



January 2018

## **European Social Charter**

European Committee of Social Rights

Conclusions 2017

**MONTENEGRO**

*This text may be subject to editorial revision.*



The following chapter concerns Montenegro, which ratified the Charter on 3 March 2010. The deadline for submitting the 6th report was 31 October 2016 and Montenegro submitted it on 1 February 2017.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the report concerns the following provisions of the thematic group "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

Montenegro has accepted all provisions from the above-mentioned group except Article 30.

The reference period was 1 January 2012 to 31 December 2015.

The conclusions relating to Montenegro concern 18 situations and are as follows:

- 6 conclusions of conformity: Articles 3§1, 3§4, 13§2, 13§3, 14§1 and 14§2,
- 8 conclusions of non-conformity: Articles 3§2, 3§3, 11§1, 11§3, 12§1, 12§3, 13§1 and 23.

In respect of the 4 other situations related to Articles 11§2, 12§2, 12§4 and 13§4 the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Montenegro under the Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

#### **Article 3§2**

On 25 July 2014, the Parliament of Montenegro adopted the Law on Safety and Health at Work (Official Gazette No. 34/14), which replaces the former Law on Safety and Health at Work (Official Gazette No. 79/04 and 26/10). According to the new law, the employer is obliged to provide measures of safety and health at work to all employees, by preventing, eliminating and controlling risks at work, informing and training employees, and with proper organisation and the necessary means. In addition, the employer is obliged to provide special safety and health at work to women during pregnancy, persons under 18 years of age, and persons with disabilities.

#### **Article 12§4**

During the reference period, Montenegro concluded bilateral social security agreements with Romania and the Slovak Republic.

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The next report will deal with the following provisions of the thematic group "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),

- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

The report should also contain information requested by the Committee in Conclusions 2016 in respect of its conclusions of non-conformity due to a repeated lack of information:

- the right to work – policy of full employment (Article 1§1),
- the right to work – vocational guidance, training and rehabilitation (Article 1§4),
- the right to vocational guidance (Article 9),
- the right to vocational training – apprenticeship (Article 10§2),
- the right to vocational training – vocational training and retraining of adult workers (Article 10§3),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – vocational training for persons with disabilities (Article 15§1),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – employment of persons with disabilities (Article 15§2),
- the right of persons with disabilities to independence, social integration and participation in the life of the community – integration and participation of persons with disabilities in the life of the community (Article 15§3),
- the right to protection in case of dismissal (Article 24).

The deadline for submitting that report was 31 October 2017. The report was registered on 26 December 2017. Conclusions relating to the Articles concerned will be published in January 2019.

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Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter) as well as in the HUDOC database.

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 1 - Health and safety and the working environment*

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

#### **General objective of the policy**

The Committee previously deferred its conclusion (Conclusions 2013) and requested information on the content of applicable laws, policies, strategies, and programmes, as well as the competencies of relevant public institutions. It also asked whether the objective of the policy was to foster and preserve a culture of occupational risk prevention, and whether policies, strategies and programmes were regularly assessed and reviewed in light of changing risks.

In reply, the report indicates that the Strategy for Improvement of Health of Employees and Safety at Work in Montenegro was adopted for the period 2010-2014. The overall objective of the Strategy is to improve the health of employees and working conditions in order to prevent accidents at work, occupational diseases and their reduction to the lowest possible level, or elimination of occupational hazards. The Committee asks the next report to provide more comprehensive information on the manner in which the Strategy for Improving Health and Safety at Work is reviewed in light of changing risks, in consultation with the social partners. It further asks for information on the activities implemented and results obtained by the National Strategy.

The Committee notes from the report that, on 25 July 2014, the Parliament of Montenegro adopted the Law on Safety and Health at Work (Official Gazette No. 34/14), which replaces the former Law on Safety and Health at Work (Official Gazette No. 79/04 and 26/10). The new law acts preventively at all levels of activity. In addition, the report states that the safety at work is a constitutional principle under Article 64§3 and §4 of the Constitution of Montenegro. The report also lists the existing legal framework in this field.

According to the report, under the Directorate of Labour (an organisational unit of the Ministry of Labour and Social Welfare of Montenegro) a Department for Safety at Work was created in 2013. This Department, among others, performs activities related to monitoring, studying and encouraging the development of occupational safety and health (OSH); preparing regulations in the field of OSH; monitoring and implementing ratified conventions and EU directives in the field; giving opinions regarding the implementation of regulations in the field of OSH; collection and analysis of data on accidents at work and occupational diseases; encouraging education and developing a culture of work in the field of occupational safety, training of employees, employers, professionals dealing with safety at work, inspectors and others. The Committee takes note of the list of other institutions and organisations that undertake activities in the fields of health and safety, detailed in the report.

Moreover, in the second quarter of 2015, the Parliament of Montenegro adopted the Law on Ratification of the Convention of the International Labour Organisation on the Promotional Framework for Occupational Safety and Health at Work No. 187, whereby it accepted obligations imposed by the ratification of the said Convention. ILO Convention No. 187 has been ratified on 18 September 2015.

The Committee points out that new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. It would also point out that, with regard to Article 3§1 of the Charter, it takes into account the stress, aggression, violence and harassment at work when examining whether policies are regularly evaluated or reviewed in the light of emerging risks. The States parties have a duty to carry out activities in terms of research, knowledge and communication relating to psychosocial risks (Statement of

Interpretation on Article 3§1 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

### ***Organisation of occupational risk prevention***

The Committee previously deferred its conclusion (Conclusions 2013) and requested information on organisation of occupational risk prevention, notably framework of rights, duties and structures for occupational risk prevention at national level; measures for occupational risk prevention at company level: assessment of work-related risks, adoption of preventive measures geared to the nature of risks, and information and training for workers; and whether the labour inspectorate has a duty to share the knowledge about occupational hazards and risk prevention acquired during inspection and investigation, as part of preventive activities (information, education, prevention).

In response, the report indicates that from 1st June 2012, the Department of Labour Inspection is organisationally shifted from the Ministry of Labour and Social Affairs into the Administration for Inspection Affairs. As part of the Department of Labour Inspection, an occupational safety and health (OSH) Group is in charge of the supervision of the implementation of the Law on Safety and Health at Work, secondary legislation thereof, technical and other measures relating to the protection of health and safety carried out by the labour inspectors in the field of safety and health at work, unless the Law stipulates that oversight in the implementation of these regulations in certain activities is carried out by other authorities.

As regards the risk assessment in relation to the work, the report indicates that an employer is obliged to issue an Act on Risk Assessment for all workplaces, determine the manner and measures to eliminate risk and ensure their implementation. The employer will specify in the Act on the Risk Assessment the jobs with increased risk, the health requirements for certain work to be met by employees in the work process, or for the use of certain funds for work on the basis of expert assessment of the authorised institution for health care of employees. The Act of Risk Assessment determines the identification and/or detection of danger; which jobs are exposed to the identified risks; the likelihood of accidents at work and occupational diseases; whether the risk is acceptable; and the introduction of measures to reduce unacceptable risks. The employer is also obliged to familiarise employees with the Act on Risk Assessment.

The Committee asks for information about the way in which employers, particularly small and medium-sized enterprises discharge their obligations in terms of initial assessment of the risks specific to workstations and the adoption of targeted preventive measures in practice. It asks the next report to indicate the manner in which the Government ensures that safety and health laws and regulations are adopted and maintained in force on the basis of an assessment of occupational risks.

According to the report, the employer is obliged to ensure protective measures by preventing, removing and controlling the risk at work, informing and training employees, along with appropriate organisation and the necessary resources, to implement safety measures and select such working and production methods that will improve or increase the level of OSH protection. The employer is also obliged to provide training for the safe operation for the employee at the beginning of his employment, i.e. reassignment to other jobs, when introducing a new technology or new work instruments or alteration of work equipment, as well as in case of alteration of the work process that may cause change of safe work and occupational health measures or after absence that lasted for more than a year.

In addition, the employer has to inform the employee or the employees' representative in writing on the risks to safety and health at work, as well as on the protective measures and activities to each type of workplace and/or job. Also, he is obliged to inform a representative of the employees about the rights and obligations relating to the occupational health and

safety and thus allow him access to risk assessment and measures to protect health and safety, including those risks faced by the groups of employees exposed to particular risks; decisions on measures to protect health and safety, which need to be taken, and if necessary, on the means and equipment for personal protection at work, which is used; records and reports on occupational injuries that have resulted in the absence of the employee from work for more than three working days.

The Committee notes that risk prevention measures exist at the level of undertakings. However, no information was provided as regards the labour inspectorate. The Committee underlines that there is a duty for inspectors to share the knowledge of risks and risk prevention they have acquired during their inspections and investigations conducted as part of their prevention activities (e.g. information, education). It reiterates its request, and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Montenegro is in conformity with Article 3§1 of the Charter in this respect.

### ***Improvement of occupational safety and health***

The Committee previously deferred its conclusion (Conclusions 2013) and requested information on improvement of occupational health and safety, notably whether public authorities were involved in research (scientific and technical knowledge) on occupational health and safety, and in activities (analysis of sectoral risks, elaboration of standards, issue guidelines, publications, seminars, training); and whether public authorities were involved in training (qualified professionals), in the design of training modules, of training (how to work, how to minimise risks for oneself or others) and certification schemes.

In response, the report indicates that the national authorities are involved in research activities and occupational safety through the strategic policy objectives among which is awareness raising about the importance of the gradual introduction of health and safety at work in the educational system of Montenegro. It is also planned to raise awareness about the importance of OSH of pupils in primary and secondary education through the elective lessons on the topic of occupational safety and health.

According to the report, the Institute for the Development and Research in Safety at Work has been established for the purpose of research, study and design of appropriate methods in the field of occupation safety and health. This Institute is a public institution and has a capacity of legal entity. The Committee takes note of the activities of the Institute, detailed in the report.

The Ministry of Labour and Social Welfare implements the professional examination for persons engaged in the business of safety at work. Conditions, program and manner of taking such examination has been determined by the competent ministry. The Ministry of Labour and Social Welfare then delivers an authorisation to a legal entity or entrepreneur (i.e. authorised organisation that can carry out certain tasks of safety and health at work). The decision is issued for a period of three years and may be renewed under the same conditions.

In addition, the new Department for Safety at Work performs activities related to organising and taking professional examinations for acquiring professional title for the performance of safety at work; material processing and preparation of the operating license for authorised organisations for safety at work which carry out their activities with the approval of the Ministry; keeping registers of authorised organisations in the field of safety at work carrying out activities with the approval of the Ministry and supervise their work; and keeping of registers of persons who have passed the professional exam for acquiring professional title in the organisation of this Ministry.

Moreover, the report indicates that the involvement of state authorities in training of civil servants in the field of occupational safety and health within the Human Resources

Management Authority, in accordance with the aspirations and trends of approaching Montenegro to the European Union, primarily in the area of institution building system.

The Committee notes that there is a system aimed at improving occupational health and safety through research, development and training. It asks that the next report contain updated information, supported by concrete examples on the research work (analysis of sectoral risks; norms defined; recommendations made; publications) and training (certification schemes; training of qualified professionals; training schemes) undertaken during the reference period.

### ***Consultation with employers' and workers' organisations***

The Committee previously deferred its conclusion (Conclusions 2013) and requested information on consultation with employers' and workers' organisations, notably framework for consultation between public authorities and social partners (bodies; competencies; participants; frequency; issues) in the area of occupational health and safety; and consultation mechanisms at company level (bodies; competencies; participants; frequency; issues) in the area of occupational health and safety.

According to the report, the social partners as well as non-governmental organisations are involved in all phases of preparing and drafting of regulations relevant for the area of occupation safety and health. The report stresses that the employer, employee, representative of employees and trade unions shall cooperate in determining their rights, obligations and responsibilities pertaining to the safety and health at work, particularly in relation to data on the risks assessment and protective measures, decisions on protective measures to be taken, including the personal protective equipment, records and reports on accidents at work, planning and organising training and verification of capacities of the safety and health at work, etc.

The Committee asks that the next report provide concrete examples of the involvement of employers' and workers' organisations in shaping occupational health and safety policy in practice.

### ***Conclusion***

Pending receipt of the requested information, the Committee concludes that the situation in Montenegro is in conformity with Article 3§1 of the Charter.

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 2 - Safety and health regulations*

The Committee takes note of the information contained in the report submitted by Montenegro, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§2 of the Charter.

#### **Content of the regulations on health and safety at work**

The Committee recalls that states' first obligation under Article 3 of the Charter is to ensure the right to occupational safety and health rules of the highest possible standard. Paragraph 2 of this Article requires them to issue health and safety regulations providing for preventive and protective measures against most of the risks recognised by the scientific community and laid down in Community and international regulations and standards. These regulations have to be specific in that they must set out rules in sufficient detail for them to be applied properly and efficiently. They must also cover a majority of the risks listed in Conclusions XIV-2.

The Committee previously deferred its conclusion (Conclusions 2013) and requested for information on the following points: whether the legislation and regulations on occupational health and safety cover the majority of the risks listed in General Introduction to Conclusions XIV-2; and whether such coverage is specific in that the rules are set out in sufficient detail for them to be applied properly and efficiently.

The report gives a list of the existing legal framework in the field of health and safety: Law on Safety and Health at Work (Official Gazette (OG) No. 34/14); Labour Law (OG No. 49/08, 59/11, 66/12 and 31/14); Law on Pension and disability insurance (OG No. 66/12, 38/13, 61/13, 60/14, 10/15 and 44/15, etc.); Law on Labour Inspection (OG No. 79/08 ); Law on the Armed Forces (OG No. 88/09, 75/10 and 32/14); Decision on Montenegrin standards and related documents (OG No. 58/15); Law on Safety of Navigation (OG No. 62/13, 6/14 and 47/15); Law on Ionizing Radiation Protection and Radiation Safety (OG No. 56/09 and 58/09); Mining Law (OG No. 65/08 and 74/10); and Law on Social Council (OG No.16/07, 20/11 and 61/13).

The report states that, on 25 July 2014, the Parliament of Montenegro adopted the Law on Safety and Health at Work (Official Gazette No. 34/14), which replaces the former Law on Safety and Health at Work (Official Gazette No. 79/04 and 26/10). According to the new law, the employer is obliged to provide measures of safety and health at work to all employees, by preventing, eliminating and controlling risks at work, informing and training employees, and with proper organisation and the necessary means. In addition, the employer is obliged to provide special safety and health at work to women during pregnancy, persons under 18 years of age, and persons with disabilities. However the Committee needs further information on the content of the legislation, in particular which risks are covered by the Law on Safety and Health at Work. It asks that the next report explain the specific occupational risk protection system established under the Law on Safety and Health at Work.

The Committee points out that under the terms of Article 3§2 of the Charter, regulations concerning health and safety at work must cover work-related stress, aggression and violence specific to work, and especially for workers under atypical working relationships (Statement of Interpretation on Article 3§2 of the Charter, Conclusions 2013). The report does not provide any information on this point. The Committee accordingly reiterates its request.

The Committee observes that there has been general framework legislation on occupational safety and health since the Law on Safety and Health at Work (Official Gazette (OG) No. 34/14) came into force. It notes, however, that existing regulations only cover a small proportion of the risks identified in Conclusions XIV-2, and fail to offer protection against significant risks such as heavy loads, asbestos, air pollution, noise and vibration, and

chemical, physical and biological agents, or exposed sectors such as dock labour and agriculture.

### ***Levels of prevention and protection***

The Committee considers the levels of prevention and protection that the legislation specifies for certain risks.

### ***Establishment, alteration and upkeep of workplaces***

The Committee previously deferred its conclusion (Conclusions 2013) and requested whether workplace risk assessment is mandatory and a schedule to remedy the identified risks exists. In reply, the report indicates that the employer is obliged to issue an Act on Risk Assessment for all workplaces, determine the manner and measures to eliminate risks and ensure their implementation (see also examination under Article 3§1, Conclusions 2017). However, the report does not contain any information on the installation, modification and upkeep of workstations.

The Committee notes that, according to ILO database NORMLEX, ILO Conventions No. 119 on the Guarding of Machinery (1963) and No. 148 on the Protection of Workers against Occupational Hazards in the Working Environment Due to Air Pollution, Noise and Vibration (1979) are in force. ILO Conventions No. 120 on Hygiene in Commerce and Offices (1964) and No. 127 on Maximum Weight (1967) are not.

Given the generality of the information provided, the Committee is not in a position to examine whether the legislation and regulations in force satisfy the obligation under Article 3§2 of the Charter, which requires that levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces be in line with the level set by international reference standards. It asks for information in the next report on the legislative or regulatory measures establishing the levels of prevention and protection against occupational hazards specifically related to the establishment of, alteration to, and upkeep of workplaces. It also asks for more detailed information on the implementation of preventive measures geared to the nature of risks, on the provision of information and training for workers, as well as on a schedule for compliance.

### ***Protection against hazardous substances and agents***

The Committee asks the next report to provide information on the specific provisions relating to protection against risks of exposure to benzene.

### ***Protection of workers against asbestos***

The Committee previously deferred its conclusion (Conclusions 2013) and requested whether exposure limits were aligned with those adopted in the international reference standards and, where applicable, in the Community *acquis*. With regard to asbestos, it requested whether workers are protected up to a level at least equivalent to that set by Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work, as amended by Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003, and ILO Convention No. 162 on Asbestos (1986), and whether the use at the workplace of asbestos in its most harmful forms (amphiboles) is prohibited.

The report provides no information on the levels of prevention and protection in relation to asbestos.

In view of the lack of information in the report, the Committee is not in a position to examine whether the legislation and regulations in force satisfy the obligation under Article 3§2 of the

Charter, which requires that level of prevention and protection required by the legislation and regulations in relation to asbestos are at least equivalent to the level set by international reference standards. It asks that the next report provide information on the legislation and regulations on level of prevention and protection from asbestos, and on the application of this legislation and regulations in practice. It asks in particular for information on exposure limit values, on the ban of production and sale of asbestos and products containing it. It also asks for specific measures taken to make an inventory of all building and materials contaminated by asbestos.

### ***Protection of workers against ionising radiation***

The Committee previously deferred its conclusion (Conclusions 2013) and requested, with regard to ionizing radiation, whether workers are protected up to a level at least equivalent to that set in the Recommendations (1990) by the International Commission on Radiological Protection (ICRP Publication No. 60) or, where applicable, to Council Directive 96/29/EURATOM of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation.

The report indicates that workers are protected in accordance with the regulations in the field of ionizing radiation and notes that the Law on Ionizing Radiation Protection and Radiation Safety (OG No. 56/09 and 58/09) was adopted. According to the report, about 80% of outdated Directive 96/29/EURATOM were transposed into national legislation.

The Committee takes note of this information. Given the generality of this information, the Committee is not in a position to examine whether the legislation and regulations in force satisfy the general obligation under Article 3§2 of the Charter, which requires that level of prevention and protection required by the legislation and regulations in relation to ionising radiation are at least equivalent to the level set by international reference standards. It asks that the next report provide more comprehensive information on the legislation and regulations on the level of prevention and protection from ionising radiation, and on the application of this legislation and regulations in practice. It asks whether workers are protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007).

### ***Personal scope of the regulations***

The Committee previously deferred its conclusion (Conclusions 2013) and requested whether all workers (including temporary workers, agency workers and workers on fixed-term contracts), all workplaces (including home, domestic and independent workers) and all sectors of activity (without regard to risk intensity or numbers of employees) are covered by occupational health and safety regulations.

According to the report, an “employee” is a person who has been employed by, or has concluded an employment contract with the employer, a person who has undergone training work with the employer, as well as a person who performs work for the employer under any legal basis. The provisions of the Law on Safety and Health at Work shall apply to all persons involved in the working process of the employer under any legal ground.

The report states that the provisions of the Law on Safety and Health at Work apply to all persons employed in the territory of Montenegro with legal entities and entrepreneurs in all sectors of activity, government bodies, bodies of state administration and local self-government units, employees who were sent to work abroad if the regulations of the receiving State provide less favourable measures of safety and health at work than those provided for in this Law, unless otherwise regulated by a special law.

The Committee notes from the report that the provisions of the Law on Safety and Health at Work shall not apply to persons for whom the employer has organised work at home under

the law, and/or with whom it contracted the housework employment. The Committee therefore concludes that the situation is not in conformity with the Charter on the ground that domestic workers are not protected by occupational health and safety regulations.

Recalling that States Party undertook to have all workers, all workplaces and all sectors of activity covered by occupational health and safety legislation and regulations, the Committee asks that the next report include concrete examples on the way in which temporary workers, interim workers and workers on fixed-term contracts are provided information on hazards, training on safe working methods, medical examination when rehired or reassigned new tasks. It also asks for concrete examples on how these workers are provided access to representation at work. It also asks for information on any existing limitations on the basis of the number of employees, and on existing measures to monitor the implementation of such legislation and regulations in practice.

### ***Consultation with employers' and workers' organisations***

The Committee previously deferred its conclusion (Conclusions 2013) and requested for information on consultation with employers' and workers' organisations, notably framework for consultation between public authorities and social partners (bodies; competencies; participants; frequency; issues) in the area of occupational health and safety; and consultation mechanisms at company level (bodies; competencies; participants; frequency; issues) in the area of occupational health and safety.

The report notes that, when planning and introducing new technologies, the employer is obliged to consult with employees or their OSH representatives about issues regarding the working tools, working conditions, working environment and their consequences for the OSH. In assigning an employee to a position with special working conditions or with increased risk, the employer must take into account employee's abilities, which may affect the protection and health of the employee. The implementation of protection measures is reflected in the implementation of safety measures with respect to the following principles: avoiding risks; providing risk assessment; eliminating risks at source; adapting work and workplace to an employee, especially in terms of designing the workplace, the choice of working tools, the choice of working and production methods with particular emphasis on avoiding monotonous work and work at a more certain speed and reduce their effect on health; adapting to technical progress; substitution of dangerous with harmless or less harmful circumstances; development of a comprehensive policy to protect health and safety, which includes technology, work organisation, working conditions, interpersonal relations and working environment factors; giving advantages to collective protective measures over individual protective measures; giving appropriate instructions and information (see also examination under Article 3§1, Conclusions 2017).

The Committee confirms that there is co-operation between the public authorities and the social partners at company level.

### ***Conclusion***

The Committee concludes that the situation in Montenegro is not in conformity with Article 3§2 of the Charter on the grounds that:

- it has not been established that levels of prevention and protection required by the legislation and regulations in relation to the establishment, alteration and upkeep of workplaces are in line with the level set by international reference standards,
- it has not been established that levels of protection against asbestos and ionising radiation are adequate;
- domestic workers are not protected by occupational health and safety regulations.

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 3 - Enforcement of safety and health regulations*

The Committee takes note of the information contained in the report submitted by Montenegro, but highlights the significant gaps in information provided in relation to the specific requirements of Article 3§3 of the Charter.

#### ***Accidents at work and occupational diseases***

The Committee previously deferred its conclusion (Conclusions 2013) and requested statistical data on the number of accidents at work; the average incidence rate per 100 000 workers for accidents at work; the number of fatal accidents; the average incidence rate per 100 000 workers for fatal accidents; statistical data on the number of cases of occupational diseases; the average incidence rate per 100 000 workers for cases of occupational disease; the number of fatal cases of occupational disease; and for the average incidence rate per 100 000 workers for fatal cases of occupational disease.

The report indicates that, according to information provided by the Health Insurance Fund, the number of accidents at work was 907 in 2012, 815 in 2013, and 897 in 2014. The report indicates that the expansion in construction activity has led to an increase in the number of fatal accidents at work. The Committee observes that the standardised incidence rates of accidents at work and fatal accidents at work were not provided in the report. It therefore asks that the next report provide this information.

According to the report, the most common causes of accidents at work were non-application of measures to protect health and safety which caused the slipping, fall from a height or to a depth, struck/squeeze by a timber, etc. The hiring of persons who are not trained for safe work at jobs they do, and whom were not examined their medical fitness, deterioration of resources for the work, and the use thereof without prior inspection and testing, and without provision of expert findings of authorised organisations for environmental protection and occupational health.

The Committee notes that the report does not provide pertinent figures or statistics on the number of occupational diseases. It therefore considers that during the reference period occupational diseases were not adequately monitored. The Committee asks that the next report provide information on the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged.

The Committee considers that the figures provided do not establish that accidents at work and occupational diseases are monitored efficiently. The Committee recalls that satisfactory application of the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised, and that the frequency of accidents at work and their evolution are key aspects of monitoring the effective observance of the right enshrined in Article 3§3 of the Charter. In the meantime, the Committee concludes that the situation is not in conformity with Article 3§3 of the Charter on the ground that it has not been established that accidents at work and occupational diseases are monitored efficiently.

#### ***Activities of the Labour Inspectorate***

The Committee notes that under Article 3§3 of the Charter, States Parties must implement measures to focus labour inspection on small and medium-sized enterprises (Statement of Interpretation on Article 3§3, Conclusions 2013). Since it cannot find an answer to its

question in the report with regard to this point (Conclusions 2013), the Committee requests that the next report contain this information.

The Committee previously deferred its conclusion (Conclusions 2013) and requested information on the framework and functioning of the Labour Inspectorate (relevant bodies, competence, means of investigation, enforcement powers); activities of the Labour Inspectorate (number of labour inspectors, frequency of inspection visits, proportion of workers covered by inspection related to the labour force); and measures taken and sanctions adopted by the Labour Inspectorate (number of infringements, types of notices and measures, number and volume of fines, number of suspension of activity, number of cases prosecuted).

The report indicates that the number of systematised working posts for labour inspectors is 39, of which 12 focus on safety and health at work. Out of potentially positions only 34 inspectors is employed, of which 9 are in the field of safety and health at work.

According to the report, supervision of the implementation of the Law on Health and Safety at Work, the application of regulations adopted based on this law, and technical and other measures relating to the safety and health at work is carried out by the Labour Inspection through the labour inspector for safety and health at work. That is unless the law stipulates that the control of the implementation of these regulations in certain activities is carried out by other authorities.

A labour inspector for safety and health at work, in addition to the duties and powers established by law, has the obligation and authority to carry out investigation of serious, collective and fatal accidents at work. According to data provided by the Administration for Inspection Affairs, the total number of completed site investigations by labour inspectors in the field of safety and health at work as regards accidents at work decreased from 49 in 2012, of which 7 accidents were fatal, to 36 in 2015, including 9 fatal accidents.

The report indicates that the Labour Inspection carried out 2 656 inspections in the field of health and safety during the reference period, and 2 622 irregularities were established. In order to eliminate identified irregularities, 169 decisions have been issued and 583 conclusions were drawn. Due to established irregularities, 859 misdemeanour warrants have been issued, resulting in the imposition a total of €265 870 of fines (the failure to take measures to protect employees, according to the report). There were 4 requests for initiation of misdemeanour procedures in the field of safety and health.

The Committee takes note of the information provided. However, this information is not sufficient to enable the Committee to assess compliance with Article 3§3 of the Charter. The Committee therefore repeats its previous requests concerning the proportion of workers who are covered by inspections and the percentage of companies which underwent a health and safety inspection in the years covered by the reference period. In the meantime, the Committee reserves its position on this point.

### *Conclusion*

The Committee concludes that the situation in Montenegro is not in conformity with Article 3§3 of the Charter on the grounds that it has not been established that accidents at work and occupational diseases are monitored efficiently.

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 4 - Occupational health services*

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

The Committee recalls that under Article 3§4 States must promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services for all workers with essentially preventive and advisory functions. These services may be run jointly by several companies. They must be efficient and should be able to identify, measure and prevent work-related stress, aggression and violence (see Statement of Interpretation on Article 3§4, Conclusions 2013; also Conclusions 2003, Bulgaria). It further notes that if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose. Thus, States "must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources" (Conclusions 2003, Bulgaria, Conclusions 2009, Albania).

The Committee previously deferred its conclusion and requested for more detailed information on framework on occupational health services (legislation, mission, organisation, programmes, strategies, action plans); whether, if not all undertakings provide occupational health services, a strategy is set up, in consultation with the social partners, to provide access to occupational health services; what, if access to occupational health services is not mandatory, are the consequences whenever employers choose not to provide such access; number of workers under care with occupational health services; and proportion of undertakings which provide or share occupational health services with other undertakings.

In reply, the report indicates that the Law on Safety and Health at Work (Official Gazette No. 34-14) prescribes that the employer shall promote the safety and health at work. Article 11 of this law prescribes the obligation to conduct previous and periodic medical checks of employees. The Rulebook on the Scope of Measures of Specific Health Care of Employed (Official Gazette No. 44/06) stipulates the mandatory specific medical checks of employees. In addition, the report indicates that the Law on Health Care (Official Gazette No. 3/16 and 39/16, outside of the reference period) stipulates that the employers shall, in planning and carrying out business activities, develop and use appropriate technologies that are health/environment friendly, introduce and implement measures for specific health care of employees. The Rulebook on Detailed Conditions to be Met by a Legal Entity to Perform the Health Care of the Employed (Official Gazette No. 60/16, outside of the reference period) specifies conditions for legal entities to be eligible to conduct specific medical checks of employees.

The report indicates that occupational health services provide healthcare institutions. In order to ensure protection of health and safety at work, immediate checks on primary health care level are ensured (private health institutions, health centres and private health facilities) as well as periodic or early reviews of staff in occupational medicine. The access to occupational health services is mandatory for all employees, but, if the employer does not provide the employee access to health care, the competent inspection services will take measures to sanction those employers.

Moreover, the report indicates that the principle of safety at work has been promoted by the Strategy for the Improvement of Occupational Medicine in Montenegro for the period 2015-2020 with the Action Plan. This strategy promotes a new concept of providing services in occupational medicine for all employees regardless of sector, type of employment, the size and profile of the employer or geographical location, includes access to services that are relevant, accessible, acceptable, affordable and of good quality. In order to meet all the needs of the employee with regard to health in line with the reform process of the health system, the Study on the Establishment of the Institute of Occupational Medicine is in

preparation as a single reference medical institution to promote working capacity and health of employees. The Committee asks the next report to provide information about the impact of this strategy on the development of health services in small and medium-sized enterprises.

The Committee observes that the Law on Safety and Health at Work require employers to provide medical examination to employees. In view of the progressive nature of the obligation in Article 3§4 of the Charter, the Committee repeats its request for information regarding the percentage of employees covered by occupational health services be provided in the next report.

#### *Conclusion*

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

## **Article 11 - 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 Montenegro.

### **Measures to ensure the highest possible standard of health**

The Committee notes from the WHO that life expectancy at birth in 2015 (average for both sexes) was 76.1 (compared to 75.6 in 2009). The life-expectancy rate is below than that of other European countries. For instance, life expectancy at birth in the EU-28 was estimated at 80.6 years in 2015.

The death rate (deaths/1 000 population) was 10 in 2015 according to the World Bank (compared to 9.29 in 2011).

The Committee noted previously that the main causes of disease, disability and premature death (before the age of 65) are chronic non-communicable diseases. Ischemic heart disease, cerebrovascular disease, lung cancer, affective disorders (unipolar depression) and diabetes cause almost two-thirds of the total disease burden. The Committee asked to be kept informed of the measures taken to combat these causes of mortality (Conclusions 2013). The report indicates that the new "Health Care System Development Master Plan for the period 2015-2020" has as main strategic objectives to avoid premature mortality, to reduce the morbidity of the leading chronic diseases, to improve the quality of life and to avoid the consequent disability. An Action Plan 2016-2017 was adopted by the Government to implement the strategy for the prevention and control of chronic non-communicable diseases. Measures and activities which are directly or indirectly related to the control and prevention of chronic non-communicable diseases are contained in other national strategic documents and the accompanying action plans (e.g. the Action Plan for Nutrition, the Action Plan for the Promotion of Mental Health, the Action Plan for Health Care of Persons with Diabetes, the Action Plan to Reduce the Harmful Use of Alcohol, etc.). The Committee asks for information in the next report on the implementation and impact of these plans and initiatives on combating the main causes of death.

The Committee notes from Eurostat that the infant mortality rate decreased from 5.7 deaths per 1,000 live births in 2009 (previous reference period) to 4.4 in 2011 and even to 2.2 in 2015 (during the reference period), while the EU-28 average rate in 2015 was 3.6 per 1 000 live births.

As regards the maternal mortality rate, the Committee notes from WHO data that in 2015 the rate was 7 deaths per 100 000 live births.

The Committee asks for updated figures in the next report on the death rate and the main causes of death, as well as on infant and maternal mortality rates.

### **Access to health care**

The Committee took note previously of the regulatory and legal texts related to health and asked for information on the administrative structures responsible for the proper implementation of the regulatory framework (Conclusions 2013). The report indicates that the Ministry of Health and health institutions at all levels of health care are responsible for the functioning of the health system in accordance with the Health Care System Development Master Plan for the period 2015-2020.

The Committee notes from the EU Commission Report 2016 that the 2015-2020 master plan for health development and the law on healthcare, which is partly aligned with the EU *acquis*, were adopted in late 2015. Fiscal austerity and sustainability continued to detract from the work of public health bodies, and programmes and interventions were further impacted by overuse of medicines. Amendments to the maximum sale prices criteria for

medicines were adopted regarding the alignment of prices, once the maximum price is determined. The Ministry of Health issued a guidebook for regular analyses in monitoring the prescription of drugs. The Committee asks that the next report contain information on the out-of-pocket payments supported by patients (as a percentage of the total health spending).

In its previous conclusion, the Committee wished to be kept informed on any reforms of the health system pursued (Conclusions 2013). The report indicates that the strategic document "The Plan of Structural Reforms in the Healthcare System of Montenegro with 2015 Action Plan", established priority measures to reform the health system, which should be implemented from 2016 to 2017 (outside the reference period). These measures include the continuing education of medical personnel, reducing the number of hospital beds and reducing unnecessary referral of patients to tertiary level of health care. The structural reform envisages a measure of redistribution of working hours, greater number and competences of doctors at primary health care level, which will result in the relief of the secondary and tertiary levels of care. The Committee wishes to be kept informed on the implementation of these reforms and on any other health care reforms undertaken.

In its previous conclusion, the Committee noted that WHO Framework Strategy "Health for All" sets out core values for the preparation of health policies. These should be based on the principle of equality, allowing equal access to health services for the population, paying special attention to the poor and other marginal/vulnerable groups. The Committee asked the next report to indicate how this strategy translates into practice, namely whether disadvantaged groups (the unemployed, persons living below the poverty line, etc.) qualify for medical assistance, and the range of public health services provided (Conclusions 2013).

The report indicates that as regards the vulnerable groups (unemployed, persons living below the poverty line, etc.), the normative framework in the health care system is in line with the strategic objectives that all citizens, health service users enjoy the same rights. Article 5 of the Law on Health Care ("Official Gazette of Montenegro", No. 16/03 and 39/16) provides that in the exercise of the right to health care, all citizens are equal, regardless of their nationality, race, sex, gender identity, sexual orientation, age, disability, language, religion, education, social origin, property or other personal characteristics, in accordance with the law. However, the Committee notes from the EU Commission Report 2016 that access to health protection must be improved for people with disabilities, people living with HIV, children and adults who use drugs, prisoners, women in prostitution, LGBTI people, internally displaced persons and Roma. The Committee wishes to receive the Government's comments on this point.

The Committee recalls that the right of access to health care also requires that arrangements for access to care must not lead to unnecessary delays in its provision. It therefore previously asked for information on the rules that apply to the management of waiting lists, as well as statistics on average waiting times in health care (Conclusions 2013). The report indicates that according to Article 50 of the Law on Health Insurance ("Official Gazette of Montenegro", No. 16/06) medical institutions provide timely health care, depending on the type of health services and the urgency of the case. For certain services in the field of diagnosis and treatment, which are not urgent, a waiting list can be made. Providing health care is done in order of the waiting list. The insured person is put on a waiting list, only if a health service to be provided is the best way or the only way to treat the insured person. The Committee asks for information and concrete examples of the actual average waiting times for primary and specialist care as well as for surgical interventions.

The Committee noted in its previous conclusion that there was an insufficiency of healthcare professionals in Montenegro, especially in the number of doctors. It asked whether any measures are being taken in this respect, and whether the actual needs for health workers are being assessed/ monitored (Conclusions 2013). The report indicates that the "Plan of human resources in the health sector from 2013 to 2022" establishes the uniform distribution

of health personnel (with a share of 25% of staff in the northern and southern regions, and 50% in the central region). After 2017 (outside the reference period), the staff requirements will be reviewed at primary health care level, given the growing health problems and the need for promotion, prevention and health improvement. The Plan of Human Resources is based on the assumption to reach the number of 260 doctors per 100,000 inhabitants by 2022, which is for Montenegro a demanding task, but also a realistic assessment. The report mentions in this context the adoption in June 2015 of the document of Structural Reforms in the Healthcare System of Montenegro with Action Plan for its implementation from 2015 to 2017.

The Committee takes note that according to Euro Health Consumer Index (EHCI) which assesses the performance of national healthcare systems in 35 European countries according to 48 indicators, including patients' rights, accessibility, prevention and outcomes, Montenegro scored the last country in this comparison with only 484 points (as opposed to the Netherlands which was on the first place with 916 points).

Furthermore, the Committee notes from World Bank data that the public health expenditure as a share of GDP in Montenegro dropped from 5.2 in 1995 to 3.7 in 2014, which is well below other European countries and the OECD average of 8.9% in 2013.

The Committee asks that the next report provide comprehensive information on the implementation of the Structural Reforms mentioned in the report and on their concrete impact on the health care system. Meanwhile, noting that the main reforms of the health system should be implemented from 2016 to 2017 (outside the reference period), the Committee considers that the situation is not in conformity with Article 11§1 of the Charter on the ground that adequate measures had not been taken to effectively guarantee the right of access to health care.

The Committee previously asked for information on the availability of rehabilitation facilities for drug addicts, and the range of facilities and treatments (Conclusions 2013). The report indicates that under Article 12 of the Law on the Prevention of Drug Abuse ("Official Gazette of Montenegro", No. 28/11) the drugs addicts, who have already been treated, are to be provided rehabilitation and re-socialization in special institutions. Services for drug and other psychoactive substances users are provided in a specialised hospital in Kotor, Department of Psychiatry, Clinical Centre of Montenegro and rehabilitation centre "Kakaricka Montenegro" – Podgorica. The Committee takes note of the information in the EU Commission Report 2016 on drug abuse prevention that efforts are needed to develop and expand prevention, rehabilitation and social reintegration programmes for addicts. The same source indicates that the Commission for drugs was created in May 2016, which is composed of four psychiatrists, one representative of the civil society organisations and two representatives from the Ministry of Health. The Committee wishes to be kept informed on the progress made in this field in the next report.

The Committee asks that the next report contain information on the availability of mental health care and treatment services, including information on the prevention of mental disorders and recovery measures.

The Committee asks that the next report contain information on dental care services and treatments (such as who is entitled to free dental treatment, the costs for the main treatments and the proportion of out-of-pocket paid by the patients).

As regards the right to protection of health of transgender persons, the Committee received submission by Transgender Europe and the International Lesbian and Gay Association (European Region) (ILGA) stating that Montenegro is among the states which require sterilisation as a condition for legal gender recognition. The Committee asks for information on this matter in the next report, in particular whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilization or any other invasive medical treatment which could impair their health or physical integrity.

### *Conclusion*

The Committee concludes that the situation in Montenegro is not in conformity with Article 11§1 of the Charter on the ground that adequate measures have not been taken to effectively guarantee the right of access to health care.

## **Article 11 - Right to protection of health**

### *Paragraph 2 - Advisory and educational facilities*

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

### ***Education and awareness raising***

The Committee recalled previously that under Article 11§2, States Parties must demonstrate through concrete measures that they implement a public health education policy in favour of the general population and population groups affected by specific problems. Thus, the Committee asked for information on the whole range of activities undertaken by public health services, or other bodies, to promote health and prevent diseases (Conclusions 2013). The report indicates that the Institute for Public Health of Montenegro – Centre for Health Promotion monitors the socio-economic, cultural, environmental, political and other characteristics of the community, as well as attitudes, beliefs and behaviours that directly or indirectly affect the health of the population. The Centre is responsible for the preparation and implementation of national public health programs and strategies for promotion, prevention and protection of public health. The activities of the Centre focus primarily on educating citizens, as well as informing of the harmful factors of living and working environment, which can have negative consequences on health. The Centre develops also national programs to protect vulnerable groups and monitors their implementation.

The Committee recalls that informing the public, particularly through awareness-raising campaigns, must be a public health priority. Measures should be taken to prevent activities that are damaging to health (smoking, alcohol, drugs) and to promote a sense of individual responsibility (healthy eating, sex education, environment). The Committee asks that the next report provide information on concrete campaigns undertaken on the above mentioned topics in the media, in schools and in public institutions etc.

In its previous conclusion the Committee recalled that health education should be provided throughout school life and form part of school curricula and asked the next report to indicate whether providing health education at schools is a statutory obligation, how it is included in school curricula (as a separate subject or integrated into other subjects), and the content of health education (Conclusions 2013). The report indicates that for pupils of primary and secondary schools, subjects related to health education are dealt with under topics such as biology, civic education, healthy lifestyles, civic pedagogy and ‘the individual within the group’. Moreover, the subject “Healthy Lifestyles” which was introduced in the curriculum of primary and secondary education contains topics like: mental and emotional health, defence (immune) system, infectious diseases and HIV/AIDS, reproductive health with sex education and prevention of sexually transmitted diseases, prevention of physical and psychological violence, the impact of psychoactive substances on human health (the latter includes the prevention of alcoholism). The report adds that the National Institute for Education has approved the introduction of elective subjects in secondary schools “Healthy Lifestyles”. A research was carried out on the “Impact of elective subject Healthy Lifestyles on knowledge, values and life skills of pupils of elementary schools”, the findings of which were used for the development of the subject “Healthy Lifestyles for High School Pupils”. The Committee asks whether the latter subject was introduced in the curriculum of high schools.

### ***Counselling and screening***

The Committee recalled previously that under Article 11§2, States Parties should provide free and regular consultation and screening for pregnant women and children throughout the country. It asked that information on these matters be provided in the next report, including on the frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing (Conclusions 2013). As regards the medical examinations of children in schools, the report indicates that regular medical check-ups are

carried out. This systematic review includes a complete health examination of children and checks are carried out in the second, fourth, sixth, eighth grade, and in the first and third year of high school. In the eighth grade, a physical examination is performed and vaccination against polio, diphtheria and tetanus are carried out; in the fourth and final year of high school, medical check-ups and vaccination against diphtheria and tetanus are carried out.

The report does not provide any information on the consultation and screening programs available for pregnant women. The Committee asks that the next report include information on this matter. Pending receipt of the information provided, it reserves its position on this point.

In its previous conclusion, the Committee recalled that pursuant to this provision there should be screening, preferably systematic, for the diseases which constitute the principal cause of death, and asked for information on mass screening programmes available in the country, their frequency and accessibility (Conclusions 2013). The report indicates that in 2011 Montenegro adopted a National Plan for Cancer Control, the National Programme for Early Detection of Breast Cancer, the National Programme for Early Detection of Cervical Cancer and the National Programme for Early Detection of Colon Cancer. Montenegro adopted also the Strategy for the Prevention and Control of Chronic Non-communicable Diseases (2008). The Committee wishes to be informed on the impact /outcome of these programmes in practice. The development of the program of screening for early detection of colon cancer is on-going. The report adds that the relevant European Guidelines for screening programs are being used and media campaigns have also been conducted.

The Committee notes from the EU Commission Report 2016 that the WHO European Childhood Obesity Surveillance Initiative was carried out in May and June 2016, though no official results are available yet. It asks for information on this matter in the next report.

#### *Conclusion*

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

## **Article 11 - Right to protection of health**

### *Paragraph 3 - Prevention of diseases and accidents*

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

### **Healthy environment**

In its previous conclusion, the Committee asked for information on the laws, regulations and measures taken for the reduction of environmental risks, in particular in the field of air quality, water management, waste management, environmental noise, ionising radiation, asbestos and food safety, as well as on the institutional structures for the proper implementation of environmental legislation. It also wished to receive information on the levels of air pollution, contamination of drinking water and food intoxication during the reference period, namely whether trends in such levels increased or decreased (Conclusions 2013).

The Committee takes note from the report of the regulations and measures taken with regard to food safety and air quality assessment. The report provides detailed information on the main air pollutants and it states that the air, assessed in terms of global indicators of sulphur (IV) oxide (SO<sub>2</sub>) is of good quality, except in the urban part of Pljevlja, where deviations from the required air quality standards were registered during the reference period. Increased concentrations of PM<sub>10</sub> and PM<sub>2.5</sub> dust particles in the air had the biggest impact on poorer air quality. High concentrations were recorded on a daily basis in Pljevlja, Nikšić and Podgorica. The Committee asks to be kept informed on the measures taken to reduce the air pollution in the problematic areas.

The Committee reiterates its request for information on contamination of drinking water and water management, waste management, environmental noise, ionising radiation and asbestos. The Committee points out that in the absence of such information in the next report, there will be nothing to show that the situation is in conformity with the Charter on this point.

### **Tobacco, alcohol and drugs**

In its previous conclusion, the Committee noted that smoke-free legislation existed in respect of certain public places such as, health care institutions, educational facilities, universities and government facilities. However, no such legislation existed as regards bars, restaurants, pubs, public transport, or indoor offices. The Committee asked the next report to provide updated information on the state of laws on smoke-free environments, health warnings on tobacco packages, as well as tobacco advertising, promotion and sponsorship (Conclusions 2013).

The report indicates that through the Law on Limiting Use of Tobacco Products measures were introduced with regard to labels and warnings on packaging, the prohibition of sale of tobacco products to persons under the age of 18, rules on advertising, promotion and sponsorship of tobacco products. The Committee notes from WHO Report on the Global Tobacco Epidemic (2017) that smoke-free legislation still does not exist with respect to indoor offices and workplaces, restaurants, cafés, pubs and bars, and public transport.

The Committee recalls that anti-smoking measures are particularly relevant for the compliance with Article 11 since smoking is a major cause of avoidable death in developed countries. To be effective, any prevention policy must restrict the supply of tobacco through controls on production, distribution, advertising and pricing (Conclusions XVII-2 (2005), Malta). In particular, the sale of tobacco to young persons must be banned (Conclusions XV-2 (2001), Portugal) as must smoking in public places (Conclusions 2013, Andorra) including transport, and advertising on posters and in the press (Conclusions XV-2 (2001), Greece).

The Committee assesses the effectiveness of such policies on the basis of statistics on tobacco consumption.

The Committee notes from WHO Europe – Tobacco Control Factsheet that the prevalence of current adult smokers (20 years and older) was 31.0% in 2012 (men: 35.0%; women: 27.0%). It asks for updated information in the next report on trends in the consumption of tobacco (adults and youth). Meanwhile, the Committee considers that the situation is not in conformity with Article 11§3 of the Charter on the ground that the measures taken to ensure smoke-free environments in public places have been insufficient.

The Committee previously asked for information on the policy regarding alcohol consumption (including the minimum age at which the sale of alcoholic beverages is permitted) and drug consumption (Conclusions 2013). The report indicates that selling alcohol to minors is prohibited by the Law on Tourism "Official Gazette of Montenegro," No. 61/10), Article 104, which stipulates that *"the company, legal person or entrepreneur in the restaurant cannot serve alcoholic beverages to persons under 18 years, and it is required that a written notice is displayed in a visible place"*. The report indicates that according to the WHO estimates, the total alcohol consumption per capita in Montenegro amounted to 13.02 litres, with a share of unregistered or informally produced alcohol of 4.7 litres. The Committee takes note from the report of the data on the use of alcohol among young people as reflected by the 2015 ESPAD survey of the Institute for Public Health. A National Strategy to Prevent Harmful Use of Alcohol and Alcohol related Disorders 2013-2020 was adopted, which defines the objectives of the fight against alcoholism. The Action Plan for implementation of the Strategy for the period 2015-2016 set out the activities relating to the establishment and regular work of the National Coordinating Council for the alcohol that will include representatives of relevant government organisations. The Committee asks the next report to provide information on the impact of the strategy and action plan on the consumption of alcohol, especially among young people.

The report further indicates that drugs for substance abuse may be issued only by prescription in accordance with the Law on Medicines. Montenegro has adopted a strategic document on the rational use of drugs. The Committee asks that the next report provide updated information on the measures taken to reduce consumption of alcohol and drugs and trends in such consumption.

### ***Immunisation and epidemiological monitoring***

The Committee previously asked for updated information on vaccination coverage rates (Conclusions 2013). The report indicates that the coverage of mandatory vaccination of children against infectious diseases in 2015 ranged from 64.0% (MMR1) to 88.4% (BCG), with revaccination performed with coverage of 70.6% (polio in the second year) to 95.6% (DT and polio before entering the first grade of primary school). Other systematic primary immunisation coverage rates were: DTaP, Hib and Polio 3: 89.2% and Hepatitis B: 81.6%. The report further indicates that the incidence rate of tuberculosis in 2015 was 12.1 per 100 000 population (compared to 19.1 per 100 000 population in 2009) and the incidence of newly diagnosed HIV/AIDS infections was 3.06 per 100 000 inhabitants.

The Committee asks for updated figures on the vaccination coverage in the next report.

### ***Accidents***

The Committee previously asked for information on any measures or initiatives taken to prevent accidents, as well as on trends in the matter (Conclusions 2013). The report indicates that a Strategy to Improve Road Safety for the period 2010-2019 was adopted which establishes measures and activities in order to carry out actions and campaigns of a preventive effect on traffic safety, raising the level of awareness and reducing the number of traffic accidents.

The Committee recalls that under Article 11§3, States Parties must take steps to prevent accidents. The main accidents covered are road accidents, domestic accidents, accidents at school, and accidents during leisure time. The Committee asks for information on the implementation and impact of the above mentioned strategies on reducing the number of accidents and trends in this field.

*Conclusion*

The Committee concludes that the situation in Montenegro is not in conformity with Article 11§3 of the Charter on the ground that the measures taken to ensure smoke-free environments in public places have been insufficient.

## **Article 12 - 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 Montenegro.

In the case of **family** and **maternity benefits**, the Committee refers to its conclusions on, respectively, articles 16 and 8§1 (Conclusions 2015).

### ***Risks covered, financing of benefits and personal coverage***

The Committee refers to its previous conclusions for a description of the social security system in Montenegro, and notes that it continues to cover the traditional risks (medical care, sickness, unemployment, old age, work accidents/occupational diseases, family, maternity, invalidity and survivors). The system also continues to rest on collective funding: it is funded by contributions (employers, employees) and by the State budget.

The Committee recalls that Article 12§1 guarantees the right to social security to workers and their dependents including the self-employed and that States Parties must ensure this right through the existence of a social security system established by law and functioning in practice. In particular, health insurance should extend beyond employment relationship and must cover a significant percentage of the population. The social security system should furthermore cover a significant percentage of the active population as regards income-replacement benefits, such as sickness, maternity and unemployment benefits, pensions, and work accidents or occupational diseases benefits.

The Committee previously noted that **healthcare** insurance was mandatory and covered all employed, self-employed, farmers, beneficiaries of social protection rights, beneficiaries of pensions according to regulations on pension and disability insurance, priests and church employees, registered unemployed persons, prisoners and their family members. In response to the Committee's question (Conclusions 2013), the report indicates that the insured participate in the costs of obtaining health care services in the amount of 20%. According to the report, the costs of participation in obtaining health services are minimal and relate entirely to the administrative costs of the services provided. The Committee notes that healthcare compulsory insurance extend beyond the employment relationship and also covers dependant family members of the insured who are not capable of independent life and work and understands from the available information that a significant part of the population is presumably covered by healthcare insurance. As the report does not provide however the information requested, it asks again that the next report provide details concerning the percentage of persons insured out of the total population.

In order to assess the coverage of social security, the Committee previously asked, for each branch, updated figures concerning the percentage of persons insured out of the total active population and indicated that, should this information not be provided, there would be nothing to establish the situation's conformity with the Charter. In this respect, the Committee notes that, according to the statistical office of Montenegro, at the end of 2015 the active population was 267 600 (including 219 800 employees and 47 800 unemployed), while the total population was estimated to be 622 218. The report indicates that as of July 2016 (out of the reference period) the number of persons insured against **sickness** was 185 659, that is 69.3% of the active population. According to Missceo, sickness insurance covers employees; civil servants; civilians in military service, military units, and military institutions; elected or appointed persons; entrepreneurs and self-employed persons. Sickness insurance also covers short-term incapacity for work resulting from **work accidents and occupational diseases**, in respect of employed, self-employed and farmers as well as other persons involved in training, compulsory work or rescue /defense operations. Long-term incapacity (with at least 75% loss of working capacity) is on the other hand covered by the **(old age) Pension and Disability** insurance, regardless of the cause of incapacity. **Survivors'** benefits are also granted under the same insurance. The report indicates that, as

of July 2016 (out of the reference period), 124 487 persons were beneficiaries of old age and disability pensions, but does not provide information on the number of persons covered by the insurance. Employed and self-employed persons are covered by a compulsory insurance against **unemployment** and, according to the report, 6 521 persons received unemployment benefits at the end of 2015. In the absence however of the requested data concerning the percentage of the active population covered, the Committee is not in a position to assess whether the coverage of the population is adequate. The Committee asks that the next report provide update data concerning the total population, the active population, the number of persons covered respectively in respect of healthcare; sickness; work accidents and occupational diseases; old age, disability and death as well as unemployment. In the meantime, it considers that it has not been established that the existing social security schemes cover a significant percentage of the population.

### ***Adequacy of the benefits***

In the absence of the Eurostat median equivalised income indicator, the Committee notes from official statistics that, in 2013 the national absolute poverty line was set at €186.45 per month. The report indicates that, under the Labour Law, the minimum wage cannot be lower than 30% of the average wage in the previous six months. In 2013, the minimum wage was set at €193. In 2015, according to the report, the average net wage was €489. On the basis of the information provided, the Committee understands that the minimum wage could not be lower than €342, but no information is available as regards the poverty line at that time.

As regards **sickness** benefits, the Committee previously noted that the amount of benefit is determined at 70% of the calculation basis (average earnings of the employee over the last three months prior to the month when temporary incapability for work occurred) and 100% in case of **work accidents or professional diseases**. According to Missceo, these benefits are payable for a maximum of ten months in case of continuous incapacity for work and for 12 months if there were interruptions. On the basis of the information available concerning the poverty line and minimum wage in 2013, the Committee considers that the level of benefits in case of work accidents or professional diseases was adequate, but the level of sickness benefits, calculated on the basis of 70% of the minimum wage, fell largely below the poverty line and was therefore inadequate.

The Committee notes from Missceo that **unemployment** benefits are available to persons between the age of 15 and 67, who are registered as unemployed, are capable to work and are actively seeking for work and have been insured for at least 12 months in the previous 18 months. The report confirms that the entitlement to cash benefits shall cease if an unemployed person refuses to take part to activation measures or refuses a suitable employment offer in his/her place of residence. Under the Law on Employment, an employment offer is deemed to be appropriate if it corresponds to the person's type and level of education and/or his/her previous occupation. The Committee asks the next report to indicate what are the legal remedies available to challenge a decision to suspend entitlement to unemployment benefits. The Committee previously held that the duration of unemployment benefits was too short and their level was inadequate. It notes that there have been no changes in this respect: a person insured for less than ten years can only get unemployment benefits for 3 or 4 months, up to a maximum of 12 months in case of insurance service over 25 years (with further extensions possible in some cases). The level of benefits is set at 40% of the minimum wage, and was therefore €77 on a net basis and €96 in gross amount, according to the report, except in the case of disabled workers, whose unemployment benefits, as from 2014, are calculated on the basis of the lowest pension and disability amount (€121.92 in 2016, out of the reference period). As the situation has not changed as regards the level and duration of unemployment benefits, the Committee reiterates its conclusion that the level is manifestly below the poverty line and the duration of payment, for a person with an insurance period lower than ten years, is too short.

As regards **old-age** pensions – the level of which was previously found to be inadequate (Conclusions 2013) – the Committee refers to its assessment under Article 23, where it found that the level remained inadequate.

As regards **disability** pensions, the Committee notes from the report that, in case of full loss of working capacity, the minimum pension in 2012, 2013, 2014 and 2015 amounted to €100.40. As this amount falls below the poverty line, the Committee maintains that the minimum level of disability pension is inadequate.

The Committee asks the next report to provide comprehensive and updated information concerning the national absolute poverty line, the minimum wage and the minimum levels of income-replacement benefits (sickness, work accidents and occupational diseases, unemployment, old age and disability). The statistical information required should concern the reference period taken into account in the next assessment.

### *Conclusion*

The Committee concludes that the situation in Montenegro is not in conformity with Article 12§1 of the Charter on the grounds that:

- it has not been established that the existing social security schemes cover a significant percentage of the population;
- the level of sickness benefits is inadequate;
- the level of unemployment benefits is inadequate;
- the duration of payment of unemployment benefits to persons with an insurance period of less than ten years is too short;
- the minimum level of disability pensions is inadequate.

## **Article 12 - Right to social security**

*Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security*

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

The Committee notes that Montenegro has not ratified the European Code of Social Security. Therefore the Committee cannot take into consideration other sources such as the resolutions of the Committee of Ministers on application of the Code and has to make its own assessment based on the information received in the report.

The Committee recalls that Article 12§2 obliges states to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The Code requires acceptance of a higher number of parts than ILO Convention n° 102 on Social Security (Minimum Standards), as six of the nine contingencies must be accepted although certain branches count for more than one part (medical care counts as two and old-age counts as three).

The Committee notes that Montenegro has ratified ILO Convention N° 102 on Social Security (Minimum Standards) and has accepted parts II to VI, VIII and X which concern respectively medical care, sickness, unemployment, old-age, employment injury, maternity and survivors' benefits. Part VI is no longer applicable as a result of ratification by Montenegro of ILO Convention 121 on Employment Injury Benefits.

The Committee recalls that in order to assess whether the social security system is maintained at a level at least equal to that necessary for the ratification of the Code, it has to assess the information regarding the branches covered, the personal scope and the level of benefits.

The Committee recalls its assessment under Article 12§1 which indicates that the social security system of Montenegro continues to cover the traditional risks (medical care, sickness, unemployment, old-age, work accidents/occupational diseases, family, maternity, invalidity and survivors). It refers to its conclusion of non-conformity under Article 12§1 that it has not been established that the existing social security schemes cover a significant percentage of the population, and its request under Article 12§1 that the next report provides updated data in this respect.

The Committee also recalls its assessment under Article 12§1 that the level of sickness and unemployment benefits as well as the minimum level of disability pensions are inadequate, and it refers to its request under Article 12§1 that the next report provides comprehensive and updated information concerning the national absolutely poverty line, the minimum wage and the minimum levels of income-replacement benefits. As regards old-age pensions – the level of which was previously found to be inadequate (Conclusions 2013) – the Committee refers to its assessment under Article 23 where it finds that the level remains inadequate.

The Committee notes the information provided to the ILO Committee of Experts on the application of conventions and recommendations (CEACR) concerning the application of ILO Convention 102, and the reply to the CEACR's Direct request published in 2013. It notes from this information that the calculation of the old-age pension shows the replacement rate as 40.75% which would appear to comply with the Code and it looks forward to receiving confirmation regarding these figures, as well as updated data in the next report. The Committee notes that the 2017 Report of the CEACR does not refer to any observation or direct request to the Government with regard to ILO Conventions n<sup>os</sup> 102 and 121.

### *Conclusion*

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

## **Article 12 - 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 Montenegro.

The Committee refers to its previous conclusions for a description of the social security system in Montenegro. In the case of family and maternity benefits, the Committee refers to its conclusions on, respectively, articles 16 and 8§1. As regards other branches of social security, the report does not provide information on improvements achieved during the reference period.

On the contrary, the report indicates that the adjustment of (old age and invalidity) pensions was suspended during the whole reference period, and was only resumed in 2016, out of the reference period. The Committee recalls that a restrictive evolution in the social security system is not automatically in violation of Article 12§3, depending on the nature of the changes, the reasons given for them in the framework of the social and economic policy in which they arise, their extent, the existence of measures of social assistance for those who find themselves in a situation of need because of the changes made, and the results obtained by such changes. Even when individual restrictive measures are in conformity with the Charter, their cumulative effect can bring about a significant degradation of the standard of living and the living conditions of some groups of population, which would be not in conformity with Article 12§3 of the Charter. In particular, measures taken in order to consolidate public finances may be considered as a necessary means to ensure the maintenance and sustainability of the social security system. However, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system (*Federation of employed pensioners of Greece ((IKA –ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012*).

While taking note of the fact that, according to the report, the suspension of (old age and invalidity) pensions' adjustment was needed because of the negative economic conjuncture, the Committee notes that the report does not clarify what concrete steps were taken to prevent a significant degradation of the standard of living and the living conditions of some groups of the population and what was the impact of such measures. In particular, the report does not explain whether and to what extent the adoption in 2013 of a new Law on Social and Child support, concerning social assistance to vulnerable categories of persons, contributed to alleviate the impact of the frozen (old age and invalidity) pensions' level. On the basis of the criteria mentioned above as regards restrictions carried out to the right to social security, the Committee considers that the situation is not in conformity with Article 12 §3 on the ground that, during the reference period, no steps were taken to raise the social security system to a higher level. In this connection, the Committee also notes from the Concluding Observations 2014, concerning the UN Covenant on Economic, Social and Cultural Rights, that the UN Committee expressed "*concern at the lack of capacity of State Institutions to implement the law [on Social and Child Support] effectively*". It also noted "*with concern that social assistance benefits, including for unemployed persons, older persons and persons with disabilities, are insufficient to ensure an adequate standard of living for the persons concerned and their families*" and that "*an increasing percentage of the population lives under the national absolute poverty level*".

Other measures are mentioned in the report whose impact in terms of personal coverage and benefits' levels does not appear to be clear. The Committee notes in particular the adoption, in June 2015, of Structural Reforms in the Healthcare System of Montenegro with an Action Plan for its implementation from 2015 to 2017. It asks for information in the next report on the changes made with respect to the social security system, specifying the effect of these changes on the personal scope of the system and the minimum level of income replacement benefits. Such information must be provided automatically under the heading of

changes introduced during the reference period, in order to assess compliance of the situation with Article 12§3. The Committee recalls in this respect that Article 12§3 requires States Parties to improve their social security system, for example by expanding schemes, protecting against new risks or increasing the level of benefits. The improvements should lead to a gradual raising of the social security system of the country in question above the level required by International Labour Convention No. 102 (Statement of Interpretation on Article 12§3, Conclusions III (1973)).

The report furthermore mentions measures coming into force out of the reference period, such as the new Law on Health Care ("Official Gazette of Montenegro", No. 3/16 and 39/16) and the Law on Health Insurance ("Official Gazette of Montenegro" No. 6/16). The Committee asks the next report to provide information on their implementation and impact.

### *Conclusion*

The Committee concludes that the situation in Montenegro is not in conformity with Article 12§3 of the Charter on the ground that, during the reference period, no steps were taken to raise the social security system to a higher level.

## **Article 12 - Right to social security**

### *Paragraph 4 - Social security of persons moving between States*

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

### ***Equality of treatment and retention of accrued benefits (Article 12§4)***

#### ***Right to equal treatment***

Equal treatment between nationals and the nationals of the other States Parties in respect of social security rights shall be ensured through the conclusion of bilateral or multilateral agreements or through unilateral measures.

As regards bilateral agreements concluded with other States Parties, the report provides no information.

As regards unilateral measures undertaken by Montenegro, the Committee observes that, according to section 9 of the Law on Pension and Disability Insurance, foreign citizens and stateless persons have access to pension and disability insurance under the same conditions as the citizens of Montenegro. The Committee notes from the report that foreign nationals legally residing in the territory of Montenegro, whether they hold a permanent or temporary residence permit, are entitled to the rights covered by the Law on Social and Child Protection under the same condition as the citizens of Montenegro, pursuant to Article 5 of the said Law. The Committee notes from the 2016 report of the European network of legal experts in gender equality and non-discrimination on Montenegro that the new Foreigners Law adopted by Montenegro in 2014 created the prerequisites for, *inter alia*, foreign nationals with temporary or permanent residence permit, refugees and stateless persons to enjoy equal rights with nationals of Montenegro, excluding the right to vote. The Committee wishes to know more about the impact of the new law in the next report.

However, the Committee notes from MISSCEO that the payment of unemployment benefits are only granted to nationals of Montenegro. The Committee asks the next report to clarify whether the payment of unemployment benefits is conditional upon a citizenship requirement.

In respect of payment to family benefits, the Committee considered that the requirement for the child to reside in the territory of the paying State is in conformity with Article 12§4 (Statement of Interpretation on Article 12§4, Conclusions XVIII-1 (2006)). However, since not all countries apply such a system, States Parties applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to enter, within a reasonable period of time, into bilateral or multilateral agreements with those States which apply a different entitlement principle (Conclusion 2006, Cyprus).

The Committee asked in its previous conclusion (Conclusions 2013) whether a "child residence requirement" exists, and, if so, whether bilateral or multilateral agreements have been concluded with States which apply a different requirements. The report indicates that Montenegro applies a "child residence requirement". It further precises that bilateral agreements concluded on social insurance cover, among other things, access to child benefits. However, the report provides no detailed information concerning the existence of such agreements with States which apply a different requirement, therefore the Committee reiterates its questions.

#### ***Right to retain accrued benefits***

The Committee recalls that invalidity benefit, old age benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one State Party according to the eligibility criteria laid down under that legislation are maintained irrespective of whether the beneficiary moves to another State Party. With respect to the retention of

benefits (exportability), the obligations entered into by States Parties must be fulfilled irrespective of any other multilateral social security agreement that might be applicable. In order to ensure the exportability of benefits, States Parties may choose between bilateral agreements or any other means such as unilateral, legislative or administrative measures.

The Committee asked in its previous conclusion (Conclusions 2013) whether the right to retain benefits accrued in Montenegro by nationals of States Parties not bound by a bilateral agreement with Montenegro is secured and if so, how. It also asked why there are no agreements with certain States Parties, and to provide information on the planned agreements and when these might be signed.

According to the report, Montenegro is bound by bilateral social security agreements with 23 States Parties to the Charter. The report adds that, during the reference period, it concluded such agreements with Romania and the Slovak Republic and opened negotiations with Albania, Greece and Ukraine.

Since the report does not answer the questions asked by the Committee, it reiterates its questions. It also wishes the next report to provide further information on States Parties which concluded social security bilateral agreements with Montenegro as well as the principles enshrined in those agreements.

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

The Committee recalls that there should be no disadvantage for a person who changes his/her country of employment, where he/she has not completed the period of employment or insurance necessary under the national legislation to be entitled to certain benefits. This requires, where necessary, the aggregation of the employment or insurance periods completed in another territory and, in case of long-term benefits, a *pro-rata* approach to the conferral of entitlement, the calculation and payment of benefits.

States Parties may choose between the following means in order to ensure the maintenance of accruing rights: multilateral conventions, bilateral agreements or, unilateral, legislative or administrative measures. States Parties that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.

The Committee asked in its previous conclusion (Conclusions 2013) if and how the right to accumulate insurance and employment periods is secured for nationals of States Parties not bound by a bilateral agreement with Montenegro. It also asked why there are no agreements with certain States Parties, and provide information on the planned agreements and when these might be signed. The report states that the right to the accrued insurance and periods of employment is ensured by the application of bilateral social security agreements. The Committee assumes therefore that such a right is not secured for nationals of States Parties not bound by such agreements. In this regard, it asks the next report to clarify whether this understanding is correct.

### ***Conclusion***

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

## **Article 13 - 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 Montenegro.

### ***Types of benefits and eligibility criteria***

The Committee takes note of the reforms implemented after the entry into force of the new Law on Social and Child Protection in June 2013, which gave the basis for the decentralisation of social and child protection.

According to the report the Law on Social and Child Protection covers all categories of persons in need of assistance, whether children, disabled persons or the elderly. The Committee notes in this respect from MISSCEO that the right to benefits can be exercised by a family, or a family member, if he/she is:

- incapable of work;
- a parent maintaining a child, or a parent exercising prolonged parental right, in accordance with the law regulating family relations;
- a person who has completed education according to the educational programmer with adapted delivery and additional expert assistance or special educational programmer;
- a person who has turned 18, if he/she is attending regular secondary school education, until the end of the time limit prescribed for that education.

In its previous conclusion (Conclusions 2013) the Committee asked for clarifications regarding the categories of persons eligible for social assistance under the Law on Social and Child Welfare. In particular, it asked whether any assistance would be available to persons who do not fall within the above mentioned categories.

The Committee recalls that under Article 13 the system of assistance must be universal in the sense that benefits must be payable to 'any person' on the sole ground that he/she is in need. The text of Article 13§1 clearly establishes that this right to social assistance takes the form of an individual right of access to social assistance in circumstances where the basic condition of eligibility is satisfied, which occurs when no other means of reaching a minimum income level consistent with human dignity are available to that person. This does not mean that specific benefits cannot be provided for the vulnerable population categories, as long as persons who do not fall into these categories are also entitled to appropriate assistance insofar as they are in need. The Committee considers that social assistance is not provided, as a subjective right of any single person, whether or not capable of working and whether or not belonging to a vulnerable category, on the sole ground that he/she is without resources and is unable to obtain adequate resources by any other means. Therefore, the situation is not in conformity with the Charter.

In its previous conclusion the Committee asked whether the unjustified refusal of an employment or training offer could lead to a situation where the person would be entirely deprived of his/her means of subsistence. According to the report, unjustified refusal of employment or training has an impact on the termination of rights. According to MISSCEO entitlement to family cash benefit will belong to a person who did not refuse offered employment or vocational training, re-training or additional training, pursuant to the law. The Committee reiterates its request whether withdrawal of social assistance in response to a refusal of a job offer will leave the person concerned fully deprived of his/her means of subsistence.

The Committee takes note of the declining number of beneficiaries of financial support. It notes that in 2016 8077 families exercised their right to social assistance, for which € 751,915 were allocated, compared with 14,747 families and € 1,34 million in 2013. The Committee asks the next report to explain the reasons for such a decline.

The Committee notes from MISSCEO that entitlement to health care is provided to a beneficiary of cash benefit (social assistance benefit).

### ***Level of benefits***

In its previous conclusion the Committee found that the level of social assistance paid to a single person without resources was manifestly inadequate. The Committee notes from the report in this regard that the amount of compensation for an individual as well as for families with more members is not determined in relation to their needs but in relation to the possibilities of the state budget. The increase of compensation for an individual would affect the increase of the compensation to families with more members. The report states that the salaries both in the public or private sector are not paid in accordance with the needs of the individual but in accordance with the income of the employer.

The Committee recalls that Article 13 breaks with the traditional concept of assistance, which was bound up with the moral duty of charity. The Contracting Parties are not merely empowered to grant assistance as they think fit. They are under an obligation which they may be called on in court to honour.

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

- Basic benefit: the Committee notes from MISSCEO that the amount of cash benefit on a monthly basis for a single-member family stood at € 63,50 in 2013.
- Additional benefits: in its previous conclusion the Committee asked the next report to specify the level of the supplementary benefits available to persons without resources. The report states that the beneficiaries of social assistance may also be eligible for other types of benefits, such as one-time financial support, care and assistance due to health status, privileges in transport, subsidies for electricity, housing and other benefits. According to the report, beneficiaries can receive additional benefits based on their status from the state, local self-governments, companies, non-governmental sector, religious organisations and others. The Committee asks the next report to provide information regarding the average amount of additional benefits paid to a single person in receipt of social assistance.
- Poverty threshold (defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value): in the absence of this indicator, the Committee takes the national poverty threshold into account. It notes from an official statistical source that the national poverty line stood at € 186,45 in 2013.

In its previous conclusion the Committee found that the level of social assistance was manifestly inadequate. The Committee notes that the report, again, does not indicate the average monetary value of all additional benefits that would be paid to a single person without resources, in addition to the social assistance benefit.

The Committee considers that the level of social assistance is manifestly inadequate on the basis that the total assistance that can be obtained (€ 63,50) is not compatible with the poverty threshold.

### ***Right of appeal and legal aid***

In the previous conclusion the Committee asked the next report to confirm that legal aid is available to people without resources contesting decisions concerning their right to social and medical assistance.

According to the report, in the system of social and child protection, fees are not charged for lodging an appeal in the second instance procedure. Advisory service within the competence

of social welfare centres is free to persons without resources. Also, according to the Law on Free Legal Aid beneficiaries of financial support are provided with legal aid by the court.

### ***Personal scope***

The Committee recalls that, under Article 13§1, States are under the obligation to provide adequate medical and social assistance to all persons in need, both their own nationals as well as nationals of States Parties lawfully resident within their territory, on an equal footing. In addition, with reference to its Statement of Interpretation of Articles 13§1 and 13§4 (Conclusions 2013) regarding the scope of Articles 13§1 and 13§4 in terms of persons covered, the Committee considers that persons in an irregular situation in the territory of the State concerned are also covered under Article 13§1, rather than under Article 13§4, which was previously its practice.

The Committee henceforth examines whether the States who have accepted Article 13§1 ensure the right to:

- adequate social and medical assistance for their own nationals and for nationals of other States Parties lawfully resident within their territory on an equal footing;
- emergency social and medical assistance to persons unlawfully present in their territory.

### ***Nationals of States Parties lawfully resident in the territory***

In its previous conclusion the Committee asked the next report to clarify what forms of social and medical assistance applied, and to what extent, to foreign nationals, in particular as regards nationals from States Parties, with a residence status in Montenegro. It asked whether such persons had access to medical assistance, beyond emergency assistance, on an equal footing with nationals.

In reply the Committee notes from the report that the provisions of the Law on Social and Child Protection provide that a foreigner with regulated permanent or temporary residence in Montenegro shall have the same rights as the nationals of Montenegro.

The report further states that the Law on Health Insurance provides that among the insured for health care are foreigners working for national legal or private entities in Montenegro on the basis of specific contracts and agreements on international technical assistance, as well as foreigners employed by international organisations and institutions and other foreign legal and private entities.

The Committee understands that both social and medical assistance are provided to nationals of States Parties lawfully resident or regularly working in Montenegro on an equal footing with nationals. The Committee asks the next report to confirm this understanding.

### ***Foreign nationals unlawfully present in the territory***

As regards emergency medical assistance, in its previous conclusion under Article 13§4 (Conclusions 2015) the Committee considered that the situation met the requirements of Article 13§4 as regards emergency medical assistance. The Committee now notes from the report that the Law on Health Care in Article 12 provides that a foreigner has the right to health care in accordance with this Law and international agreements. Health institutions and health workers are obliged to provide a foreigner with urgent medical assistance. An alien shall bear the costs provided for emergency medical assistance or other types of health care, according to the price list of a medical institution. The Committee asks whether these costs will be waived in case the person concerned is without resources.

As regards emergency social assistance, in its previous conclusion (Conclusions 2015) the Committee took note of the legal framework applicable to foreigners who are unlawfully present. The Foreigners Act No. 56/2014 governs the situation of foreigners who are unlawfully present and under an obligation to leave the territory and provides that pending

deportation unlawfully present foreigners shall be placed in a "shelter for foreign persons" until deportation can take place or up to a maximum of 90 days (with exceptions possible; Sections 104 and 106). The authorities may seek to recuperate costs incurred in this respect (Section 115).

According to the report, as regards emergency social assistance concerning the persons who are unlawfully present in the territory of Montenegro, although the law does not explicitly recognise this category of persons in terms of the exercise of the right to social protection, the centres for social work can provide them with advisory services and financial assistance. Also, an assistance can be provided in relation to the protection of minors, the disabled or the elderly. In order to provide assistance to these persons, the centres for social work established communication with other competent authorities in the field of health, interior, police and, if necessary, other bodies.

In this connection, the Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13 as a subjective right, to individuals in a highly precarious situation. The Committee has considered that even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country (Complaint No. 90/2013, Conference of European Churches (CEC) v. the Netherlands, decision on the merits of 1 July 2014, §123).

The Committee asks the next report to confirm that the legislation and practice comply with these requirements. In the meantime, it reserves its position on this issue.

### *Conclusion*

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

- the right to social assistance is not guaranteed as a subjective right of any single person without resources;
- the level of social assistance is manifestly inadequate.

## **Article 13 - 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 Montenegro.

In its previous conclusion (Conclusions 2013) the Committee asked the next report to confirm that users of social and medical assistance did not suffer from any restriction of their political or social rights.

In reply the report states that all citizens exercise their social and civil rights under equal conditions regardless of gender identity, political affiliation, race, colour, disability or any other status.

Article 7 of the new Law on Social and Child Protection prohibits discrimination of beneficiaries on the basis of race, gender, age, social origin, sexual orientation, religion, political, trade union or other belonging, property owned, culture, language, disability, belonging to particular social group or other status.

The Committee asks whether the provisions enshrining the principle of equality and prohibiting discrimination in the exercise of political or social rights are interpreted in practice in such a way as to prevent discrimination on the basis of receipt of social or medical assistance.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Montenegro is in conformity with Article 13§2 of the Charter.

## **Article 13 - 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 Montenegro.

In its previous conclusion (Conclusions 2013) the Committee asked the next report to provide comprehensive information on the services that offer advice and personal assistance to people with no income, in order to prevent, eliminate or reduce personal or family need.

According to the report, advisory services within the competence of centres for social work provide free counselling for persons in need as regards their rights. Advisory services are provided to foreign nationals without resources who have a temporary or permanent resident status.

The Committee recalls that Article 13§3 concerns only social services providing advice or help to persons without or liable to be without adequate resources. Accordingly, Article 13§3 is a special provision which is more precise than Article 14§1, which is concerned with social welfare services in general.

The Committee further recalls that Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so. The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights. In assessing national situations under this provision the Committee specifically examines whether there are mechanisms to ensure that those in need may receive help and personal advice services free of charge and whether such services and institutions are adequately distributed on a geographical basis. The Committee asks the next report to provide updated information on how these requirements are met in legislation and practice.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Montenegro is in conformity with Article 13§3 of the Charter.

## **Article 13 - 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 Montenegro.

The Committee refers to its conclusion under Article 13§1 (personal scope) and recalls that Article 13§4 from now on will cover emergency social and medical assistance for nationals of States Parties lawfully present (but not resident) in the territory.

In its Conclusion 2015 regarding Article 13§4 the Committee considered that it had not been established that emergency social assistance was guaranteed to all non-resident foreign nationals. It now notes from the report that as regards the categories of persons who are lawfully in the territory (e.g. tourists and those in transit), even though the law explicitly does not recognise this category of persons in the exercise of the right to social protection, the centres for social work may provide advice as well as one-time financial assistance in case of need. The Committee asks whether the provision of emergency social and medical assistance is left to the discretion of centres for social work.

The Committee recalls that States Parties are required to provide non-resident foreigners, without resources, with emergency social and medical assistance. Such assistance must cover accommodation, food, clothing and emergency medical assistance, to cope with an urgent and serious state of need (without interpreting too narrowly the 'urgency' and 'seriousness' criteria). No condition of length of presence can be set on the right to emergency assistance (Complaint No 86/2012, European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171). The Committee asks the next report to confirm that these requirements are met.

The Committee refers to its conclusion under Article 13§1 where it reserved its position as regards emergency social assistance for unlawfully present foreign nationals. The Committee asks the next report to provide information regarding lawfully present foreign nationals and in the meantime, it reserves its position.

### *Conclusion*

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

## **Article 14 - Right to benefit from social services**

### *Paragraph 1 - Promotion or provision of social services*

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

### **Organisation of the social services**

The Committee notes that the report does not provide any information on the overall organisation of social services.

The Committee, therefore, asks that the next report provides a detailed description of the organisation of social services and activities implemented by the social services, public or private institutions, or other types of organisations.

### **Effective and equal access**

In its previous conclusion (Conclusions 2013), the Committee asked whether nationals of other States Parties legally residing or working regularly in Montenegro have the same rights in terms of access to social services as the citizens of Montenegro and, if not, which restrictions apply.

The report states that Article 5 of the Law stipulates that these rights, in accordance with this Law, can be exercised by a Montenegrin citizen with a permanent place of residence in the territory of the State. The rights to social and child protection determined in accordance with this Law and international agreement can be exercised by a person who has the status of a foreigner with granted temporary or permanent stay in the state, in accordance with a special law i.e. the Law on Foreigners. In order to exercise the rights to social and child protection, foreigners must fulfil the same requirements as the citizens of Montenegro (personal status, earnings, income, etc.) and in this regard no limitations are set. Advisory services provided by the centre for social work are free of charge and relates to any person requesting such a service from the centre. Activities for services provided by the Centres for Social services are free of charge.

### **Quality of services**

In its previous conclusion (Conclusions 2013) the Committee asked to have details on numbers of staff and their qualification, on users involvement in decision-making and supervisory mechanisms to control adequacy of public and private services.

The report in reply to its question indicates that the new Law on Social and Child Protection, articles 122 and 123 prescribe that professional tasks of service providers shall be carried out by professional workers and professional associates. Professional worker is a social worker, psychologist, pedagogue, adult-education specialist, special pedagogue, lawyer, sociologist, special education teacher, special educator, rehabilitator and doctor of medicine, and professional associates are persons with higher education. Professional social workers shall pass a vocational ability exam, and a professional worker must also have an operating licence. Also, a service provider shall have an operating licence. The access to rights in the area of social and child protection is provided on the whole territory of the country. In all municipalities, the Government of Montenegro organised centres for social work either as an independent organisational unit or regional units. For persons who are not able to independently protect the rights and interests, care is provided ex officio by the centres for social work. Provisions of articles 162 to 166 of the new Law on Social and Child Protection relate to the supervision of the implementation of the Law. It is stipulated that supervision over the professional work of service providers is conducted by the Ministry of Labour and Social Welfare (the control over the application of the prescribed technical procedures i.e. assessment, planning, review of the effects of implemented activities, etc.). It also stipulates that inspection control is carried out by the inspection for social and child protection which is

organised within the Administration for Inspection Affairs. In this respect, the Committee asks that the next report provides information on the ratio staff users of social services and data on the geographical distribution of social services. The Committee asks also to provide information on what kind of mechanisms are in place to protect people's right to privacy, including protection of personal data.

*Conclusion*

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

## **Article 14 - Right to benefit from social services**

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

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

In its previous conclusion (Conclusions 2013) the Committee asked that the next report provided statistical data on subsidies paid by the central government and the local authorities to voluntary organisations providing social services. It also requested that the next report describe any other types of support that may exist for voluntary organisations such as, for example, tax incentives.

In reply to this question, the report states that non-governmental organisations (NGOs) have been established in accordance with the Law on NGOs. The regulation did not foresee the financing of their activities by the state. Funding for their projects and programs from the state is organised through a public tender. The report underlines that calls for tender are announced once a year and the funds are distributed according to the areas for which they were called, among other things, for social and child protection. This is significant state support to the NGO sector, which is, as regards the social and child protection, primarily engaged in the implementation of services, particularly relating to children, the disabled, the elderly, victims of violence and others. If non-governmental organisations provide funds for the realisation of projects on the basis of international agreements, in accordance with the provisions of these contracts, they are exempt from taxes and custom's duties for products or services that are the subject of the contract. The report indicates an example of public tender, outside the reference period, in the field of "Meeting the needs of persons with disabilities", that devoted €1,214,237.18 to specific plans and programs.

In its previous conclusion (Conclusions 2013), the Committee asked to know whether and how the Government ensures that the services of the private sector are efficiently and equally available to all, without discrimination, on the basis of race, ethnic origin, religion, disability, age, sexual orientation and political opinions.

Besides, the Committee recalls that States Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory system is required. In its previous conclusion, the Committee asked to clarify the situation in this respect.

The report indicates that Provisions of articles 162 to 166 of the Law on Social and Child Protection relates to the supervision of implementation of the Law. It is stipulated that supervision over the professional work of service providers is conducted by the Ministry of Labour and Social Welfare (the control over the application of the prescribed technical procedures i.e. assessment, planning, review of the effects of implemented activities, etc.). It also stipulates that inspection control is carried out by the inspection for social and child protection which is organised within the Administration for Inspection Affairs. Social inspections carries out inspection-control over the work of institutions that have been organised by the state or local government as well as those which are part of the private sector.

The report underlines that appropriate secondary legislation has been brought in accordance with the new Law on Social and Child Protection in relation to the licensing and accreditation of training programs for service providers. The procedures of obtaining licenses will commence during 2017 and so far there have not been registered service provider yet, and in this respect, there is no legal basis for determining compliance with the prescribed procedures in the provision of services, as well as performing by persons with adequate qualifications. Private service providers can register their activities under other regulations or without permission to work-license. However, despite the interest shown, the license will be

provided, as stated, during 2017. The Committee notes that the above-described activities fall outside the reference period. The Committee, therefore, asks that the next report provides information on the implementation of the new Law on Social and Child Protection, in relation to the licensing and accreditation of training programs for private service providers and if this applies to all social services.

The report indicates that the control mechanism has been established in accordance with the Law on Social and Child Protection, as provided in previous answers, stating that issues in the area of social services can also be dealt by the Protector of Human Rights and Freedoms of Montenegro. Besides, the individuals, voluntary and other organizations are given the opportunity, as regards the institutions established by the state, to get acquainted with the manner of work, to make suggestions and proposals for improving the work, raise any objections in all cases where they consider that there has been a violation of the procedures for the provision of services or violation of the rights of users and similar.

#### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Montenegro is in conformity with Article 14§2 of the Charter.

## **Article 23 - Right of the elderly to social protection**

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

### ***Legislative framework***

The Committee points out that the main aim of Article 23 of the Charter is to enable elderly persons to remain full members of society and consequently it invites the States Parties to make sure that they have appropriate legislation, firstly, to combat age discrimination outside employment and, secondly, to provide for a procedure of assisted decision making.

With regard to age-based discrimination, the Committee previously asked (Conclusions 2013) whether there was an anti-discrimination legislation (or an equivalent legal framework) designed to protect the elderly against discrimination outside employment, or whether such a legislation was envisaged. The Committee notes that Article 7§2 of the new Law on Social and Child Protection, which came into force in 2013, states that this law is based on various principles including the prohibition of age discrimination. It also notes from the Montenegro report of the European network of legal experts on gender equality and non-discrimination that the Law on the Prohibition of Discrimination of 2010, as amended in 2014, prohibits discrimination on the grounds explicitly listed in its Article 2, which include age, in various areas. Furthermore, Article 4 of the Law on Healthcare refers to age as a possible ground of prohibited discrimination.

The Committee notes, however, from the same report that despite this legislative framework, discrimination on the ground of age is still very widespread, and that it is encountered mostly in the employment field, but is not limited in this field. It asks what practical measures Montenegro is taking to counter this type of discrimination outside the employment field.

With regard to assisted decision making for the elderly, the Committee asked previously if such a procedure had been set up. The report states that elderly people may be represented by a third party provided that they have previously agreed to this by means of an authorisation procedure. Social work centres are required to inform the elderly persons concerned in detail about their rights in this regard. Elderly persons who can no longer attend to their own interests may also be placed under partial guardianship by a court decision. In this connection, the report points out that in principle the guardian should be a family member chosen by the social work centre on the order of a court. Guardians have a duty to inform social work centres of their activities. They may not transfer any of the assets of persons in their care, decide that they should be placed in an institution or take any other action on their behalf without the prior consent of the centre. The Committee asks for more information on the authorisation procedure and guardianship. It also asks if representatives in fact or in law are regularly supervised or inspected by social work centres and, in this context, what measures they may take against a representative who has not satisfied his or her obligations or taken advantage of the elderly person in his or her care in any manner. Finally, it asks whether social work centres are entitled to appoint a third party guardian in place of a family member and what obligations are placed on guardians.

### ***Adequate resources***

When examining the adequacy of resources of elderly persons under Article 23, the Committee takes into account all social protection measures provided for elderly persons, aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons. These resources will then be compared with median equivalised income. However, the Committee points out that its task is to assess not only the law, but also the compliance of practice with the obligations arising from the Charter. For this purpose, the Committee will

also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

In its previous conclusion (Conclusions 2013), the Committee asked for updated information in the next report on the conditions of entitlement to the old-age pension. The report states in this respect that in 2015, full pensions were paid to persons who had reached the age of 67 (men and women) and accrued 15 years of contributions, reached the age of 65 years and 4 months (men) or 60 years and 6 months (women) and accrued 15 years of contributions or accrued 40 years of contributions regardless of age (men and women).

The Committee also asked whether minimum contributory and non-contributory pensions combined with any cash benefits and supplements available ensured that the recipient's income was above the poverty threshold. According to the report, the average old age pension was €249 in 2015, and the minimum pension was €100.40 in 2012, 2013, 2014 and 2015.

The report does not provide any information on the amount of the special additional benefit. It indicates however that people over the age of 67 are entitled to a subsidy for their electricity bill. The Committee asks for more information on these points in the next report. It also reiterates its request for information on the at-risk-of-poverty rate for persons aged 65 and over.

In the absence of information on the at-risk-of-poverty threshold, defined as 50% of the median equivalised income, the Committee refers to the national absolute poverty threshold, which stood at €186.45 monthly in 2013 according to MONSTAT, the Statistical Office of Montenegro. As the amount of minimum old age pension falls below this threshold, the Committee concludes that it is inadequate.

### ***Prevention of elder abuse***

In its previous conclusion (Conclusions 2013), the Committee asked what the public authorities were doing to evaluate the extent of the problem and to raise awareness about the need to eradicate elder abuse and neglect. The report states that Article 8 of the new Law on Social and Child Protection prohibits all forms of violence or abuse of any sort against old people carried out in an institution or by a service provider or by their employees.

The Committee takes note of this information but notes that nothing in the report indicates whether the public authorities evaluate the extent of the problem or try to raise public awareness about it.

### ***Services and facilities***

The Committee points out that, although Article 23 makes reference only to information about services and facilities, it presupposes that such services and facilities exist.

With regard to the services and facilities themselves, the Committee firstly asked in its previous conclusions (Conclusions 2013) for more information on the implementation of home help and day care services for the elderly. The report states that a pilot project has led to the establishment of a "Home Care Services" project. The Committee notes that this project started outside the reference period.

Secondly, the Committee asked whether in general the supply of home help services for the elderly matched the demand, how their quality was monitored, and if it was possible to lodge a formal complaint about services. The report states that home help for the elderly, which is provided partly by NGOs do not meet demand, particularly in rural areas. In this regard, the report points out that social work centres carry out periodic visits in order to provide appropriate assistance. The report also states that the types of services provided, the procedures for the licensing of social workers and service providers and the accredited training programmes are laid down in the new Law on Social Protection and the Protection of

Children, which is fleshed out by regulations. Article 164 of this law assigns the inspector for child and social protection, an independent body, the task of assessing the work performed by social service providers. The report points out that all beneficiaries are entitled, if they consider their rights to have been violated, to turn to the inspectorate, for their complaint and/or claim to be examined.

The Committee's third question was whether the extent of provision differed from one municipality to another, and whether there was a charge for any of these services. The report does not provide any information on this subject so the Committee repeats its question.

Fourth, the Committee asked for information on services and facilities which could be used by families caring for elderly persons, particularly highly dependent persons, along with any services specially designed for dementia or Alzheimer's sufferers. The report states that it is possible to place highly dependent persons with foster families but, given the major care they require, few actually are. They are mostly placed in social protection institutions. An institution specialising in the accommodation and treatment of persons with mental disabilities, including the elderly, has been opened in Podgorica.

In its fifth question, the Committee asked what cultural, leisure and educational facilities were available to the elderly. The report states that numerous activities have been undertaken to improve pensioners' daily lives.

With regard to information relating to services and facilities, the Committee asks the next report to provide information in this regard.

### ***Housing***

The report states that housing problems for the elderly are dealt with by pensioners' associations (NGOs) and local authorities. These associations finance the construction of homes and provide facilities in co-operation with local authorities. Flats are offered at a much lower cost than the market price and payment conditions are adjusted to pensioners' circumstances. Local authorities adopt annual housing plans for the most vulnerable in accordance with social housing legislation. The Committee asks for more information on this subject in the next report.

### ***Health care***

In its previous conclusion (Conclusions 2013), the Committee asked for information on services and programmes specifically aimed at the elderly. The report states that the 2008-2012 Strategy for the development of social protection for the elderly in Montenegro has resulted in, *inter alia*, the opening of four care centres for the elderly in the municipalities of Niksic and Danilovgrad.

The Committee also asked for information on any measures to improve the accessibility and quality of geriatric and long-term care and the co-ordination of social and healthcare services for the elderly. The Committee notes from the report that the Montenegro's new strategy to improve the situation of elderly people includes a section given over to health care. The Committee asks the next report to provide more information on the subject. It wishes to know, in particular, if and how this part of the strategy improves the accessibility and quality of geriatric and long-term care and the co-ordination of social and healthcare services for the elderly.

### ***Institutional care***

In its previous conclusion (Conclusions 2013), the Committee asked whether institutional care were licensed and whether they were inspected and, if so, what authority or body was responsible for the inspection of retirement homes and residences for the elderly and, whether provision had been made to complain about the standard of care and services and

possible ill-treatment. The report states that establishments, service providers and training programmes have all been subject to a licensing or accreditation procedure since the adoption of the new Law on Social Protection and the Protection of Children. Licensing and accreditation procedures will begin in 2017. The report points out that service providers, as mentioned above, are inspected by the general inspectorate services. The same rules apply to all service providers, whether they are care institutions or not.

Therefore, the Committee notes that during the reference period there was no procedure in force and, hence that there was no legal means of verifying the compliance of services provided with quality standards or of ensuring that staff had appropriate qualifications. Consequently, it considers the situation not to be in conformity with the Charter on this point.

The Committee also asked whether places available in institutions matched demand. The report states that existing institutional housing for the elderly does not have the capacity to meet demand. As a result, Montenegro has begun construction of two additional facilities and other projects are being discussed. The Committee asks to be informed in the next report of any developments in this area.

### *Conclusion*

The Committee concludes that the situation in Montenegro is not in conformity with Article 23 of the Charter on the grounds that:

- the level of old-age pensions is manifestly inadequate;
- accommodation facilities for the elderly are neither subject to any accreditation or licensing procedure nor inspected by an independent body.