committee refers to its assessment under Article 13§1 in respect of levels of social assistance in Denmark.

The report provides updated figures on the amount of minimum income benefits for old people. Persons who are aged 60 years or more and who do not qualify for a social pension are offered a special rate of social assistance corresponding to the amount payable to a married old-age pensioner if they have been resident in Denmark for a total of seven years within a period of eight years, when they apply for assistance. If the conditions are not met, they are offered a starting allowance. According to the report, in 2008 the special social assistance rate was 7,492 Danish Crowns (DKK) (€ 1,005) for persons meeting the aforementioned residence requirement, whereas the starting allowance was 4,926 DKK (€661) for persons married/living together and 5,940 DKK (€797) for singles. For the purposes of assessing the situation, the Committee must consider the level of the minimum pension during the reference period, that is, in 2007, which was €774 (starting allowance payable to persons not meeting the 7 year length of residence requirement).

The poverty threshold, defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value, was estimated at €972 per month in Denmark in 2007. In the light of the above data, the Committee considers that the amount of the starting social allowance for single elderly persons is not adequate.

Prevention of elder abuse

The Committee recalls that elder abuse is defined in the Toronto Declaration on the Global Prevention of Elder Abuse (2002) as 'a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person'. It can take various forms: physical, psychological or emotional, sexual, financial or simply reflect intentional or unintentional neglect. The World Health Organization (WHO) and the International Network of the Prevention of Elder abuse (INPEA) have recognised the abuse of older people as a significant global problem. Hundred thousands of older people in Europe encounter a form of elder abuse each year. They are pressed to change their will, their bank account is plundered, they are pinched or beaten, called names, threatened and insulted and sometimes they are raped or sexually abused.

The Committee wishes to know what the Government is doing to evaluate the extent of the problem, to raise awareness on the need to eradicate elder abuse and neglect, and if any legislative or other measures have been taken or are envisaged in this area.

Services and facilities

Pursuant to the Act on Social Services a citizen can obtain personal assistance (e.g., personal hygiene, getting into and out of bed) or practical assistance (e.g.,

cleaning, laundering or shopping) if he or she is an adult residing in Denmark who can not perform such tasks alone. The right to home help services is irrespective of whether the person is living in his/her own house or in assisted living accommodation. The local authority's decision on whether an elderly person is entitled to receive such services is based on an individual assessment. The Committee refers to its last conclusion on Article 4 of the Additional Protocol for detailed information on the provision of home help services (Conclusions XVII-2).

The report mentions that one of the envisaged reforms in the old age care sector is a government bill aimed at ensuring that recipients of home help services are entitled to one permanent contact person who must be close to the citizen. The Committee wishes to be kept informed of the passing into law of this bill.

In reply to the Committee's question, the report states that the authorities have no information on whether the social/cultural/educational services provided by voluntary bodies meet the demand for such services. It is however indicated that the supply of services by voluntary associations is widespread in Denmark, with about one third of the population carrying out voluntary work.

As regards the treatment and care of people suffering from dementia, the report states that since 2003 the Danish parliament has earmarked a total of 137 million Danish Crowns (DKK) (€18.3 million) for dementia initiatives, the major part of which has been distributed through the Ministry of Social Welfare, for example: supplementary training of care staff and professionals, improving cooperation between relatives, volunteers and the public sector or developing day and relief care services for demented people and their relatives.

Housing

Pursuant to the Act on Social Housing, social housing for the elderly can take the form of an independent dwelling, assisted living accommodation or shared housing arrangements. The dwelling must be specially suited for elderly and disabled persons, including being suited for wheelchairs and having a layout/access adapted to walking-impaired persons. It must also have a private toilet and shower.

Social housing for the elderly must be rented to elderly and disabled persons. The local council has a right of allotment for this type of housing, irrespective of who own it. The local council individually assesses and decides to whom the dwellings should be rented. The Committee asks for information on rental prices of social housing, as well as on any housing allowances, benefits or subsidies that are available for the elderly to meet the costs of their housing.

Existing care homes and sheltered flats may continue to be run under a temporary provision in the Act on Social Services. However, they will gradually decrease because local authorities can no longer build care homes or sheltered housing, the emphasis now being placed on social housing/retirement housing.

According to the report as from 1 January 2009 the local authority must offer a dwelling in social housing or a place in a care home to elderly persons who need such a dwelling or place. Once the need has been established there is a time limit of 2 months for the authority to make the offer.

Health care

The Committee recalls that health care for the elderly is an integrated part of the health care system in Denmark (see Conclusions XVII-2).

Legislation requires local authorities to offer all citizens aged 75 and above a preventive home visit twice a year (Act on Preventive Home Visits).

The report states that the National Health Board published a report in 2008 assessing the efficacy of drugs for the treatment of dementia as well as various types of interventions to support the informal caregivers of people with dementia.

Mention is made in the report to the existence of guidelines adopted in 1999 by the National Health Board on taking care of seriously ill or dying people.

Institutional care

The Committee recalls that the emphasis in Denmark is to provide housing with associated services and care rather than nursing home type institutions. Thus, no conventional nursing type homes have been created in Denmark since 1987 but have been rather replaced by the building of social housing for the elderly. The Committee refers to its last conclusion for an overview of the operation, inspection, complaints procedure, etc. in institutional type facilities (Conclusions XVII-2).

As already mentioned above, with effect from 1 January 2009 a place in a care home must be offered to elderly people who need such type of accommodation. Noting however that nursing homes are not being built in Denmark since 1987, the Committee asks how the expected shortage of places in institutional care will be solved.

In reply to the Committee's question, the report states that persons in nursing homes all have their own doctor, often the same family doctor the patient has had for many years. The doctor is under a legal obligation of prescribing the required medication to the patient, and personnel in the institution are responsible for ensuring that the patient gets the prescribed medicine.

Regarding elderly persons of foreign origin in institutions, the report states that the authorities have no figures on the number of such persons who live in assisted living accommodation. Given that care and support to elderly persons is granted on the basis of an individual assessment in Denmark, ethnic elderly persons should normally receive help for any special social and health problems they might have.

The report states that between 2004-2006 the authorities implemented a project for improved planning of daily work with elderly ethnic citizens. Moreover, a sum

of 13 million Danish Crowns (DKK) (€1.7 million) was allocated for projects related to elderly persons with an ethnic background, for example, to prevent and solve their health problems, promote dialogue between such persons, their relatives and local authorities, and to increase this group's participation in local activities.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 4 of the Additional Protocol on the grounds that:

- it has not been established that there is an adequate legal framework to combat age discrimination outside employment; and
- the level of the starting allowance for single elderly persons is not adequate.