

The background of the cover features a large, stylized graphic of two hands. The hand on the left is red and the hand on the right is blue. Both hands have simple, white, almond-shaped eyes. The hands are positioned as if they are about to clasp or hold something together. The overall style is minimalist and symbolic.

European Committee of Social Rights
Activity Report 2011



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European Committee of Social Rights

Activity Report 2011

Council of Europe
May 2012

The European Committee of Social Rights, a committee of independent experts established by Article 25 of the Charter as amended by the 1991 Turin Protocol, rules on the conformity of the situation in States with the European Social Charter. The Committee adopts “conclusions” in respect of national reports submitted annually by the States Parties, and it adopts “decisions” in respect of collective complaints lodged by organisations. The Committee is composed of 15 independent, impartial members who are elected by the Committee of Ministers of the Council of Europe for a term of office of six years, renewable once.

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and the European Code of Social Security
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by Mr Luis Jimena Quesada, President of the Committee7

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Introduction

by Mr Luis Jimena Quesada, President of the Committee

The 50th anniversary of the European Social Charter: creating new dynamics for the next 50 years

The 50th anniversary celebration of the 1961 European Social Charter was the result of the combined efforts of all the players involved in the implementation of this instrument and proof of the great potential of this common effort. In the context of the 50th anniversary, the Committee of Ministers, in its major Declaration of 12 October 2011 on the 50th anniversary of the Charter, defined a two-fold obligation:

- ♦ on the one hand, it stressed the need to redress certain unacceptable asymmetries: between Council of Europe states which are not yet bound by the Charter and those which are, between states which have ratified the revised Charter of 1996 and those which are still bound by the 1961 Charter, and between states which have accepted the collective complaints procedure (in certain cases accepting the further possibility of allowing national NGOs to submit complaints) and those which have not;
- ♦ on the other hand, it emphasised the obligation to recognise the effectiveness of the social rights laid down in the Charter as a genuine shared responsibility between players at national level (judges, parliaments, government officials, local and regional authorities, social partners and civil society organisations, mediators and other institutions defending human rights, academics and journalists) and at international level (the European Committee of Social Rights of the European Social Charter working in synergy with the European Code of Social Security and with other institutions and organs of the Council of Europe,

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as well as with the ILO and other world bodies and with the EU).

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Committee
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Rights*



In the current context of global economic crisis, the message that the protection of social rights must not be watered down needs to be as sincere as that concerning the indivisibility of all human rights. Economic and social policy debate should focus on mobilising and optimising available resources in order to pursue this goal of effectively implementing social rights. Consequently, joint financial strategies must not be devised in such a way that they are incompatible with legal solutions conducive to upward social harmonisation at European level. The ratification of the revised Charter by Austria in 2011 (and more recently, in January 2012, by "the former Yugoslav Republic of Macedonia") and the acceptance of additional provisions by Cyprus on the occasion of the Charter's 50th anniversary show an increased sense of responsibility at a time of economic crisis, which reinforces the view of the Charter as a means of facing up to the economic crisis through increased social commitment.

This desire for constant betterment guided both the foundation of the Council of Europe and the adoption of the European Social Charter. As the Preamble to the revised European Social Charter of 1996 states, "the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms" and "in the European Social Charter opened for signature in Turin on 18 October 1961 and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the social rights specified therein in order to improve their standard of living and their social well-being".

Numerical reckoning can become an obsession and a purely quantitative assessment of the real state of affairs can have incalculable consequences. For this reason, this annual activity report does not confine itself to presenting figures and statistics which show the enormous workload of the European Committee of Social Rights and the positive outcome of its efforts with the unremitting, indispensable and highly skilled assistance of the Social Charter Department. The purpose of this report is not simply to keep a tally of the number of decisions taken in the collective complaints procedure and the conclusions adopted under the reporting system as that could lead to a

misunderstanding of the concept on which the Social Charter is based and the task assigned to the Committee.

Over and above these arithmetical operations highlighting the number of “typical” activities (decisions and conclusions) carried out by the Committee, this report attempts simultaneously to present a qualitative assessment of actual compliance with the rights recognised in the Charter via the Committee’s case-law output, which stems from a final legal interpretation of the text of the treaty. Based on a view of the Social Charter as a living, evolving instrument, the Committee has adopted certain statements of interpretation whose purpose is to adapt standards to the real-life situation and to render standardised European protection compatible with specific national situations while remaining faithful to the key values laid down in the Charter.

From this point of view, one of the Committee’s constant, paramount concerns is improvement of its working methods: in 2011 a proposal for reform of the reporting system was submitted to the Committee of Ministers and a revision of the Committee’s Rules of Procedure was adopted in order to improve the collective complaints procedure (in terms of extended provision for intervention by third parties and follow-up to the Committee’s decisions – see new Rules 32A and 36). However, for the Social Charter to be effective, there is also a need to strengthen the Social Charter Department and this entails consolidation of the

commitment and support already expressed in 2011 by the Secretary General and by the Director General of Human Rights and Rule of Law.

The Committee also wishes to intensify its co-operation with other Council of Europe bodies and institutions, the European Union, the United Nations and other regional and national institutions. The report refers to the Committee’s “atypical” activities (comments on texts submitted to it by the Committee of Ministers, including texts drawn up by the Parliamentary Assembly), exchanges of views with the Assembly and with ILO experts, activities in synergy with other institutions (the Commissioner for Human Rights and the representative of the UN High Commissioner for Refugees), co-operation activities (with the Conference of INGOs, the European Economic and Social Committee, the French Economic, Social and Environmental Council, the International Institute of Human Rights, the Academic Network on the European Social Charter, universities and national NGOs) and activities to disseminate the Charter and raise its profile (publications or decisions of national judicial bodies). In this last area, I would particularly like to thank the Council of Europe’s Media Relations Division for its invaluable support in promoting the Charter.

The 50th anniversary would have been an ideal date for the 1961 Charter to take its well-earned retirement and to be definitively replaced by the revised

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Charter of 1996 in its 15th year of existence (a minimum age for “admission” to the work of effectively protecting social rights). However, even if the 50th anniversary of the 1961 Charter was not marked by the achievement of complete harmonisation of the pace of social progress at European level (acceptance of the revised Charter and the collective complaints procedure by all 47 Council of Europe member states), the multiple efforts on the part of all of the players involved in implementation of the Charter on the occasion of this anniversary (reflected to an appreciable extent in this activity report) allow me to look forward to the future with

optimism: the Charter and the case-law of the Committee remain a source of legitimacy for national policy (legislative, executive or judicial) for the implementation of social rights, a source of mutual enrichment with other international institutions committed to the defence of human rights, a source of academic exchange, a source of motivation for the staff of the Social Charter Department, a source of inspiration and commitment for the members of the Committee and, last but not least, a source of democratic culture and of hope for millions of people that their day-to-day lives will be improved.

2011 activities of the European Committee of Social Rights

1. Overview

The European Committee of Social Rights is set up pursuant to Article 25 of the European Social Charter as amended by the 1991 Additional Protocol. Its function is to rule on the conformity of national law and practice in the States Parties in respect of the European Social Charter, the 1988 Additional Protocol and the initial 1961 European Social Charter. The Committee is composed of 15 independent members “of the highest integrity and of recognised competence in national and international social questions” and elected by the Committee of Ministers.¹

The Committee conducts its supervision of state compliance within two distinct but inter-related procedures: the reporting procedure where it examines written reports submitted by States Parties with regular intervals and the collective complaints procedure which allows certain

national and international organisations to lodge complaints against States Parties that have accepted to be bound by this procedure. In respect of state reports, the Committee adopts “conclusions” and in respect of collective complaints it adopts “decisions”.

In 2011, the Committee held 7 sessions in Strasbourg:

- ♦ from 24 to 26 January (248th session)
- ♦ from 14 to 18 March (249th session)
- ♦ from 9 to 13 May (250th session)
- ♦ from 27 June to 1 July (251st session)
- ♦ from 12 to 16 September (252nd session)
- ♦ from 17 to 21 October (253rd session)
- ♦ from 5 to 9 December (254th session)

1. The current composition of the Committee appears in Appendix 1.

2011 activities of the European Committee of Social Rights

During these sessions the Committee:

- ♦ examined reports presented by 39 States Parties describing how they have implemented the Charter in law and in practice as regards the provisions belonging to the thematic group of provisions relating to children, families and migrants (Articles 7, 8, 16, 17, 19, 27 and 31);
- ♦ ruled on collective complaints against States having accepted this procedure: it registered 12 new complaints, declared 11 complaints admissible and it adopted decisions on the merits of 4 complaints;
- ♦ reviewed the situation in 6 States Parties (Andorra, Lithuania, the Republic of Moldova, the Netherlands, Norway and Ukraine) with respect to the non-accepted provisions of the Charter (the so-called Article 22 procedure). For this purpose delegations of the Committee also held meetings (outside the sessions) with Andorra, Lithuania, the Republic of Moldova and Ukraine.

The Committee formulated comments on a number of texts submitted to it by the Committee of Ministers, in particular this concerned recommendations by the Parliamentary Assembly (these comments are reproduced in Appendix 15).

In the framework of its sessions, the Committee held meetings with representatives of several Council of Europe bodies, with representa-

tives of other international bodies, including the annual exchange of views with the international Labour Organisation as well as with other external actors such as the Academic Network on the Charter.

In 2011 the Committee's agenda was naturally affected by the 50th anniversary of the Charter and delegations or individual members of the Committee participated in many events organised at national and international level to mark this occasion. In connection with the celebrations in Strasbourg on 18 October 2011, the Committee of Ministers adopted a Declaration reaffirming the importance of respecting social rights, especially for the most vulnerable persons and a reflection was initiated at Committee of Ministers level on strengthening the impact of the Charter, notably by a reform of the reporting procedure and of follow-up to the decisions of the European Committee of Social Rights.

In this context the Committee itself prepared and transmitted proposals to the Committee of Ministers and to the States Parties on a new reporting procedure and on the personal scope of the Charter.

A detailed account of the anniversary year and its many activities is contained in Chapter 7 below and related appendices.

Finally, delegations of the Committee visited a number of countries in 2011 to conduct discussions with their authorities on:

- ♦ the Committee's findings in previous supervision cycles and the assessment in the current cycle of those countries' policies concerning their Charter undertakings;
 - ♦ in the case of countries that had not yet done so, the prospects for their ratification of the Charter and the collective complaints procedure.
- A list of the relevant meetings appears in Appendices 14 and 15.

2. Election of members to the Bureau of the Committee

At its 248th session (24-26 January 2011) the Committee proceeded to elect its Bureau in accordance with Rule 8 of its Rules.

Mr Jimena Quesada was elected President and Mr O'Cinneide and Ms Schlachter were elected as vice-presidents. Finally, the Committee elected Mr Belorgey as General Rapporteur.

Pursuant to the Committee's Rules the Bureau shall be elected for a period of two years (Rule 8). According to Rule 11 the Bureau shall direct the work of Committee.

The role of the President is to "direct the work and chair the meetings of the Committee" (Rule 9). This includes a variety of tasks, including notably those relating to the collective complaints procedure, such as the appointment of Rapporteurs (Rule 27), requesting observations on admissibility and written submissions on the merits of a complaint from the parties and fixing deadlines for these, requesting observations from actors other than the parties (Rules 29, 31 and 32) as well as taking "any necessary measures to

ensure the proper functioning of the procedure" (Rule 28). The President also has an important representative role participating in numerous meetings of various Council of Europe bodies, including an annual exchange of views with the Committee of Ministers, as well as in meetings and conferences organised by governments, civil society, universities and others.

The President may delegate certain of his/her duties to the vice-presidents, which entails, *inter alia*, representing the Committee on various occasions. In practice, the main function of the vice-presidents is to ensure the functioning of the sub-committees which are formed for the purpose of examining national reports (Rule 20) and to chair the meetings of these sub-committees.

The role of the General Rapporteur is to ensure the consistency of the Committee's conclusions and decisions on the various articles of the Charter and to inform the Committee about the case-law if necessary (Rule 10).

3. The Committee's Rules: Amendments

During its 250th session on 10 May 2011 the Committee adopted two amendments to its Rules. The Committee decided to insert:

- ♦ a new rule on request for observations which reads as follows:

Rule 32A: Request for observations

1. Upon a proposal by the Rapporteur, the President of the Committee may invite any organisation, institution or person to submit observations.
 2. Any observation received by the Committee in application of paragraph 1 above shall be transmitted to the respondent State and to the organisation that lodged the complaint.
- ♦ It also adopted a new rule on immediate measures, which reads as follows:

Rule 36: Immediate measures

1. Since the adoption of the decision on the admissibility of a

collective complaint or at any subsequent time during the proceedings before or after the adoption of the decision on the merits the Committee may, at the request of a party, or on its own initiative, indicate to the parties any immediate measure the adoption of which seems necessary with a view to avoiding the risk of a serious irreparable injury and to ensuring the effective respect for the rights recognised in the European Social Charter.

2. In case of a request of immediate measures made by a complainant organisation, the request shall specify the reasons therefore, the possible consequences if it is not granted, and the measures requested. A copy of the request shall forthwith be transmitted to the respondent State. The President shall fix a date for the respondent State to make written submissions on the request of immediate measures.

4. Collective complaints procedure

The Additional Protocol of 1995 providing for a system of collective complaints came into force on 1 July 1998. To date, fourteen member States of the Council of Europe are bound by the Protocol.²

Over the period 1998-2011, the European Committee of Social Rights has received 75 collective complaints. The Committee, as a quasi-judicial body, has made 131 decisions, and among them 73

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2. On 4 April 2012 the Czech Republic became the fifteenth member State to accept the procedure.

decisions on admissibility, 57 decisions on the merits and 1 decision to strike out a complaint.

Hitherto the Committee experienced the largest increase in the number of complaints in 2011³ with 12 new complaints received and registered in the course of 2011. In the course of its 7 sessions in 2011, the Committee adopted 4 decisions on the merits and 11 decisions on admissibility. The Committee of Ministers adopted resolutions⁴ in 7 complaints.

The 12 complaints registered in 2011 were lodged against 5 countries: France (4 complaints), Greece (3 complaints), Belgium (2 complaints), Finland (2 complaints) and Norway (1 complaint).

Six complaints came from international non-governmental organisations, 4 complaints came from national trade unions, and for the first time, 2 complaints were filed by a national non-governmental organisation (Finland is so far the only State having recognised the right of national NGOs to lodge collective complaints against it).

It should be noted that the European Committee has instructed the Secretariat not to register manifestly inadmissible complaints, for instance because they have the character of individual complaints. 17 such complaints were rejected in 2011.

The time required to process the complaints remains within the established deadlines (6 months for

the admissibility and 12 months for the merits). The average duration of the admissibility stage was 4.3 months and the average duration of the merits stage was 12.8 months.

The 4 decisions on the merits adopted by the Committee in 2011 are the following:

- ♦ The Committee adopted its decision on the merits with regard to the case “*Centre on Housing Rights and Evictions (COHRE) V. France*” (No. 63/2010 on 28 June 2011. The complainant organisation alleged that the evictions of Roma from their dwellings and their expulsions from France in the summer of 2010 breach Articles 16 (right of the family to social, legal and economic protection), 31 (right to housing) and 19§8 (guarantees concerning deportation) of the Revised Charter. The complainant organisation also alleged that the facts in question constitute discrimination (Article E) in the enjoyment of the aforementioned rights.
- ♦ The Committee concluded unanimously that the forced evictions of Roma of Romanian and Bulgarian origin in the summer 2010 constitute a violation of Article E (non discrimination) taken in conjunction with Article 31§2 (Right to housing – Reduction of homelessness) and that the de facto collective expulsion of Roma of Bulgarian and Romanian origin from France during the summer

3. See list of collective complaints in appendix 5

4. See list of Resolutions in appendix 5

2011 activities of the European Committee of Social Rights

2010 constitutes a violation of Article E (non discrimination) taken in conjunction with Article 19§8 (guarantees concerning deportation). The decision became public following the adoption of the Resolution of the Committee of Ministers (CM/Res/ChS(2011)9) on 9 November 2011.

- ♦ The Committee adopted its decision on the merits with regard to the case “*European Roma Rights Centre (ERRC) v. Portugal*” (No. 61/2010) on 30 June 2011. The complainant organisation maintained that the sum of housing-related injustices in Portugal (including problems of access to social housing, substandard quality of housing, lack of access to basic utilities, residential segregation of Romani communities and other systemic violations of the right to housing) violates Articles 16 (the right of the family to social, legal and economic protection), 30 (right to protection against poverty and social exclusion) and 31 (right to housing), read alone or in conjunction with Article E (non discrimination) of the Revised Charter. The Committee concluded unanimously that there was violation of Article E (non discrimination) taken in conjunction with Articles 31§1 (adequate housing), Article 16 (the right of the family to social, legal and economic protection) and Article 30 (right to protection against poverty and social

exclusion). The decision became public on 7 November 2011.

- ♦ The Committee adopted its decision on the merits with regard to the case “*European Trade Union Confederation (ETUC), Centrale Générale des Syndicats Libéraux de Belgique (CGSLB), Confédération des Syndicats chrétiens de Belgique (CSC) and Fédération Générale du Travail de Belgique (FGTB) v. Belgium*” (No. 59/2009) on 13 September 2011. The complainant organisations alleged that the situation in Belgium is not in conformity with the rights laid down in Article 6§4 (right to strike) of the Social Charter. They claimed that judicial intervention in social conflicts in Belgium, in particular concerning restrictions imposed on the activity of strike pickets, are in violation of this provision. The Committee concluded by 8 votes against 4 that the restrictions on the right to strike constitute a violation of Article 6§4 on the ground that they do not fall within the scope of Article G, as they are neither prescribed by law nor in keeping with what is necessary to pursue one of the aims set out in Article G of the Charter. The decision became public on 8 February 2011.
- ♦ The Committee adopted its decision on the merits with regard to the case “*European Council of Police Trade Unions (CESP) v. Portugal*” (No. 60/2010) on 17 October 2011. The complainant organisation claimed that the method for calculating remuner-

ation for overtime work performed by criminal investigation officers in the Portuguese Criminal Police Force, which is contained in Regulation No. 98/97 of 13 February 1997 and confirmed by Regulation No. 18/2002 of 5 April 2002, infringes Article 4§2 of the Charter, because the assessment of remuneration for overtime work is based on a rate which is below the normal hourly rate for police officers, and with a per diem limit. The CESP also contended that in Portugal police officers do not enjoy, in practice, the right to bargain collectively (Articles 6 §§1 and 2 of the Charter) and the right to take part in the determination and improvement of the working conditions and working environment (Article 22 of the Charter). The Committee concluded by 13 votes against 1, that there was a violation of Article 4§2 (right to increased rate of remuneration for overtime work) of the Revised Charter on the grounds that police officers on active prevention duties (*prevenção activa*) and shift duties (*serviço de piquete*) do not receive increased remuneration for overtime. The Committee also concluded unanimously that there was no violation of Article 6 §§ 1 and 2 nor of Article 22 of the Charter.

In 2011, the collective complaints procedure once again had a significant impact on the law and practice of the States Parties. The Committee noted *inter alia* the following examples:

Croatia: In response to the Committee's decision indicating that the Croatian authorities did not take into account the vulnerabilities of many displaced families, and of ethnic Serb families in particular, who wish to return to Croatia, the Government in September 2010 adopted a decision providing for the option to buy apartments under privileged conditions, offering a special personal discount for refugees and displaced persons: every year spent as a refugee is multiplied by a coefficient of 1.5. Since many returnees will not be able to purchase apartments in a single payment, they will be offered a possibility to buy off the flats paying in installments over a period of 20 years. All recipients of housing aid living outside the national zones of interest have been informed by letter that they now have the option available to purchase their allocated housing units.

Resolution CM/ResChS (2011) 6 of 5 May 2011 (Cohre v. Croatia, Complaint No. 52/2008).

Slovenia: In response to the Committee's objection regarding the situation of former holders of the Housing Right that are living in denationalised dwellings, a high-level interministerial group has been established with the aim to thoroughly analyse the existing situation of tenants in denationalised dwellings and, if deemed necessary, to identify the additional measures required to treat the tenants in denationalised dwellings in line with the provisions of the European Social Charter. In addition, a new housing policy is being formulated by the Slovenian

Government for the 2012-2021 period through the National Housing Programme with a view to speeding up the process of acquiring non-profit housing.

Resolution CM/ResChS (2011)7 of 15 June 2011 (Feantsa v. Slovenia, Complaint No. 53/2008).

France: The *Cour de Cassation* established a number of requirements to maintain the working days system.

The Court held that in order to be valid, the agreements on annual working days must be approved by a collective agreement which includes safeguards for monitoring of workload. In particular, the agreements must specify the procedures that guarantee employees the respect of maximum working time and daily and weekly rest. (Decision No. 1656 of 29 June 2011 (09-71107) – *Cour de Cassation* – Social Chamber).

Resolution CM/ResChS (2011)4 of 6 April 2011 (CGT v. France, Complaint No. 55/2009).

Resolution CM/ResChS (2011)5 of 6 April 2011 (CFE-CGC v. France, Complaint No. 56/2009).

The 50th anniversary of the European Social Charter was an

opportunity for the Committee of Ministers to solemnly reaffirm the paramount role of the Charter in guaranteeing and promoting social rights and to recognise the contribution of the collective complaints mechanism in furthering the implementation of social rights. In the Declaration adopted on 12 October 2011, at the 1123rd meeting of the Ministers' Deputies, the Committee of Ministers called on those members states not having done so to ratify the Additional Protocol.

Within the framework of the celebration of the 50th anniversary of the Social Charter, the Directorate General of Human Rights and Rule of Law and the Commissioner for Human Rights on 18 October 2011 organised a Brainstorming on the Ratification of Collective Complaints procedure, with the participation of Permanent Representatives of States Parties to the Charter, members of the European Committee of Social Rights and Governmental Committee, Representatives of INGOs and European trade unions and members of the academic network.

5. Reporting procedure

In 2011, the Committee examined state reports on the application of provisions belonging to the thematic group on children, families and migrants:

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

- ♦ article 27 (right of workers with family responsibilities to equal opportunity and treatment),
- ♦ article 31 (right to housing).

The deadline for submission of the reports was 31 October 2010. Reports on the Charter were presented by Albania, Andorra, Armenia, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy, Lithuania, Malta, Moldova, the Netherlands, Norway, Portugal, Romania, Slovenia, Sweden, Turkey and Ukraine. Reports on the 1961 Charter were presented by Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, the Netherlands in respect of the Antilles and Aruba, Poland, Slovakia, Spain, “the former Yugoslav Republic of Macedonia” and the United Kingdom.

The situation as regards the timely submission of reports improved somewhat. Only Hungary did not submit a report and despite several reports arriving very late significant progress has nevertheless been made compared to the situation a few years ago.

In its General Introduction to the Conclusions 2011 (Charter) and Conclusions XIX-3 (1961 Charter) the Committee announced certain developments of a procedural and technical nature.

First of all, an agreement has been reached with the International Labour Organisation (ILO) concerning the participation of the

latter in the Committee’s deliberations pursuant to Article 26 of the 1961 Charter. Based on a mutual acknowledgement that current circumstances made it impossible to continue the participation in the form it had taken hitherto, agreement was reached on a simplified arrangement according to which an exchange of views on issues of common interest with a delegation of the ILO shall be organised every year after the annual ILO conference. Additional exchanges of views may be organised if necessary and specific questions from the Committee to the ILO will be channelled through the ILO official responsible for contacts with the Committee on a continuous basis.

Secondly, the Committee, taking note of the fact that the great majority of States Parties are bound by the Revised Charter decided, from now on, to use the following expressions:

- ♦ “The Charter” refers to the 1996 Revised Charter
- ♦ “The 1961 Charter” refers to the original Charter from 1961.

In 2011, the Committee also put forward a proposal for a reform of the reporting procedure. The proposal, which was addressed in a letter to the Chair of the Committee Ministers foresees biennial reports on selected themes to be determined in consultation with the States Parties and it provides for a period of transition from the current system for submission of reports. It is currently under consideration by the Committee of Ministers.

The Committee's findings

The Committee published its Conclusions 2011 and XIX-4 on 24 January 2012. The Committee reached a total of 950 conclusions – 729 in respect of the Charter and 221 in respect of the 1961 Charter – of which 460 were conclusions of conformity (48.4%), there were 258 findings of non-conformity (27.2%) and finally 232 conclusions (24.4%) were deferred pending receipt of additional information (tables summarising the conclusions adopted, by article and by country, appear in Appendix 6).

The substantive findings of the Committee cover a very wide spectrum of situations related to the rights of children, families and migrants. While the many specific findings do not lend themselves to brief and simplistic categorisation, certain typical or recurring problems of conformity nevertheless stand out:

The right of children to protection (Article 7)

Under the Charter children may not be admitted to regular employment before the age of 15, but they may, under certain conditions, perform what is termed “light work”. In comparative terms child labour may not be a major problem in most Council of Europe member states, but the Committee nevertheless found several countries to be in breach of certain aspects of Article 7§1. Some countries were found not to have taken sufficient steps in practice to eradicate child labour (there may be a prohibition

in law, but in practice too many children are still employed in tasks that cannot be considered “light”).

However, it was not only problems of practice: another, related, problem is that the legislation of certain States does not define the notion of light work with sufficient precision. Moreover, in respect of some countries the Committee held that certain restrictions on the scope of the statutory prohibition of child labour were contrary to the Charter.

Under Article 7§10 on the protection children against “physical and moral dangers” the main violations identified had to do with lacking or insufficient protection of children against the misuse of information technologies, against trafficking and sexual exploitation, including child pornography and prostitution.

In total there were 89 conclusions of non-conformity in respect of the rights guaranteed by Article 7 corresponding to about 26% of all the conclusions for this provision.

The right to maternity protection (Article 8)

The 28 findings of non-conformity under Article 8 (about 18%) concerned in particular inadequate levels of maternity benefit (Article 8§1), too broad exceptions to the prohibition on dismissal of pregnant women and during maternity leave (Article 8§2), reinstatement not being the rule in case of unlawful dismissal (Article 8§2)

and absent or inadequate provision for breastfeeding breaks and their remuneration (Article 8§3).

The right of the family to social, legal and economic protection (Article 16)

Among the recurring grounds of non-conformity under Article 16 (23 conclusions of non-conformity in total or 66%) the most frequent were the lack of a guarantee of equal treatment of nationals of other States Parties with respect to allocation of child allowances and/or housing benefits, in particular in the form of excessive length of residence requirements, and the inadequate housing conditions of Roma and other vulnerable families. Other violations identified under this provision include inadequate levels and/or coverage of family benefits, insufficient measures to combat domestic violence and undue interference in the family life of Roma families.

The right of children and young persons to social, legal and economic protection (Article 17)

Under this provision the Committee, among other things, looked into the issue of corporal punishment of children. No less than 14 countries were found to be in breach of the Charter because corporal punishment is not explicitly prohibited in the national legislations (or is only prohibited in schools and institutions, but not in the home). In fact, many countries still allow various forms of “physical correction” which are not compatible with the Charter.

Other problems encountered pertain to young offenders and notably the possibility of imposing excessively long prison sentences and pre-trial detention period. Another issue was the age of criminal responsibility being too low in certain cases. With respect to the right to education the Committee found that some countries do not extend this right to children with irregular immigration status and this constitutes a violation of the Charter.

In total there were 30 conclusions of non-conformity pertaining to Article 17 (53%).

The rights of migrant workers (Article 19)

The application of certain aspects of Article 19 on the rights of migrant workers has traditionally been problematic for quite many States Parties with its guarantee of equal treatment in respect of employment, trade union membership and accommodation (Article 19§4), with its right to family reunion (Article 19§6) and with its safeguards against expulsion of migrant workers (Article 19§8). This year was no exception; 66 conclusions of non-conformity in total for the 12 paragraphs of Article 19 (10 paragraphs in the 1961 Charter) or about 24%.

In respect of family reunion, for example, the Committee found violations, in respect of 10 countries on one or more of the following grounds:

- Firstly, excessive length of residence requirements before a migrant worker can be joined by his/her family;

- Secondly, overly restrictive rules for the calculation of the economic means of migrant workers;
- Thirdly, requirements that spouses and children of migrant workers sit language tests before or after entering the country.

As regards expulsion, the Committee found that in certain countries migrant workers may be expelled on grounds that go beyond those permitted by the Charter. This is the case, for example, where you can be expelled for having recourse to social welfare or for being homeless or for substance abuse and also where you can be expelled for having committed petty crimes. The absence of a proper right of appeal against a decision to deport also led to conclusions of non-conformity for some countries. The Committee also condemned instances of expulsion of Roma and Sinti people under circumstances which were not compatible with the Charter.

The right of workers with family responsibilities (Article 27)

There were relatively few findings of non-conformity in respect of Article 27 (6 in total or 11%). The violations found concerned issues such as periods of parental leave not taken into account for the calculation of pension entitlements (Article 27§1), fathers not entitled to take parental leave (Article 27§2) and the absence of provision in law for the reinstatement of workers unlawfully

dismissed on account of their family responsibilities.

The right to housing (Article 31)

The right to housing as guaranteed by Article 31 is no doubt one of the most crucial social rights and almost all of the still rather few countries having accepted it were found to have problems with aspects of its application: in total there were 18 conclusions of non-conformity under Article 31 (55%).

The Committee's case-law on Article 31 has developed mainly in the context of collective complaints and a good deal of the problems identified in the current conclusions have to do with the follow-up by States – or rather the lack of it – to the Committee's previous decisions in collective complaints.

This is notably the case with respect to the right to adequate housing under Article 31§1, where the Committee reiterated its findings in several collective complaints that in some countries a large number of dwellings is sub-standard lacking suitable amenities (are without reliable access to water or electricity or are unsafe or unhealthy), and in particular that there had been insufficient progress as regards the eradication of sub-standard housing conditions for a large number of Roma. Under Article 31§2 concerning reduction of homelessness, the insufficiency of measures taken to reduce homelessness. In some countries evictions of Roma and Sinti continue to be carried out without the necessary procedural

safeguards and without proper re-housing solutions. Finally, under Article 31§3 on affordable housing, a significant shortage of social housing in some countries has led to conclusions of non-conformity as has the lack of equal treatment

of foreigners in respect of social housing and access to housing benefits.

On the whole, the sub-standard housing conditions of many Roma was one of the main recurring issues in this year's conclusions.

Examples of progress in the application of Charter rights

Despite the context of the economic and financial crisis, many States Parties have taken account of the Committee's conclusions in different areas in order to adjust the relevant laws and regulations or eliminate practices contrary to the standards laid down by the Committee.

Thus, in the course of examining the national reports the Committee in Conclusions 2011 and XIX-4 took note, *inter alia*, of the following examples of the impact of the Charter:

- ♦ **Luxembourg:** education is now compulsory until 16 years. Consequently, those under 16 years cannot work for 8 hours a day or 40 hours a week (Compulsory Schooling Act of 6 February 2009). [Article 7§4]
- ♦ **France:** postponement of accrued leave after the resumption of work when the employee is unable to take annual paid leave during the year stipulated by the Labour Code or a collective agreement, as a result of absences due to employment injury or occupational disease (Court of Cassation, judgment of 27 September 2007, *Société Arcadie distribution Sud-Ouest v. M. Michel Vallantin*; Court of Cassation, judgment of 24

February 2009, *Ms X v. Caisse primaire d'assurance maladie (CPAM) de Creil*). [Article 7§7]

- ♦ **Czech Republic:** act No. 40/2009 Coll., Criminal Code came into effect on January 2010 which in its Article 192 sanctions possession of child pornography for one's own purposes with a term of imprisonment from two to six years. Possession means any type of holding. [Article 7§10]
- ♦ **Portugal:** Penal Reform (Law No. 59/2007 of 4 September 2007) created the autonomous crimes of pornography involving minors and the sexual abuse of minors, including the criminalisation of the acquisition or possession of pornographic material (Article 176 (3) of the Penal Code). [Article 7§10]
- ♦ **Spain:** with the entry into force of the Equality Act domestic workers, like other workers, cannot be dismissed for reasons pertaining to pregnancy or maternity. [Article 8§2]
- ♦ **Belgium:** the social partners have agreed within the framework of the National Council of Labour to amend Collective Agreement No. 80 in order to extend the period where breastfeeding breaks are granted to 9

months, hence bringing it into conformity with the requirements of Article 8§3. [Article 8§3]

- ♦ **Cyprus:** in accordance with Amending Maternity Protection Act 109(I) of 2007, employees are entitled to one hour per working day for the purpose of breastfeeding and/or childcare. This time is considered as working time and is remunerated as such. The period during which employees are entitled to take this time off has been extended from 6 months after childbirth to 9 months. Therefore, the Committee considers the situation to be in conformity. [Article 8§3]
- ♦ **Lithuania:** a draft Act on Protection from Domestic Violence was submitted to the Government on 12 May 2010. The purpose of the draft legislation is to respond quickly to violations, impose sanctions, provide appropriate support and take preventive measures to protect people from domestic violence. In addition, Government Resolution No. 853 of 19 August 2009 approved the Plan of Measures Implementing the National Strategy on Combating Violence against Women, 2010-2012. [Article 16]
- ♦ **The Netherlands:** On 1 January 2008, the child tax credit was replaced by a means-tested child allowance. As a result, lower-income families also benefit (what was not a case before). The guaranteed minimum income for single parents receiving social assistance is higher than for other single people (90% of the statutory minimum wage as opposed to 70% of the statutory minimum wage for single people). Single parents also receive the single-parent tax credit in full. [Article 16]
- ♦ **Spain:** The First Schedule to Law No. 54/2007 on International Adoption amended the Civil Code to remove the “right” of parents and guardians to use “reasonable and moderate” forms of “correction” from Articles 154 and 268 of the Civil Code. [Article 17]
- ♦ **Greece:** Section 4 of Law 3500/2006 on Combating Domestic Violence (in force since 2007) now provides that physical violence against children as a disciplinary measure in the context of their upbringing may be subsumed under Article 1532 of the Civil Code, which addresses abuse of parental authority. [Article 16]
The prohibition followed a finding in 2004 by the Committee under the collective complaints procedure that Greece was in violation of Article 17 of the Charter because of the absence of an explicit prohibition in law of corporal punishment of children within the family, in secondary schools and in other institutions and forms of childcare. Following the decision of the Committee legislation was introduced to explicitly prohibit corporal punishment in secondary schools (Section 21 of Law No. 3328/2005). The above-mentioned Section 4 of Law 3500/2006 on

Combating Domestic Violence also applies in alternative care settings. [Article 17]

- ♦ **Poland:** Section 2 of the Act of 6 May 2010 “On the Prevention of Family Violence” amends the Family Code (1964) by inserting a new Article 96 which prohibits all corporal punishment in childrearing: “persons exercising parental care, care or alternative care over a minor are forbidden to use corporal punishment, inflict psychological suffering and use any other forms of child humiliation”. The Committee considers that these legislative amendments have brought the situation into conformity with the Charter. [Article 17]
- ♦ **Germany:** Section 9 of the Act amending military law of 31 July 2008 (BGBl. I, p.1629), which came into force on 9 August 2008, added the following paragraph 6 to Section 16 of the Employment Protection Act: “Sections 1, paragraphs 1, 3 and 4, and sections 2 to 8 of this Act shall also apply to foreigners employed in Germany if they are required to honour their military service obligations in their country of origin. This provision shall apply only to nationals of states party to the European Social Charter of 18 October 1961 (BGBl. II, 1964, p. 1262) who are lawfully resident in Germany”. On this basis, migrant workers from the States Parties to the 1961 Charter who are lawfully present on German territory are now treated no less favourably than German nationals and nationals of the EU/EEA states with regard to employment conditions for those just finishing military service. [Article 19§4]
- ♦ **Lithuania:** Since 2007 the Labour Market Training Authority considers that parents raising a child under eight years old are a priority group as regards access to employment support measures. [Article 27§1]
- ♦ **Finland:** As from 2006, the right to partial child-care leave for parents of children with disabilities or long-term illnesses has been extended until the time when the child in need of special care and treatment reaches the age of 18. [Article 27§2]
- ♦ **Estonia:** The provision in the Individual Labour Disputes Act which limited compensation to six months’ average wages in cases of unlawful termination of the contract was repealed. [Article 27§3]
- ♦ **Finland:** The Programme to Reduce Long-Term Homelessness with the central objective of halving long-term homelessness over the period 2008 to 2011 succeeded not only in attaining the objective, but even exceeded it. The “Housing first” principle has been recommended as an advanced example of how to tackle homelessness. [Article 31§2]
- ♦ **France:** Act No. 2009-323 of 25 March 2009 on action for housing and against exclusion introduced a new measure to

assist persons in situations of extreme social deprivation, whose prospects of integration and improved autonomy were poor. These are the so-called pensions de famille (family boarding houses) which provide long-term accommodation and an opportunity for the person concerned to re-establish social ties, partly thanks to the daily presence of a landlord or landlady. [Article 31§2]

Norway: The housing allowances system was reformed to make it more transparent and

simple to manage. Most restrictions on eligibility for allowances were removed and since 2009 all persons over 18 years of age – including non-nationals lawfully residing in Norway and inscribed in the national register – may apply for housing allowance. [Article 31§3]

For additional examples of the impact of the Charter mechanism, see above in chapter 4 on collective complaints.

The Committee's statements of interpretation and general questions

Statements of interpretation

In accordance with its practice, the Committee in Conclusions 2011 and XIX-4 made several statements explaining and developing its interpretation of certain specific provisions of the Charter. The General Introduction thus contained the following *statements of interpretation*:

- ♦ *Statement of interpretation on Article 7§3: mandatory period of rest during school holidays*

The Committee has re-considered its interpretation under Article 7§3 with respect to the mandatory period of rest during holidays for children who are still subject to compulsory education. Having regard to the developments in the protection of children in the labour market over the past two decades at national and international level as well as to the fact that a clear and protective standard has been laid down with respect to

work during the school term, the Committee considers it necessary to adopt a more concrete approach which will allow it to assess the widely diverging national situations and traditions in a fair and balanced way.

The Committee considers that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays which shall under no circumstances be less than two weeks during the summer holiday. The adequacy of the length of the mandatory and uninterrupted period free of any work will be assessed by the Committee on a case-by-case basis taking into account a number of factors, in particular the length and distribution of holidays over the school year and the timing of the uninterrupted period of rest.

In addition, the Committee will also have regard to the definition of the nature of the work (light work) that children subject to compulsory education may perform during school holidays, limitations of daily and weekly hours during which such work may be performed as well as the overall state of the protection in law and in practice against exploitation of children in the labour market, including the efficiency of the labour inspectorate.

♦ *Statement of interpretation on Article 8§1: compulsory post-natal leave*

Article 8§1 of the Charter should be examined in the light, in particular, of developments in national legislation and international conventions. This provision was designed both to grant employed women protection in the case of maternity and to reflect a more general interest in public health, i.e. the health of the mother and child. In connection with the first point, the Charter requires a minimum of 14 weeks' leave entitlement, together with adequate financial safeguards. With regard to the second point, the women concerned enjoy the right to protection against any work which might be harmful to the health of the mother or the child.

The aforementioned two requirements are met insofar as national legislation, on the one hand, allows women the right to use all or part of their recognised entitlement to cease work for a period of at least 14 weeks, allowing them freedom of choice by means of a scheme of

benefits set at an adequate level, and, on the other hand, obliges the employer to respect the free choice of women.

The requirement of six weeks postnatal leave is a means of achieving the protection provided for by Article 8 (see for example Conclusions VIII, United Kingdom). Where compulsory leave is less than six weeks, the rights guaranteed under Article 8 may be realised through the existence of adequate legal safeguards that fully protect the right of employed women to choose freely when to return to work after childbirth – in particular, an adequate level of protection for women having recently given birth who wish to take the full maternity leave period (e.g. legislation against discrimination at work based on gender and family responsibilities); an agreement between social partners protecting the freedom of choice of the women concerned; and the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave).

♦ *Statement of interpretation on Article 16 and 17§1*

The Committee recalls that any restrictions or limitations of custodial rights of parents' should be based on adequate and reasonable criteria laid down in legislation and should not go beyond what is necessary for the protection and best interest of child and the rehabilitation of the family (Conclusions XV-2, Statement of Interpretation on Article 17§1).

The Committee underlines that placement must be an exceptional measure, and is only justified when it is based on the needs of the child, namely if remaining in the family environment represents a danger for the child. On the other hand, it considers that the financial conditions or material circumstances of the family should not be the sole reason for placement. In all circumstances, appropriate alternatives to placement should first be explored, taking into account the views and wishes expressed by the child, his or her parents and other members of the family.

The Committee furthermore holds that when placement is necessary, it should be considered as a temporary solution, during which continuity of the relationship with the family should be maintained. The child's re-integration within the family should be aimed at, and contacts with the family during the placement should be provided for, unless contrary to the best interest of the child. Whenever possible, placement in a foster family or in a family-type environment should have preference over placement in an institution.

♦ *Statement of interpretation on Article 17§2*

As regards the issue as to whether children unlawfully present in the State Party are included in the personal scope of the Charter within the meaning of its Appendix, the Committee refers to the reasoning it has applied in its Decision on the Merits of 20

October 2009 of the Complaint No. 47/2008 *Defence for Children International (DCI) v. the Netherlands* (see, *inter alia*, §§ 47 and 48) and holds that access to education is crucial for every child's life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child's life would be adversely affected by the denial of access to education. The Committee therefore holds that States Parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education as any other child.

♦ *Statement of interpretation on Article 19§4*

Under Article 19§4b the States Parties undertake to secure for migrant workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of membership of trade unions and enjoyment of the benefits of collective bargaining.

The Committee has consistently held that by way of the expression "membership of trade unions" Article 19§4b guarantees not only the right to join a trade union, but also to participate in trade union activities, including the right to be founding member of a trade union (see, *inter alia*, Conclusions XIV-1, Turkey).

♦ *Statement of interpretation on Article 19§6*

The Committee notes that with regard to the implementation of Article 19§6, several States have invoked the application of the Directive of the European Union (EU) 2003/86/EC on the right to family reunification. In this regard, the Committee recalls that it rules on the Charter and not on EU law. In any case, it notes that the above directive, *expressis verbis*, is without prejudice to more favourable provisions of the Charter.

Referring to its decision of 23 June 2010 on the merits of Complaint No. 55/2009, *Confédération générale du Travail (CGT) v. France* (§§ 31-42), the Committee concludes that the above-mentioned directive contains provisions allowing the member states concerned to adopt and apply rules that infringe Article 19§6 of the Charter.

These provisions concern in particular:

- a. the length of residence requirement for migrant workers wishing to be joined by members of their family. In this connection, the Committee has always considered (cf. Conclusions I, Germany), taking account of the provisions of the European Convention on the Legal Status of Migrant Workers (ETS No. 93), that a length of more than one year is excessive and, consequently, in breach of the Charter.
- b. the exclusion of social assistance from the calculation of

the income of a migrant worker who has applied for family reunion (in connection with the criteria relating to available means). The Committee notes that the Court of Justice of the EU (CJEU) has already limited the possibility provided by the above-mentioned Directive to restrict family reunification on the ground of available income (see CJEU judgment of 4 March 2010, case Chakroun, C-578/08, paragraph 48).

The Committee recalls in this respect that migrant workers who have sufficient income to provide for the members of their families should not be automatically denied the right to family reunion because of the origin of such income, in so far as they are legally entitled to the benefits they may receive.

In view of the above and of the relevant case-law of the European Court of Human Rights (ECtHR) – see judgment of 19 February 1996, *Gül v. Switzerland*, No. 23218/94 – the Committee considers that the above-mentioned exclusion is such as to prevent family reunion rather than facilitating it. It accordingly constitutes a restriction likely to deprive the obligation laid down in Article 19§6 of its substance and is consequently not in conformity with the Charter.

- c. the requirement that members of the migrant worker's family sit language and/or integration tests to be allowed to enter the country, or pass these tests once they are in the

country to be granted leave to remain.

In this connection, the Committee considers that, in so far as this requirement, because of its particularly stringent nature, discourages applications for family reunion, it constitutes a condition likely to prevent family reunion rather than facilitating it. It accordingly constitutes a restriction likely to deprive the obligation laid down in Article 19§6 of its substance and is consequently not in conformity with the Charter.

- d. the fact that family reunion is ruled out for children between the ages of 18 and 21 in member states of the European Union where the statutory age of majority is eighteen.

In this connection, in view of the appendix to the 1961 Charter on its scope as regards protected persons and the statements of interpretation previously issued on the subject (cf. Conclusions V, 1977 and Conclusions VII, 1984), the Committee recalls that the rejection of applications for family reunion in respect of children between the ages of 18 and 21 – for economic or for health reasons – is not compatible with the 1961 Charter.⁵

- ♦ *Statement of interpretation on Article 19§7*

The Committee considers that migrant workers residing or working lawfully in the territory of

the states parties must benefit from both a treatment not less favourable than that of nationals, and a treatment which takes account of their specific conditions. To this end, the Committee considers that any migrant worker residing or working lawfully within the territory of a state party who is involved in legal or administrative proceedings and does not have counsel of his or her own choosing should be advised that he/she may appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if he or she does not have sufficient means to pay the latter, as is the case for nationals or should be by virtue of the European Social Charter. Under the same conditions (involvement of a migrant worker in legal or administrative proceedings), whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter if he or she cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial proceedings.

- ♦ *Statement of interpretation on Article 19§8*

Article 19§8 of the Charter prohibits the expulsion of migrant workers lawfully residing within the territory of a State Party, except where they endanger national security or offend against public interest or morality.

5. Part d) of this interpretative statement only applies to States Parties bound by Article 19§6 of the 1961 Charter.

The legislation of a number of countries has already gone beyond this requirement by providing that neither may expulsion be imposed, even where the right to reside is forfeited especially in connection with circumstances of unemployment, upon migrant workers who have previously resided lawfully in their territory for a certain time and/or entered into marriage there or had offspring.

Both in these countries and in those whose legislation embodies no provision of this kind, several types of problem are posed by the situation of migrant workers who, being without employment, are ineligible for renewal of their residence permits and thereby at risk of removal from the territory:

1. Firstly, if they have conferred the right of residence on a spouse and/or children, loss of their own right of residence cannot affect their family members' independent rights of residence, which may have a longer term of validity than their own, a contagious effect, so the Committee has consistently held.
2. Secondly, for as long as a migrant workers' family members hold a right of residence it must not be possible to remove even a foreigner, who has personally lost this right except where they endanger national security or offend against public interest or morality; such is the implication of Article 8 of the European Convention for the Protection of Human Rights as often interpreted by the ECtHR, especially by the decisions in the

cases of *Berrehab v. Netherlands* of 21 June 1988 and *Mengesha Kimfe and Agrau v. Switzerland* of 2010. The Berrehab decision found that the "economic well-being of the country" was not apt to justify the expulsion or removal of a foreigner whose daughter also resided in the territory of the state wishing to take this measure. The Kimfe and Agrau decisions disallow the same ground with regard to a restricted residence measure in two different cantons imposed on two spouses whose removal does not seem feasible at least for some time.

3. Thirdly, the impossibility of expelling or removing a migrant worker which follows either from a State Party's undertakings pursuant to the Charter or from choices specific to that state and enshrined in its legislation, presupposes that the migrant worker is not placed in a situation of non-law as regards residence, i.e. holds the necessary documents to travel both in the country and beyond its borders and to obtain the social benefits which can be claimed by migrant workers whose situation is in order.
4. Lastly, national legislation should reflect the legal implications of Article 18§1 of the Charter read in conjunction with Article 19§8 as informed by the case-law of the ECtHR, in keeping with the developments which, for several decades now, have transformed migratory trends. Foreign nationals who have been resident for a suffi-

cient length of time in a state, either legally or with the tacit acceptance of their illegal status by the authorities in view of the host country's needs, should be covered by the rules that already protect other foreign nationals from deportation. In order to assess the current practices of States Parties to the Charter, either in accordance with their legislation or in parallel with it, the Committee therefore invites the States to notify it of their usual practices in this respect."

- ♦ *Statement of interpretation on Article 19§9*

The right of migrant workers to transfer their earnings and savings includes the right to transfer moveable property in their possession.

- ♦ *Statement of interpretation on Article 19§12*

In respect of Article 19§12 the Committee considers that the teaching of a migrant worker's mother tongue to his or her children contributes to the preservation of the cultural identity of all the migrants concerned while promoting a psychological and mental balance. The Committee considers that the more that is done to preserve cultural identity as a reference point in the daily lives of migrants and in particular their children, without prejudice to the customs, lifestyle and traditions of the host societies, the more migrants assert themselves firstly as persons having and owing rights and obligations and secondly as active members of society rather than bystanders at odds with their cultural identities. For this reason the Committee is of the view that

the States should undertake to promote and facilitate the teaching of the languages most represented among the migrants present on their territories within their school systems or in other contexts such as voluntary associations or non-governmental organisations.

- ♦ *Statement of interpretation on Article 8§2 and 27§3: ceiling on compensation for unlawful dismissal*

The Committee holds that compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is a ceiling on compensation for pecuniary damage, the victim must be able to seek unlimited compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

General questions

The General Introduction finally contained the following general question on Article 17§1 addressed to all the States Parties and inviting them to provide replies in the next report on the provision concerned:

Do unlawfully present children have access to shelter and medical care for as long as they are in the jurisdiction of the State Party concerned, and if so what is the legal basis?

The personal scope of the Charter: a proposal by the Committee

In the General Introduction to Conclusion 2011 and XIX-4 the Committee also recalled its position with respect to the personal scope of the Charter and drew attention to a proposal it had addressed to all the States Parties in a letter dated 13 July 2011:

“The European Committee of Social Rights would like to draw your attention to the personal scope of European Social Charter. According to paragraph 1 of the Appendix to the Charter: “Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned.”

Such a limitation is hardly consistent with the nature of the Charter, intended as a human rights instrument, and it is also a sort of anomaly: one does not find the same kind of limitation in other international legal instruments aimed at protecting human rights in general, or social rights in particular.

Moreover, the limitation of the personal scope provided for in the Appendix appears to be questionable in the light of the meaning and value that States Parties to the Charter attach to the dignity and fundamental rights of any human being as such, regardless of her/his nationality. Indeed, States Parties seem already inclined, and conscious of their duty, to apply

social rights beyond the limited personal scope indicated in the Appendix.

In addition, important social changes, which have occurred since the text of the Charter was adopted, make it increasingly urgent to overcome the limitation of the personal scope prescribed by the Appendix, in order to render the Charter system fully consistent with the object and purpose of European and international standards of human rights protection. One example of these changes is the growth of migration flows over the last two decades, as a result of which many European States have become destination countries for large numbers of immigrants from Africa, Asia, and Latin America. The fact that under the Charter system only nationals of the States Parties can invoke and obtain respect for their social rights, turns out to be a substantial discrimination, making the Charter system at odds with the universal nature of human rights, and with the fundamental values underpinning the Charter.

For the above reasons, the European Committee of Social Rights, on the occasion of the 50th anniversary of the European Social Charter, would like to draw the attention of States Parties to the Charter to their possibility to extend the application of the Charter to everyone within their jurisdiction, reminding them that such an extension would indeed be in line with the second part of paragraph 1 of the Appendix (according to which the interpreta-

tion of the scope of the Charter, provided for by the first part of the paragraph, “*would not prejudice the extension of similar facilities to other persons by any of the Parties*”).

To this end, the Committee invites States Parties to make a declaration on the basis of the appended model and notify it to the Secretary General of the Council of Europe as depositary of the treaty. This declaration may exclude from the extension of the scope of application a limited number of the provisions accepted, should it be deemed strictly necessary by the Party concerned.”

The model declaration referred to in the letter was worded as follows:

“According to the wording of the second sub-paragraph of paragraph 1 of the Appendix to the Revised European Social Charter, the Government of [...] undertakes to extend the application of the rights of the Charter, which it has accepted, to every individual under its jurisdiction [including nationals of states which are not Parties to the Charter], [if appropriate, with the exception of the following paragraphs: ...].”

By the end of 2011, two States (Lithuania and the Netherlands) had replied to the Committee’s invitation indicating that they were not, for the time being, in a position to make the proposed unilateral declaration extending the personal scope of the Charter.

6. Procedure on non-accepted provisions

The anniversary year 2011 saw a very tangible result of the procedure on non-accepted provisions when Cyprus notified the Secretary General of its acceptance of nine additional provisions of the Charter on 5 October 2011:⁶ Articles 2§3, 2§6, 4§5, 7§7, 8§5, 22b, 25, 27§2 and 29. This development came after detailed discussions held in Nicosia in 2006 between a delegation of the Committee and representatives of the Cypriot Government at a first meeting on the non-accepted provisions and

during which the Government gave a commitment to analyse further and consult with the social partners with a view to the acceptance of additional provisions.⁷ It was also a very concrete response to the Committee’s 2010 invitation to the Government to report on the progress made in this respect.

The possibility provided by Article A of the Charter (Article 20 of the 1961 Charter) of ratifying the treaty without accepting all its substantive provisions may be seen as both a weakness and strength.

6. Date of registration at the Secretariat General. Cyprus became bound by these provisions on 1 December 2011.

7. See “Report on the meeting with representatives of the Cypriot Government on provisions of the Revised European Social Charter not accepted by Cyprus”, 12 April 2006, at www.coe.int/socialcharter

On the one hand, this feature obviously restricts the Charter's scope and potential in those countries who choose not to accept all provisions and this "variable geometry" of obligations is unusual at best and counterproductive at worst for a human rights treaty. On the other hand, this possibility has no doubt allowed ratification of the treaty by countries who would not otherwise have been able to do so and has thus ensured the application of at least a basic set of very important social rights (due to the minimum level of acceptance stipulated by Article A) in these countries. The fact is that the Charter today is one of the most widely ratified human rights treaties of the Council of Europe with 43 States Parties (and being signed by all 47 member states).

Overall the level of acceptance is quite high: some States Parties have accepted all the 98 numbered paragraphs of the Charter (72 in the 1961 Charter) such as France and Portugal, others have come very close such as Italy and the Netherlands with 97 out of the 98, but there are still States Parties which have only the minimum of 63 numbered paragraphs⁸ or just over it. Taken as an average of all States Parties the level of acceptance corresponds to about 78%.⁹

Article A of the Charter (Article 20 of the 1961 Charter) also provides that States Parties may at any moment following the ratification of the treaty notify the Secretary General of its acceptance of any additional articles or paragraphs. It is in the light of this principle of progressive acceptance that the procedure set out in Article 22 of the 1961 Charter should be seen.

Under this last provision States Parties have the obligation to submit reports at intervals to be determined by the Committee of Ministers on the Charter provisions which they did not accept at the time of ratification or subsequently.

For the first many years of the Charter's existence this procedure was carried out as a classical reporting exercise, where States would submit written reports describing law and practice as regards the provisions concerned. The Committee of Ministers initiated such "exercises" on 8 occasions between 1981 and 2002.

However, in December 2002, the Ministers' Deputies adopted a new procedure concerning examination of the non-accepted provisions under Article 22:

The Deputies decided that "States having ratified the Revised European Social Charter should

8. In fact Article A of the Charter stipulates two alternative ways of meeting the minimum requirement: by accepting 16 out of the 31 full Articles or by accepting 63 out of the 98 numbered paragraphs (45 out of 72 in 1961 Charter). In addition, States must accept at least 6 out of 9 (5 out of 7 in the 1961 Charter) so-called hard core articles (Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20).
9. For a table showing acceptance figures for all States Parties as well as the total, see Appendix 4.

report on the non-accepted provisions every five years after the date of ratification” and it “invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the States concerned”.

Following this decision, five years after ratification of the Revised Social Charter (and every five years thereafter), the European Committee of Social Rights has reviewed non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. Past experience had shown that governments tended to

overlook that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the new procedure was therefore to require them to review the situation on a continuous basis and encourage them to accept more provisions whenever possible.

The above procedure on the non-accepted provisions has been applied ever since and the 2011 procedure concerned the following 6 States Parties: Andorra,¹⁰ Lithuania, the Republic of Moldova, the Netherlands, Norway and Ukraine.

Andorra

Andorra ratified the Charter in 2005 and accepted 79 paragraphs.

The following provisions were not accepted:

Articles 6§1, 6§2, 6§3, 6§4, 16, 18§1, 18§2, 18§3, 19§2, 19§4, 19§6, 19§8, 19§10, 21, 22, 24, 27§1, 27§2, 27§3, 28, 29 and 31§3.

It was the first time the exercise was carried out in respect of this country. A delegation of the Committee met with the Andorran

authorities on 18 February 2011. During the meeting the Andorran authorities expressed a wish to continue consultations with the Committee with a view to the acceptance of at least some additional provisions, possibly already in 2011 or 2012.

The Committee’s report on Andorra will be made public in the beginning of 2012.

Lithuania

Lithuania ratified the Charter in 2001 and accepted 86 of the 98 numbered paragraphs. Upon the first meeting with the Government on the 12 non-accepted provisions, which took place in Vilnius on 27 October 2006, the

Committee reached the following conclusion:

- ◆ Provisions which could be immediately accepted by Lithuania: Articles 12§2 and 19§12.

10. The procedure in respect of Andorra had initially been scheduled to take place in 2010 (this country having ratified the Charter in 2005), however for technical and practical reasons it was postponed until 2011.

- ◆ Provisions which could be accepted by Lithuania in the medium term: Articles 13§4, 18§2, 18§3, 19§2, 19§6 and 19§8.
- ◆ Provisions which could not be accepted by Lithuania at present: Articles 19§4, 23, 30 and 31§3.

The meeting which was held with the authorities on 21 June

Republic of Moldova

The Republic of Moldova ratified the Charter in 2001 and accepted 63 of the 98 paragraphs.

At the first meeting with the Moldovan authorities which took place in Chisinau on 21 March 2006, the Committee concluded as follows:

- ◆ Provisions which could be immediately accepted by the Republic of Moldova: Articles 22, 27§1, 27§3, 7§6, 10§2, 10§3, 14§1, 14§2, 19§1, 19§2, 19§4 and 19§9.
- ◆ Provisions which could be accepted by the Republic of Moldova in the medium term: Articles 15§3, 19§6, 19§10, 19§11 and 19§12.
- ◆ Provisions which could not be accepted by the Republic of

The Netherlands

The Netherlands ratified the Charter in 2006 accepting 97 of the 98 paragraphs.

The Netherlands did not accept Article 19§12.

Although it was the first time that the procedure was implemented in respect of the Nether-

2011 in Vilnius confirmed the above picture, but did not lead to any commitments from the Government as regards acceptance of additional provisions in the immediate future.

The Committee's report on Lithuania will be made public in the beginning of 2012.

Moldova at present: Articles 4§1, 4§2, 7§5, 10§1, 10§4, 10§5, 13§4, 18§1, 18§2, 19§3, 23, 25, 30, 31§§1-3.

The second meeting on the non-accepted provisions with the Moldovan authorities took place in Chisinau on 1 December 2011. On the basis of information provided at the meeting it would appear that the following provisions could be accepted in the immediate future: Articles 3§4, 4§2, 4§4, 10§1, 10§4, 19§3, 19§4 (a) and 19§9. Provisions such as Articles 15§3, 19§1 and 19§4 (b) could probably be accepted in the medium term.

The Committee's report on the Republic of Moldova will be made public in the beginning of 2012.

lands, the Committee decided that it was not necessary to organise a meeting on the single provision concerned. Instead it invited the Netherlands to submit a report on the situation as regards Article 19§12 with a deadline of 30 June 2011.

In its report,¹¹ the Committee took note that the Government did not for the time being intend to accept Article 19§12 for policy reasons, but having noted that the Netherlands had already ratified the European Convention on the

Legal Status of Migrant Workers (ETS No. 93) and is bound by its Article 15 containing obligations which have much in common with Article 19§12, the Committee encouraged the Government to re-consider the situation.

Norway

Norway ratified the Charter in 2001 and accepted 80 of the 98 paragraphs. The first meeting with Norway was held in Oslo on 28 March 2006 and led the Committee to reach the following conclusion:

- ◆ Provisions which could be immediately accepted by Norway in the medium term: Articles 2§7, 3§1, 18§1, 18§4, 27§1 (a and b) and 27§3.
- ◆ Provisions which could be possibly accepted by Norway: Articles 3§4, 7§4, 7§9, 8§4 and 26§1.
- ◆ Provisions which could not be accepted by Norway at present: Articles 8§2, 8§5, 18§2, 18§3, 19§8, 26§2 and 29.

Ukraine

Ukraine ratified the Revised Charter in 2006 and accepted 74 of the 98 paragraphs. The following provisions were not accepted:

Articles 2§3, 4§1, 12§1, 12§2, 12§3, 12§4, 13§1, 13§2, 13§3, 13§4, 19§1, 19§2, 19§3, 19§4, 19§5, 19§6, 19§7, 19§8, 19§9, 19§10, 19§11, 19§12, 25 and 31§3.

In 2011 the Committee invited the Norwegian authorities to submit a written report on the non-accepted provisions and on the progress made since the 2006 meeting. The deadline was 30 June 2011; however Norway did not submit it. In a letter announcing a delay in submitting the report the Government stated that it was favourably inclined towards accepting additional provisions, but that further consultations at national level were required.

Once these consultations have been completed and the Norwegian report has been received, the Committee will make public its conclusions (probably in the beginning of 2012).

A delegation of the Committee held the first meeting on the non-accepted provisions with the Ukrainian authorities in Kyiv on 29-30 September 2011. The information provided during the meeting indicated that several of the non-accepted provisions could be accepted immediately given the absence of any significant legal obstacles.

11. See “1st report on the Netherlands within the framework of the procedure on non-accepted provisions (Article 22 of the 1961 Charter)” at www.coe.int/socialcharter.

The Committee's report on Ukraine will be made public in the beginning of 2012.

7. 50th anniversary of the European Social Charter

The anniversary and reform of the Charter

Since its signature in Turin in 1961 this human rights treaty, a complement to the European Convention on Human Rights, has undergone profound changes, in particular with the reforms introduced in the 1990s: the Amending Protocol from 1991, the Collective Complaints Protocol from 1995 and the Revised Charter from 1996.

Although the reform of the Charter has been a success in many respects, that it is today an effective pan-European human rights mechanism, recognition has been growing among governments and within civil society that there is still much work to be done before the protection of social rights can begin to compare with that provided in respect of civil and political rights. It was in the light of this situation that the Government of Finland took the initiative to use the anniversary as an opportunity a reflection on how the strengthen the impact of the Charter. The reflection was launched at an international seminar in Helsinki on 8 February 2011 with the participation of the Finnish President, Ms Halonen.

Many interesting proposals emerged from the Helsinki

seminar¹² on how to raise the political relevance of the Charter, on how to promote further ratifications and on how to improve its monitoring mechanism. Several of these proposals were examined by the Committee of Ministers in the course of its debate on the Charter which took place at meeting in May, June and October 2011.



As a first outcome of this process the Committee of Ministers at the 1123rd meeting of the Ministers' Deputies, on 12 October 2011, adopted a Declaration reaffirming the importance of respecting social

12. See Synopsis of the Helsinki seminar on the reform of the European Social Charter at the Committee of Ministers website: www.coe.int/cm

2011 activities of the European Committee of Social Rights

rights, especially for individuals belonging to vulnerable groups. It calls on member states that have not yet ratified the Revised Charter and those which have not yet accepted the collective complaints procedure to consider doing so and invites all member states and relevant bodies of the Council of Europe to increase their efforts to raise awareness of the Charter at national level, amongst legal practitioners, academics and social partners as well as to inform the general public.¹³

At the same meeting the Committee of Ministers further decided to hold an annual exchange of views with the President of the European Committee of Social Rights.¹⁴

As regards a number of other proposals, including on a reform of the reporting procedure and on preparation of follow-up to the

decisions of the European Committee of Social Rights it was agreed to keep them under consideration with a view to reaching decisions at a later stage.

The Committee considers that the reflection that was initiated during the anniversary year and the first decisions of the Committee of Ministers represent steps in the right direction, however more progress needs to be made, especially as regards acceptance of the collective complaints procedure and effective follow-up to the Committee's conclusions and decisions. With Europe in the throes of economic crisis, out-of-control financial markets and crippling sovereign debt it is more important than ever to safeguard social rights, not only through solemn declarations, but in particular through tangible action at all levels.

Main events marking the 50th anniversary¹⁵

The official ceremony to mark the 50th anniversary took place in Strasbourg on 18 October 2011. Allocutions were made by Mr Jagland, Secretary General of the Council of Europe, Mr Tigipko, Vice-Prime Minister and Minister for Social Policy of Ukraine, Mr Cavuşoğlu, President of the Parliamentary Assembly, Mr Costa, President of the European Court of Human Rights, Mr Jimena

Quesada, President of the European Committee of Social Rights and Mr Fassino, Mayor of Turin.



13. For the text of the Declaration, www.coe.int/cm

14. See Decision, www.coe.int/cm

15. More information on these various events may be consulted at www.coe.int/socialcharter

The ceremony was flanked by two other major events, firstly a roundtable organised by the Conference of the Council of Europe international non-governmental organisations entitled “Human Rights in times of crisis: the contribution of the European Social Charter” at the *Ecole Nationale d'Administration* (ENA) in Strasbourg, on October 17 2011, coinciding with the International Day for the Eradication of Poverty and secondly, on 18 October 2011, a “brainstorming” meeting at the Council of Europe on the ratification of the collective complaints procedure which brought together European politicians, academics, social partners and NGO representatives.

The anniversary celebrations also saw the adoption of a declaration on the Charter by the Governmental Committee at its 122nd meeting 17-21 October 2011¹⁶ as well as a declaration adopted by the European Trade Union Confederation (ETUC) at the meeting of its Executive Committee on 19-20 October 2011.¹⁷

Throughout the year a number of events to mark the anniversary were organised by different actors at both international and national level. On 23 September 2011, the Council of Europe, the European Economic and Social Committee and the French Economic, Social and Environmental Council held a Joint Conference entitled “The Council of Europe’s Social Charter, 50 years on: What next?”

On 6 October 2011, the Sub-Committee on the European Social Charter and Employment of the Parliamentary Assembly held an enlarged meeting on non-discrimination.

In addition to the Helsinki seminar mentioned above, anniversary events organised by member state governments include a celebration held in Vilnius, Lithuania on 22 June 2011, a ceremony held in Kyiv, Ukraine on 28 September 2011 and a seminar organised in Lisbon, Portugal on 7 December 2011.

A more comprehensive list of the many anniversary-related events is contained in Appendix 8.

16. www.coe.int/socialcharter/Activities/50anniversary/StatementGC50thAnniv_en.pdf

17. www.etuc.org/a/9150

A visual identity for the Charter



The 50th anniversary also provided the opportunity to develop a new visual identity for the Charter with a view to promoting its visibility and impact in a world in which images, symbols and communication play an ever increasing role. In effect, the visual identity may be seen both as an integral element of the reform process which was initiated

during the anniversary year and as one of the first enduring results of that process.

The visual identity of the Charter illustrates three faces which unite to form a hand, as a symbol of unity, solidarity and co-operation. The hand may also be seen as offering protection and as being a vector of control. This reflects what the Charter is about and what the European Committee of Social Rights is seeking to achieve – the implementation of human rights through the efforts of the States Parties to this instrument, and subject to compliance within a legal framework monitored by an independent body of a judicial nature.

The visual identity was created by the Italian artist Mr Luca Rimini. It always appears together with the logo of the Council of Europe and is now being progressively used in the Council of Europe's publications and documentation material on the Charter as well as on the Charter website.

8. Meeting with the Bureau of the Governmental Committee

The Committee's Bureau met with the Bureau of the Governmental Committee in Strasbourg on the occasion of the 50th anniversary of the Charter on 18 October 2011. The purpose of this joint Bureau meeting was to improve communication between the two committees and enable them to exchange views on topics of mutual interest, while maintain-

ing their own particular areas of responsibility. The previous such meeting had taken place in Strasbourg on 15 September 2010.

During the meeting a wide range of topics were discussed including follow-up to the 50th anniversary, a possible reform of the reporting system as well as different specific

questions related to the case law of the European Committee of Social Rights.

The proposals of the European Committee of Social Rights on the reporting system appear in Appendix 11.

9. Meetings of Presidents of Council of Europe monitoring bodies

On 16 June 2010, the Committee of Ministers invited the Presidents of the Council of Europe monitoring bodies, including the President of the European Committee of Social Rights:

- ♦ to make proposals as to the means by which they may enhance co-ordination among monitoring bodies and reinforce their dialogue with the Committee of Ministers;
- ♦ to consider their possible contribution to the Action Plan adopted by the High Level Conference on the future of the European Court of Human Rights (Interlaken 18-19 February 2010) within their respective mandates.

At the meetings of the Presidents of Monitoring bodies on 13 May 2011 in Paris and 19 December 2011 in Strasbourg the Committee was represented by the President, Mr Luis Jimena Quesada and the General Rapporteur, Mr Jean-Michel Belorgey, respectively.

Among the issues considered at these meetings were co-ordination of monitoring activities (both organisational and substantive), dialogue with member states to foster mutual trust and avoid monitoring “fatigue”, the Interlaken process and communication with the Council of Europe’s political institutions (Committee of Ministers, Parliamentary Assembly).

10. Academic network on the Charter

On 18 October 2011, the Committee held an exchange of views with members of the Academic Network on the Charter. The Network, which had initially been established in 2006 to promote improved understanding and a more widespread use of the European Social Charter, was using the opportunity of the anniversary to re-launch its activities in order to have it cover all Council of Europe Member States (at the time

of the meeting the Network was comprised of 22 members from 8 countries).

The Coordinator of the Network, Professor Jean-Francois Akandji-Kombé, informed the Committee about certain operational decisions taken: the single general coordination, currently ensured by Mr Akandji-Kombe would be replaced by three language coordinators (Anglo-phone, Francophone and Spanish-

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speaking) and a general coordinator. There would also be contact persons and national correspondents. He described the Network's plans to enhance its visibility and referred to the activities in the pipeline to improve awareness on social rights in general and on the case law of the Committee in particular.

During the exchange of views a number of issues pertaining to the role and status of the Network and

its co-operation with the Committee were discussed. Professor Akandji-Kombé indicated in this respect that the Network might occasionally be interested providing information to the Committee in the context of the collective complaints procedure as a sort of "*amicus curiae*". Reference was made in this respect to the new Rule 32 A of the Committee's Rules.



Appendix 1

List of the members of the European Committee of Social Rights as of 1 January 2012

	From	Expiration date of mandate
Mr Jean-Michel BELORGEY, General Rapporteur	01/01/2001	31/12/2012
Ms Csilla KOLLONAY LEHOCZKY	01/01/2001	31/12/2012
Mr Andrzej SWIATKOWSKI	01/01/2003	31/10/2012
Mr Lauri LEPPIK	01/01/2005	31/12/2016
Mr Colm O'CONNOR, Vice-President	08/11/2006	31/12/2016
Ms Monika SCHLACHTER, Vice-President	01/01/2007	31/12/2012
Ms Birgitta NYSTRÖM	01/01/2007	31/12/2012
Mr Rüchan IŞIK	01/01/2009	31/12/2014
Mr Petros STANGOS	01/01/2009	31/12/2014
Mr Alexandru ATHANASIU	01/01/2009	31/12/2014
Mr Luis JIMENA QUESADA, President	01/01/2009	31/12/2014
Ms Jarna PETMAN	04/02/2009	31/12/2014
Ms Elena MACHULSKAYA	01/01/2011	31/12/2016
Mr Giuseppe PALMISANO	01/01/2011	31/12/2016
Ms Karin LUKAS	01/01/2011	31/12/2016

Appendix 2

Signatures and ratifications of the 1961 Charter, its Protocols and the European Social Charter (revised)

Situation at 1 February 2012

Member states	European Social Charter 1961 ETS 035		Additional Protocol 1988 ETS 128		Amending Protocol 1991 ETS 142		Collective Com-plaints Protocol 1995 ETS 158		Revised European Social Charter 1996 ETS 163	
	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification
Albania	(2)	(2)	(3)	(3)	(2)	(2)	(2)	(2)	21/09/98	14/11/02
Andorra	(2)	(2)	(3)	(3)	(2)	(2)	(2)	(2)	04/11/00	12/11/04
Armenia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	(2)	18/10/01	21/01/04
Austria	22/07/63	29/10/69	04/12/90	-	07/05/92	13/07/95	07/05/99	-	07/05/99	20/05/11
Azerbaijan	(2)	(2)	(3)	(3)	(2)	(2)	(2)	(2)	18/10/01	02/09/04
Belgium	18/10/61	16/10/90	20/05/92	23/06/03	22/10/91	21/09/00	14/05/96	23/06/03	03/05/96	02/03/04
Bosnia and Herzegovina	(2)	(2)	(3)	(3)	(2)	(2)	(2)	-	11/05/04	07/10/08
Bulgaria	(2)	(2)	(3)	(3)	(2)	(2)	(4)	(4)	21/09/98	07/06/00
Croatia	08/03/99	26/02/03	08/03/99	26/02/03	08/03/99	26/02/03	08/03/99	26/02/03	06/11/09	-
Cyprus	22/05/67	07/03/68	05/05/88	(3)	21/10/91	01/06/93	09/11/95	06/08/96	03/05/96	27/09/00

Member states	European Social Charter 1961 ETS 035		Additional Protocol 1988 ETS 128		Amending Protocol 1991 ETS 142		Collective Complaints Protocol 1995 ETS 158		Revised European Social Charter 1996 ETS 163	
	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification
Czech Republic	27/05/92*	03/11/99	27/05/92*	17/11/99	27/05/92*	17/11/99	26/02/02	-	04/11/00	-
Denmark	18/10/61	03/03/65	27/08/96	27/08/96	-	***	09/11/95	-	03/05/96	-
Estonia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	-	04/05/98	11/09/00
Finland	09/02/90	29/04/91	09/02/90	29/04/91	16/03/92	18/08/94	09/11/95	17/07/98	03/05/96	21/06/02
France	18/10/61	09/03/73	22/06/89	(3)	21/10/91	24/05/95	09/11/95	07/05/99	03/05/96	07/05/99
Georgia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	-	30/06/00	22/08/05
Germany	18/10/61	27/01/65	05/05/88	-	-	***	(1)	-	29/06/07	-
Greece	18/10/61	06/06/84	05/05/88	18/06/98	29/11/91	12/09/96	18/06/98	18/06/98	03/05/96	-
Hungary	13/12/91	08/07/99	07/10/04	1/6/05	13/12/91	04/02/04	07/10/04	-	07/10/04	20/04/09
Iceland	15/01/76	15/01/76	05/05/88	-	12/12/01	21/02/02	(1)	-	04/11/98	-
Ireland	18/10/61	07/10/64	(3)	(3)	14/05/97	14/05/97	04/11/00	04/11/00	04/11/00	04/11/00
Italy	18/10/61	22/10/65	05/05/88	26/05/94	21/10/91	27/01/95	09/11/95	03/11/97	03/05/96	05/07/99
Latvia	29/05/97	31/01/02	09/05/97	-	29/05/97	09/12/03	(1)	-	29/05/07	-
Liechtenstein	09/10/91	-	-	-	-	-	-	-	-	-
Lithuania	(2)	(2)	(3)	(3)	(2)	(2)	(2)	-	08/09/97	09/06/01
Luxembourg	18/10/61	10/10/91	05/05/88	-	21/10/91	***	(1)	-	11/02/98	-
Malta	26/05/88	04/10/88	(3)	(3)	21/10/91	16/02/94	(2)	-	27/07/05	27/07/05
Moldova	(2)	(2)	(3)	(3)	(2)	(2)	(2)	-	03/11/98	08/11/01

Signatures and ratifications of the Charter

Member states	European Social Charter 1961 ETS 035		Additional Protocol 1988 ETS 128		Amending Protocol 1991 ETS 142		Collective Complaints Protocol 1995 ETS 158		Revised European Social Charter 1996 ETS 163	
	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification
Monaco	(1)		(1)		(1)		(1)		05/10/04	-
Montenegro	(2)	(2)	(3)	(3)	(2)	(2)	(2)	-	22/03/05**	03/03/10
Netherlands	18/10/61	22/04/80	14/06/90	05/08/92	21/10/91	01/06/93	23/01/04	03/05/06	23/01/04	03/05/06
Norway	18/10/61	26/10/62	10/12/93	10/12/93	21/10/91	21/10/91	20/03/97	20/03/97	07/05/01	07/05/01
Poland	26/11/91	25/06/97	(1)	-	18/04/97	25/06/97	(1)	-	25/10/05	-
Portugal	01/06/82	30/09/91	(3)	(3)	24/02/92	08/03/93	09/11/95	20/03/98	03/05/96	30/05/02
Romania	04/10/94	(2)	(3)	(3)	(2)	(2)	(2)	-	14/05/97	07/05/99
Russian Federation	(2)	(2)	(3)	(3)-		(2)	(2)	(2)	14/09/00	16/10/09
San-Marino	(1)	-	(1)	-	(1)	-	(1)	-	18/10/01	-
Serbia	(2)	(2)	(3)	(3)	(2)	(2)	(2)	-	22/03/05**	14/09/09
Slovak Republic	27/05/92***	22/06/98	27/05/92*	22/06/98	27/05/92	22/06/98	18/11/99	-	18/11/99	23/04/09
Slovenia	11/10/97	(2)	11/10/97	(3)	11/10/97	(2)	11/10/97	(4)	11/10/97	07/05/99
Spain	27/04/78	06/05/80	05/05/88	24/01/00	21/10/91	24/01/00	(1)	-	23/10/00	-
Sweden	18/10/61	17/12/62	05/05/88	05/05/89	21/10/91	18/03/92	09/11/95	29/5/98	03/05/96	29/05/98
Switzerland	06/05/76	-	-	-	-	-	-	-	-	-

Member states	European Social Charter 1961 ETS 035		Additional Protocol 1988 ETS 128		Amending Protocol 1991 ETS 142		Collective Complaints Protocol 1995 ETS 158		Revised European Social Charter 1996 ETS 163	
	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification	Signature	Ratification
“the former Yugoslav Republic of Macedonia”	05/05/98	31/03/05	05/05/98	-	05/05/98	31/03/05	(1)	-	27/05/09	06/01/12
Turkey	18/10/61	24/11/89	05/05/98	(3)	06/10/04	10/06/09	(2)	-	06/10/04	27/06/07
Ukraine	02/05/96	(2)	(3)	(3)	(2)	(2)	(2)	-	07/05/99	21/12/06
United-Kingdom	18/10/61	11/07/62	(1)	-	21/10/91	***	(1)	-	07/11/97	-

*. Date of signature by the Czech and Slovak Federal Republic.

** . Date of signature by the State Union of Serbia and Montenegro.

***. State whose ratification is necessary for the entry into force of the protocol.

(1) State having signed the European Social Charter (revised).

(2) State having ratified the European Social Charter (revised).

(3) State having accepted the rights (or certain of the rights) guaranteed by the Protocol by ratifying the European Social Charter (revised).

(4) State having accepted the collective complaints procedure by a declaration made in application of Article D para. 2 of Part IV of the European Social Charter (revised).

Appendix 3

Acceptance of provisions

Acceptance of provisions of the Revised European Social Charter (1996) – Situation at 1 February 2012

Articles 1-4 Para.	Article 1				Article 2				Article 3				Article 4							
	1	2	3	4	1	2	3	4	5	6	7	1	2	3	4	1	2	3	4	5
Albania/Albanie																				
Andorra/Andorre																				
Armenia/Arménie																				
Austria/Autriche																				
Azerbaijan/ Azerbaïdjan																				
Belgium/Belgique																				
Bosnia and Herzegovina/ Bosnie-Herzégovine																				
Bulgaria/Bulgarie																				
Cyprus/Chypre																				
Estonia/Estonie																				
Finland/Finlande																				

Articles 1-4	Article 1				Article 2							Article 3					Article 4				
	1	2	3	4	1	2	3	4	5	6	7	1	2	3	4	1	2	3	4	5	
France																					
Georgia/Géorgie																					
Hungary/Hongrie																					
Ireland/Irlande																					
Italy/Italie																					
Lithuania/Lituanie																					
Malta/Malte																					
Moldova																					
Montenegro/ Monténégro																					
Netherlands/Pays-Bas*																					
Norway/Norvège																					
Portugal																					
Romania/Roumanie																					
Russian Federation / Fédération de Russie																					
Serbia/Serbie																					
Slovakia/Slovaquie																					
Slovenia/Slovénie																					

Articles 1-4 Para.	Article 1				Article 2					Article 3					Article 4					
	1	2	3	4	1	2	3	4	5	6	7	1	2	3	4	1	2	3	4	5
Sweden/Suède																				
Turkey/Turquie																				
“The former Yugoslav Republic of Macedonia” / « L’Ex-République yougo-slave de Macédoine »																				
Ukraine																				
<input type="checkbox"/> accepted/accepté																				
<input type="checkbox"/> non accepted/non accepté																				

*. Ratification by the Kingdom in Europe, Netherlands Antilles and Aruba remain bound by Articles 1, 5, 6 and 16 of the 1961 Charter and Article 1 of the Additional Protocol.
Ratification pour le Royaume en Europe. Les Antilles néerlandaises et Aruba restent liées par les articles 1, 5, 6 et 16 de la Charte de 1961 et de l'Article 1 du Protocole additionnel.

Articles 5-9 Para.	Art. 5					Article 6					Article 7					Article 8					Art. 9
	5	1	2	3	4	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	
Albania/Albanie																					
Andorra/Andorre																					
Armenia/Arménie																					
Austria/Autriche																					
Azerbaijan/ Azerbaïdjan																					
Belgium/Belgique																					
Bosnia and Herzegovina/ Bosnie-Herzégovine																					
Bulgaria/Bulgarie																					
Cyprus/Chypre																					
Estonia/Estonie																					
Finland/Finlande																					
France																					
Georgia/Géorgie																					
Hungary/Hongrie																					
Ireland/Irlande																					
Italy/Italie																					
Lithuania/Lituanie																					
Malta/Malte																					
Moldova																					

Articles 5-9 Para.	Art. 5					Article 6					Article 7					Article 8					Art. 9
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	
Montenegro/ Monténégro																					
Netherlands/Pays-Bas*																					
Norway/Norvège																					
Portugal																					
Romania/Roumanie																					
Russian Federation/ Fédération de Russie																					
Serbia/Serbie								**													
Slovakia/Slovaquie																					
Slovenia/Slovénie																					
Sweden/Suède																					
Turkey/Turquie																					
“The former Yugoslav Republic of Macedonia” / « L'Ex-République yougo- slave de Macédoine »																					
Ukraine/Ukraine																					

*. Ratification by the Kingdom in Europe. Netherlands Antilles and Aruba remain bound by Articles 1, 5, 6 and 16 of the 1961 Charter and Article 1 of the Additional Protocol./Ratification pour le Royaume en Europe. Les Antilles néerlandaises et Aruba restent liées par les articles 1, 5, 6 et 16 de la Charte de 1961 et de l'Article 1 du Protocole additionnel.

** . With the exception of professional military personnel of the Serbian Army / A l'exception des militaires de carrière de l'Armée serbe.

Articles 10-15 Para.	Article 10					Article 11			Article 12				Article 13				Art. 14			Article 15			
	1	2	3	4	5	1	2	3	1	2	3	4	1	2	3	4	1	2	3	1	2	3	
Albania/Albanie																							
Andorra/Andorre																							
Armenia/Arménie																							
Austria/Autriche																							
Azerbaïdjan/Azerbaïdjan																							
Belgium/Belgique																							
Bosnia and Herzegovina/ Bosnie-Herzégovine																							
Bulgaria/Bulgarie																							
Cyprus/Chypre																							
Estonia/Estonie																							
Finland/Finlande																							
France																							
Georgia/Géorgie																							
Hungary/Hongrie																							
Ireland/Irlande																							
Italy/Italie																							
Lithuania/Lituanie																							
Malta/Malte					*													**					
Moldova																							

Articles 10-15 Para.	Article 10					Article 11					Article 12				Article 13				Art. 14				Article 15					
	1	2	3	4	5	1	2	3	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	1	2	3		
Montenegro/ Monténégro																												
Netherlands/Pays-Bas																												
Norway/Norvège																												
Portugal																												
Romania/Roumanie																												
Russian Federation/ Fédération de Russie																												
Serbia/Serbie																												
Slovakia/Slovaquie																												
Slovenia/Slovénie																												
Sweden/Suède																												
Turkey/Turquie																												
“The former Yugoslav Republic of Macedonia”/ « L’Ex-République yougo- slave de Macédoine »																												
Ukraine																												

*. Sub-paragraphs a. and d. accepted / Alinéas a. et d. acceptés.

**. Sub-paragraph a. accepted / Alinéa a. accepté.

Articles 16-19 Para	Art. 16			Art. 17			Article 18			Article 19								
	1	2	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12
Albania/Albanie																		
Andorra/Andorre																		
Armenia/Arménie																		
Austria/Autriche																		
Azerbaïdjan/Azerbaïdjan																		
Belgium/Belgique																		
Bosnia and Herzegovina/ Bosnie-Herzégovine																		
Bulgaria/Bulgarie																		
Cyprus/Chypre																		
Estonia/Estonie																		
Finland/Finlande																		
France																		
Georgia/Géorgie																		
Hungary/Hongrie																		
Ireland/Irlande																		
Italy/Italie																		
Lithuania/Lituanie																		
Malta/Malte																		
Moldova																		
Montenegro/ Monténégro																		

Articles 16-19 Para	Art. 16				Art. 17				Art. 18				Art. 19									
	1	2	1	2	3	4	1	2	3	4	1	2	3	4	5	6	7	8	9	10	11	12
Netherlands/Pays-Bas																						
Norway/Norvège																						
Portugal																						
Romania/Roumanie																						
Russian Federation/ Fédération de Russie																						
Serbia/Serbie																						
Slovakia/Slovaquie																						
Slovenia/Slovénie																						
Sweden/Suède																						
Turkey/Turquie																						
"The former Yugoslav Republic of Macedonia" / « L'Ex-République yougo- slave de Macédoine »																						
Ukraine																						

*. Sub-paragraphs 1b and 1c accepted. / Alinéas 1b et 1c acceptés.

** . Sub-paragraphs a. and b. accepted. / Alinéas a. and b. acceptés.

Articles 20-31	Art. 20	Art. 21	Art. 22	Art. 23	Art. 24	Art. 25	Art. 26	Art. 27	Art. 28	Art. 29	Art. 30	Art. 31	
Para.							1	2	3		1	2	3
Albania/Albanie													
Andorra/Andorre													
Armenia/Arménie													
Austria/Autriche													
Azerbaïdjan/Azerbaïdjan													
Belgium/Belgique													
Bosnia and Herzegovina/ Bosnie-Herzégovine													
Bulgaria/Bulgarie													
Cyprus/Chypre			*										
Estonia/Estonie													
Finland/Finlande													
France													
Georgia/Géorgie													
Hungary/Hongrie													
Ireland/Irlande													
Italy/Italie													
Lithuania/Lituanie													
Malta/Malte													
Moldova													
Montenegro/ Monténégro								***					

Articles 20-31	Art. 20	Art. 21	Art. 22	Art. 23	Art. 24	Art. 25	Art. 26	Article 27			Art. 28	Art. 29	Art. 30	Article 31		
Para.							1	2	1	2	3			1	2	3
Netherlands/Pays-Bas																
Norway/Norvège								****								
Portugal																
Romania/Roumanie																
Russian Federation/ Fédération de Russie																
Serbia/Serbie																
Slovakia/Slovaquie																
Slovenia/Slovénie																
Sweden/Suède																
Turkey/Turquie																
“The former Yugoslav Republic of Macedonia”/ « L'Ex-République yougo- slave de Macédoine »																
Ukraine																

*. Sub-paragraph b. accepted. / Alinéa b. accepté.

**. Sub-paragraphs a. and b. accepted. / Alinéas a. et b. acceptés.

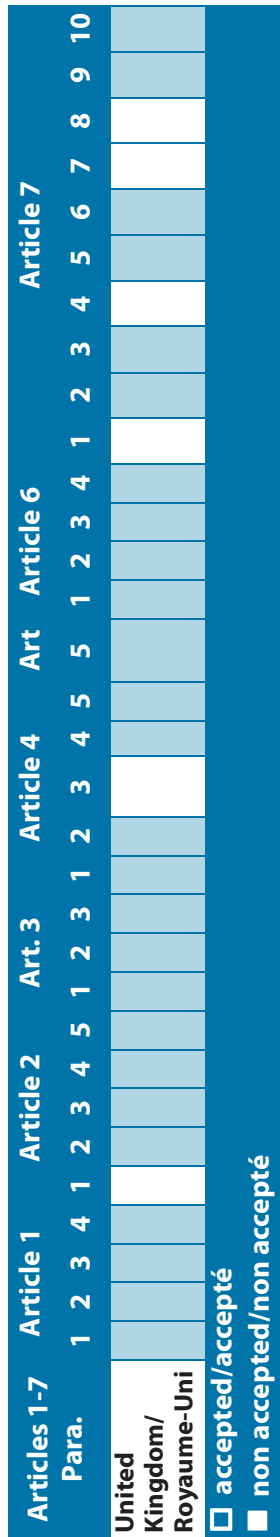
***. Sub-paragraph a. accepted. / Alinéa a. accepté.

****. Sub-paragraph c. accepted. / Alinéa c. accepté.

Acceptance of provisions of the European Social Charter (1961) and of the Additional Protocol (1988)

Articles 1-7 Para.	Article 1			Article 2			Art. 3			Article 4			Art. 5			Article 6			Article 7								
	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	5	6	7	8	9	10	
Croatia/ Croatie																											
Czech Republic/ République tchèque																											
Denmark/ Danemark																											
Germany/ Allemagne																											
Greece/Grèce																											
Iceland/ Islande																											
Latvia/ Lettonie																											
Luxembourg																											
Poland/ Pologne																											
Spain/ Espagne																											
<input type="checkbox"/> accepted/accepté <input type="checkbox"/> non accepted/non accepté																											

Acceptance of provisions



Articles 8-18 Para.	Article 8				Article 10				Article 11				Article 12				Article 13				Art.1 4				Art. 15				Art				Article 18							
	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4				
Croatia/Croatie																																								
Czech Republic/ République tchèque			*																																					
Denmark/ Danemark																																								
Germany/ Allemagne																																								
Greece/Grèce																																								
Iceland/Islande																																								
Latvia/ Lettonie																																								
Luxembourg																																								
Poland/ Pologne				**																																				
Spain/Espagne				***																																				
United Kingdom/ Royaume-Uni																																								

*. Czech Republic denounced paragraph 4 on 25 March 2008./La République tchèque a dénoncé le paragraphe 4 le 25 mars 2008.

** . Poland denounced paragraph 4 on 27 January 2011./La Pologne a dénoncé le paragraphe 4 le 27 janvier 2011.

*** . Spain denounced sub-paragraph b with effect from 5 June 1991./L'Espagne a dénoncé l'alinéa b de cette disposition à partir du 5 juin 1991.

Additional Protocol (1988)

Para.	Article 19									
	1	2	3	4	5	6	7	8	9	10
Croatia/Croatie										
Czech Republic/ République tchèque										
Denmark/Danemark										
Germany/Allemagne										
Greece/Grèce										
Iceland/Islande										
Latvia/Lettonie										
Luxembourg										
Poland/Pologne										
Spain/Espagne										
United Kingdom/ Royaume-Uni										

	Additional Protocol			
	Art. 1	Art. 2	Art. 3	Art. 4
Croatia/Croatie				
Czech Republic/ République tchèque				
Denmark/Danemark				
Germany/Allemagne				
Greece/Grèce				
Iceland/Islande				
Latvia/Lettonie				
Luxembourg				
Poland/Pologne				
Spain/Espagne				
United Kingdom/ Royaume-Uni				

Appendix 4

Number of accepted provisions by year since 1962

Year of ratification/ Année de ratification	CHARTER 1961/CHARTE 1961			REVISED CHARTER 1996/ CHARTE REVISEE 1996			Total of the accepted provisions/ Total des dispositions acceptées
	States/Etats	Accepted provisions/ Dispositions acceptées	Total	States/Etats	Accepted provisions/ Dispositions acceptées	Total	
1962	1. United Kingdom/ Royaume-Uni	60	60				60
	2. Norway/Norvège	60	120				120
	3. Sweden/Suède	66	186				186
1963			186				186
1964	4. Ireland/Irlande	63	249				249
1965	5. Germany/ Allemagne	67	316				316
	6. Denmark/ Danemark	49	365				365
	7. Italy/Italie	76	441				441
1966			441				441
1967			441				441

Year of ratification/ Année de ratification	CHARTER 1961/CHARTE 1961			REVISED CHARTER 1996/ CHARTRE REVISEE 1996			Total of the accepted provisions/ Total des dispositions acceptées
	States/Etats	Accepted provisions/ Dispositions acceptées	Total	States/Etats	Accepted provisions/ Dispositions acceptées	Total	
1968	8. Cyprus/Chypre	43	484				484
1969	9. Austria/Autriche	62	546				546
1970			546				546
1971			546				546
1972			546				546
1973			546				546
1974	10. France	72	618				618
1975			618				618
1976	11. Iceland/Islande	41	659				659
1977			659				659
1978			659				659
1979			659				659
1980	12. Netherlands/ Pays-Bas	75	734				734
1981	13. Spain/Espagne	76	810				810
1982			810				810

Number of accepted provisions by year since 1962

Year of ratification/ Année de ratification	CHARTER 1961/CHARTE 1961			REVISED CHARTER 1996/ CHARTE REVISEE 1996			Total of the accepted provisions/ Total des dispositions acceptées
	States/Etats	Accepted provisions/ Dispositions acceptées	Total	States/Etats	Accepted provisions/ Dispositions acceptées	Total	
1983			810				810
1984	14. Greece/Grèce	71	881				881
1985			881				881
1986			881				881
1987			881				881
1988	15. Malta/Malte	55	936				936
1989	16. Turkey/Turquie	46	982				982
1990	17. Belgium/Belgique	72	1054				1054
1991	18. Finland/Finlande	66	1120				1120
	19. Portugal	72	1192				1192
	20. Luxembourg	69	1261				1261
1992			1261				1261
1993			1261				1261
1994			1261				1261
1995			1261				1261
1996			1261				1261

Year of ratification/ Année de ratification	CHARTER 1961/CHARTE 1961			REVISED CHARTER 1996/ CHARTRE REVISEE 1996			Total of the accepted provisions/ Total des dispositions acceptées
	States/Etats	Accepted provisions/ Dispositions acceptées	Total	States/Etats	Accepted provisions/ Dispositions acceptées	Total	
1997	21. Poland/Pologne	58	1319				1319
1998		-66	1253	1. Sweden/Suède	83	83	1336
	22. Slovak Republic/ République slovaque	64	1317			83	1400
1999		-72	1245	2. France	98	181	1426
	23. Hungary/Hongrie	44	1289	3. Italy/Italie	97	278	1567
	24. Czech Republic/ République tchèque	56	1345	4. Romania/ Roumanie	65	343	1688
		-76	1269	5. Slovenia/Slovénie	95	438	1707
2000			1269	6. Bulgaria/Bulgarie	61	499	1768
			1269	7. Estonia/Estonie	79	578	1847
		-43	1226	8. Cyprus/Chypre	63	641	1867
		-63	1163	9. Ireland/Irlande	93	734	1897
2001		-60	1103	10. Norway/Norvège	81	815	1918
			1103	11. Lithuania/ Lituanie	86	901	2004

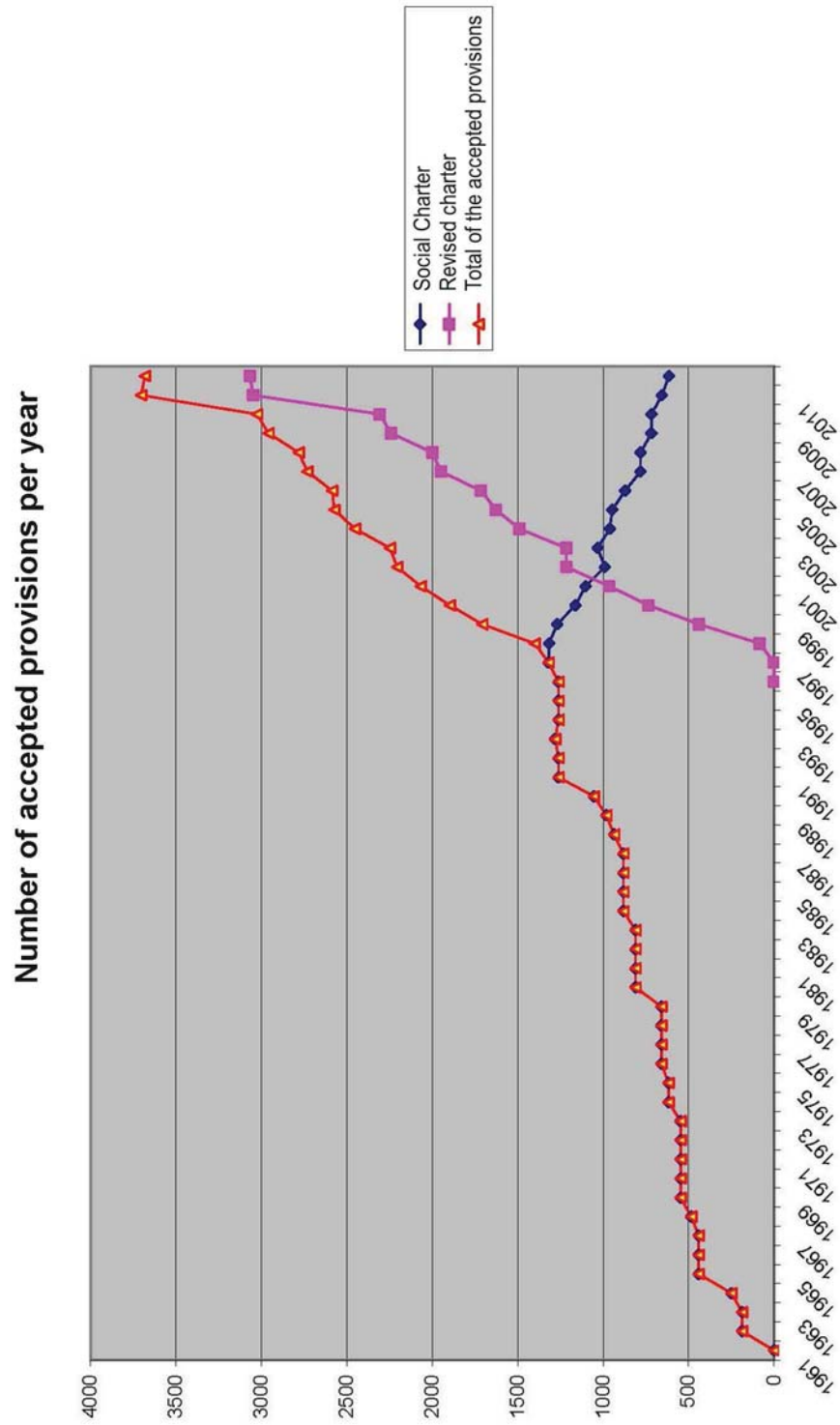
Number of accepted provisions by year since 1962

Year of ratification/ Année de ratification	CHARTER 1961/CHARTE 1961			REVISED CHARTER 1996/ CHARTRE REVISEE 1996			Total of the accepted provisions/ Total des dispositions acceptées
	States/Etats	Accepted provisions/ Dispositions acceptées	Total	States/Etats	Accepted provisions/ Dispositions acceptées	Total	
			1103	12. Republic of Moldova/ République de Moldova	63	964	2067
2002		-72	1031	13. Portugal	98	1062	2093
		-66	965	14. Finland/Finlande	89	1151	2116
	25. Latvia/Lettonie	25	990			1151	2141
2003	26. Croatia/Croatie	43	990	15. Albania/Albanie	64	1215	2205
2004			1033				1033
			1033	16. Armenia/Arménie	67	1282	2315
		-72	961	17. Belgium/Belgique	87	1369	2330
				18. Azerbaijan/Azerbaïdjan	47	1416	1416
			961	19. Andorra/Andorre	75	1491	2452

Year of ratification/ Année de ratification	CHARTER 1961/CHARTE 1961		REVISED CHARTER 1996/ CHARTE REVISEE 1996		Total of the accepted provisions/ Total des dispositions acceptées
	States/Etats	Accepted provisions/ Dispositions acceptées	States/Etats	Accepted provisions/ Dispositions acceptées	
2005	27. "The former Yugoslav Republic of Macedonia" / « L'Ex-République yougoslave de Macédoine »	41			2493
					1491
		-55	20. Malta/Malte	72	1563
			21. Georgia/Géorgie	63	1626
2006		-75	22. Netherlands/Pays-Bas	97	1723
			23. Ukraine	74	1714
2007		-46	24. Turkey/Turquie	91	1888
		-44	25. Hungary/Hongrie	60	1948
			Bulgaria/Bulgarie	1	1949
2008			26. Bosnia and Herzegovina/Bosnie-Herzégovine	51	2000
2009		-64	27. Slovakia/Slovaquie	86	2086
			28. Serbia/Serbie	88	2174
					2174
					2174

Number of accepted provisions by year since 1962

Year of ratification/ Année de ratification	CHARTER 1961/CHARTE 1961			REVISED CHARTER 1996/ CHARTE REVISEE 1996			Total of the accepted provisions/ Total des dispositions acceptées
	States/Etats	Accepted provisions/ Dispositions acceptées	Total	States/Etats	Accepted provisions/ Dispositions acceptées	Total	
				29. Russian Federation/ Fédération de Russie	67	2241	2241
2010				30. Montenegro/ Monténégro	66	2307	2307
2011		-62	656	31. Austria/Autriche	76	2383	3039
				Cyprus/Chypre	9	2392	2392
2012		-41	615	32. "The former Yugoslav Republic of Macedonia" / « L'Ex-République yougoslave de Macédoine »	60	2452	3067



Appendix 5

List of collective complaints registered in 2011 and state of procedure as of 31 December 2011

International Federation for Human Rights (FIDH) v. Belgium

Complaint No. 75/2011

The complaint was registered on 13 December 2011. It concerns the situation of highly dependent disabled adults in need of reception facilities and accommodation, and their relatives. The complainant organisation alleges that Belgium has not taken adequate measures to comply with Articles 13 (right to social and medical assistance), 14 (right to benefit from social welfare services), 15 (the right of persons with disabilities), 16 (right to appropriate social, legal and economic protection for the family), taken alone or in combination with Article E (non discrimination) of the Social Charter (Revised).

Fellesforbundet for Sjøfolk (FFFS) v. Norway

Complaint No. 74/2011

The complaint was registered on 27 September 2011. It concerns the compulsory retirement of seamen in Norway. The complainant trade union considers that the upper age limit of 62 years in the Norwegian Seamen's Act in reality implies an unjustified work ban and is thus a discriminatory withdrawal of seamen's rights to work as seamen, in breach of Articles 1 §§ 1 and 2 (Right to work) and 24 (Right to protection in case of dismissal), read alone or in conjunction with Article E (non discrimination) of the Social Charter (Revised).

Syndicat de Défense des Fonctionnaires v. France

Complaint No. 73/2011

The complaint was registered on 19 July 2011. It concerns the situation of so-called “redeployed” civil servants, employed by France Télécom and La Poste, who have remained at the grades of the former Post and Telecommunications service. The complainant trade union alleges failure to acknowledge discrimination, breach of the right to information, denial of the right to career development and of the right to social security for this category of employee within the above-mentioned companies, in violation of Articles 2 (the right to just conditions of work), 12 (the right to social security), 20 (right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex) and E (non discrimination) of the Social Charter (Revised).

The European Committee of Social Rights declared the complaint admissible on 7 December 2011.

International Federation for Human Rights (FIDH) v. Greece

Complaint No. 72/2011

The complaint was registered on 8 July 2011. It concerns the effects of massive environmental pollution on the health of persons living near the Asopos river and in proximity to the industrial zone of Inofyta, located 50 km north of Athens. The complainant organisation alleges that the State has not taken adequate measures to eliminate or reduce

these dangerous effects and to ensure the right to health protection, in violation of Article 11 (right to health) of the Social Charter of 1961.

The European Committee of Social Rights declared the complaint admissible on 7 December 2011.

Association of Care Giving Relatives and Friends v. Finland

Complaint No. 71/2011

The complaint was registered on 6 July 2011. The complainant organisation alleges that by failing to lay down rules with regard to the cost of caring for the elderly in municipal nursing homes, Finland is in breach of provisions of Articles 13 (right to social and medical assistance), 14 (right to benefit from social welfare services), 16 (right to appropriate social, legal and economic protection for the family) and 23 (right of elderly persons to social protection) of the Social Charter (Revised).

The European Committee of Social Rights declared the complaint admissible on 7 December 2011.

Association of Care Giving Relatives and Friends v. Finland

Complaint No. 70/2011

The complaint was registered on 6 July 2011. It concerns the situation of family and friend caregivers in Finland. The complainant organisation alleges that the system of financial support for family and friend caregivers is not equal, as it

varies according to their place of residence in Finland. The complainant organisation invokes Article 23 (right of elderly persons to social protection) of the Social Charter (Revised).

The European Committee of Social Rights declared the complaint admissible on 7 December 2011.

Defence for Children International (DCI) v. Belgium

Complaint No. 69/2011

The complaint was registered on 21 June 2011. The complainant organisation alleges that foreign children living accompanied or not, either as illegal residents or asylum seekers in Belgium, are currently excluded from social assistance in breach of Articles 7§10 (Special protection against physical and moral dangers), 11 (right to health), 13 (right to social and medical assistance), 16 (right to appropriate social, legal and economic protection for the family), 17 (right of children and young persons to appropriate social, legal and economic protection) and 30 (right to protection against poverty and social exclusion) alone or read in conjunction with Article E (non-discrimination) of the Social Charter (Revised).

The European Committee of Social Rights declared the complaint admissible on 7 December 2011.

European Council of Police Trade Union (CESP) v. France

Complaint No. 68/2011

The complaint was registered on 18 May 2011. The complainant organisation alleges that the new regulations concerning working conditions for police officers, as from 1 April 2008, removing payment for overtime worked or compensatory time off is in breach of Article 4§2 (right to a fair remuneration) of the Social Charter (Revised).

The European Committee of Social Rights declared the complaint admissible on 13 September 2011.

Médecins du Monde – International v. France

Complaint No. 67/2011

The complaint was registered on 19 April 2011. According to the complainant organisation the rights of Roma living in France with regard to housing, education for their children, social protection and health care are not respected, in breach of Articles 11 (right to health), 13 (right to social and medical assistance), 16 (right to appropriate social, legal and economic protection for the family), 17 (right of children and young persons to appropriate social, legal and economic protection), 19§8 (guarantees concerning expulsion), 30 (right to protection against poverty and social exclusion) and 31 (right to housing), read alone or in conjunction with the non discrimination clause in Article E of the Social Charter (Revised).

The European Committee of Social Rights declared the complaint admissible on 13 September 2011.

General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece

Complaint No. 66/2011

The complaint was registered on 21 February 2011. According to the complainant trade unions the measures relating to remuneration and working conditions contained in Act No. 3899/2010 of 17 December 2010 are in violation of Articles 1 (right to work), 4 (right to a fair remuneration), 7 (the right of children and young persons to protection), 10 (right to vocational training), and 12 (right to social security) of the Social Charter of 1961.

The European Committee of Social Rights declared the complaint admissible on 30 June 2011.

General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece

Complaint No. 65/2011

The complaint was registered on 21 February 2011. According to the complainant trade unions the

measures relating to remuneration and working conditions contained in Act No. 3899/2010 of 17 December 2010 are in violation of Article 4 (right to a fair remuneration) of the Social Charter of 1961 and Article 3 of the Additional Protocol of 1988 (right to take part in the determination and improvement of the working conditions and working environment).

The European Committee of Social Rights declared the complaint admissible on 30 June 2011.

European Roma and Travellers Forum (ERTF) v. France

Complaint No. 64/2011

The complaint was registered on 28 January 2011. According to the complainant organisation the French Government continues to forcibly evict Roma without providing suitable alternative accommodation and that Roma in France continue to suffer discrimination in access to housing, in violation of Articles 16 (right of the family to social, legal and economic protection), 19§8 (guarantees concerning expulsion), 30 (right to protection against poverty and social exclusion) and 31 (right to housing), read alone or in conjunction with the non discrimination clause in Article E of the Social Charter (Revised).

The European Committee of Social Rights declared the complaint admissible on 10 May 2011.

List of resolutions adopted by the Committee of Ministers in 2011

- ♦ **CM/ResChS(2011)8E / 6 July 2011**
Resolution – Collective Complaint No. 49/2008 by the International Centre for the Legal Protection of Human Rights (INTERIGHTS) against Greece (Adopted by the Committee of Ministers on 6 July 2011 at the 1118th meeting of the Ministers' Deputies)
- ♦ **CM/ResChS(2011)7E / 15 June 2011**
Resolution – Collective Complaint No. 53/2008 by the European Federation of National Organisations working with the homeless (FEANTSA) against Slovenia (Adopted by the Committee of Ministers on 15 June 2011 at the 1116th meeting of the Ministers' Deputies)
- ♦ **CM/ResChS(2011)6E / 5 May 2011**
Resolution – Collective complaint No. 52/2008 by the Centre on Housing Rights and Evictions (COHRE) against Croatia (Adopted by the Committee of Ministers on 5 May 2011, at the 1113th meeting of the Ministers' Deputies)
- ♦ **CM/ResChS(2011)5E / 6 April 2011**
Resolution – Collective Complaint No. 56/2009 by the *Confédération française de l'encadrement* (CFE-CGC) against France (Adopted by the Committee of Ministers on 6 April 2011 at the 1111th meeting of the Ministers' Deputies)
- ♦ **CM/ResChS(2011)4E / 6 April 2011**
Resolution – Collective Complaint No. 55/2009 by the *Confédération générale du travail* (CGT) against France (Adopted by the Committee of Ministers on 6 April 2011 at the 1111th meeting of the Ministers' Deputies)
- ♦ **CM/ResChS(2011)1E / 19 January 2011**
Resolution – Collective complaint No. 54/2008 by the European Council of Police Trade Unions (the CESP) against France (Adopted by the Committee of Ministers on 19 January 2011 at the 1103rd meeting of the Ministers' Deputies)
- ♦ **CM/ResChS(2011)9E / 9 November 2011**
Resolution – Collective Complaint No. 63/2010 by the Centre on Housing Rights and Evictions (COHRE) against France (Adopted by the Committee of Ministers on 9 November 2011 at the 1125th meeting of the Ministers' Deputies)

Appendix 5

Number of decisions handed down by the European Committee of Social Rights 1998-2011

Years	Registered Complaints	Decisions on the admissibility	Decisions on the merits	Decisions to strike out	Total decisions
1998	1	0	0	0	0
1999	5	2	1	0	3
2000	4	7	5	0	12
2001	1	2	3	0	5
2002	2	2	1	0	3
2003	10	8	2	0	10
2004	5	6	10	0	16
2005	4	5	4	0	9
2006	7	5	4	0	9
2007	7	7	5	0	12
2008	8	8	5	1	14
2009	5	7	7	0	14
2010	4	3	6	0	9
2011	12	11	4	0	15
Total	75	73	57	1	131

Appendix 6

Summary of the Committee's Conclusions for 2011

Table 1: 1961 Charter : XIX-4 (2011)

Article	Austria	Croatia	Czech Republic	Denmark	Germany	Greece	Iceland	Latvia	Luxembourg	Netherlands Aruba	Netherlands Antilles	"The former Yugoslav Republic of Macedonia"	Poland	Spain	United Kingdom						
Article 7.1	NA	+	+	NA	NA	-	NA	NA	+	NA	NA	0	0	0	NA						
Article 7.2	+	+	+	NA	+	+	NA	NA	+	NA	NA	+	+	+	+						
Article 7.3	+	0	+	NA	0	-	NA	NA	0	NA	NA	0	0	0	0						
Article 7.4	+	-	-	NA	+	+	NA	NA	+	NA	NA	0	+	+	NA						
Article 7.5	+	-	0	NA	-	0	NA	NA	0	NA	NA	NA	-	-	-						
Article 7.6	NA	-	+	NA	+	+	NA	NA	+	NA	NA	0	+	+	+						
Article 7.7	+	+	+	NA	+	+	NA	NA	+	NA	NA	+	+	+	NA						
Article 7.8	+	+	+	NA	+	+	NA	NA	+	NA	NA	+	+	+	NA						
Article 7.9	+	+	0	NA	+	+	NA	NA	+	NA	NA	0	+	+	+						
Article 7.10	+	0	+	NA	+	0	NA	NA	0	NA	NA	0	-	-	-						
										+ Conformity			- Non-conformity			0 Deferral			NA Non-accepted provision		

Article	Austria	Croatia	Czech Republic	Denmark	Germany	Greece	Iceland	Latvia	Luxembourg	Netherlands Aruba	Netherlands Antilles	“The former Yugoslav Republic of Macedonia”	Poland	Spain	United Kingdom
Article 8.1	+	+	+	0	+	-	NA	0	+	NA	NA	0	+	+	-
Article 8.2	+	0	-	NA	NA	+	NA	+	-	NA	NA	0	+	+	NA
Article 8.3	+	-	+	NA	+	+	NA	+	+	NA	NA	0	-	-	NA
Article 8.4	+	+	NA	NA	NA	+	NA	+	NA	NA	NA	0	+	+	NA
Article 16	0	-	-	-	-	-	+	-	+	-	NA	-	-	-	-
Article 17	+	-	-	-	+	0	+	0	0	NA	-	-	0	-	-
Article 19.1	0	NA	NA	NA	+	+	NA	+	+	NA	NA	+	+	+	+
Article 19.2	+	NA	NA	NA	0	+	NA	+	+	NA	NA	0	+	+	0
Article 19.3	+	NA	NA	NA	0	0	NA	+	+	NA	NA	+	0	0	0
Article 19.4	NA	NA	NA	NA	0	0	NA	-	-	NA	NA	0	+	-	-
Article 19.5	+	NA	NA	NA	+	-	NA	+	+	NA	NA	+	+	+	+
Article 19.6	-	NA	NA	NA	-	-	NA	0	0	NA	NA	-	-	-	0
Article 19.7	NA	NA	NA	NA	+	+	NA	+	+	NA	NA	+	+	+	+
Article 19.8	NA	NA	NA	NA	-	-	NA	-	-	NA	NA	+	0	-	-
Article 19.9	+	NA	+	NA	+	+	NA	+	+	NA	NA	+	+	+	+
Article 19.10	NA	NA	NA	NA	-	-	NA	-	-	NA	NA	0	-	-	-
+ Conformity			- Non-conformity					0 Deferral				NA Non-accepted provision			

Summary of the Committee's Conclusions for 2011

Table 2: Revised Charter 2011

Article	Albania	Andorra	Armenia	Azerbaijan	Belgium	Bulgaria	Bosnia and Herzegovina	Cyprus	Estonia	Finland	France	Georgia	Hungary	Ireland	Italy	Lithuania	Moldova	Malta	Netherlands	Norway	Portugal	Romania	Slovakia	Slovenia	Sweden	Turkey	Ukraine
Article 7.1	-	0	-	0	+	+	0	-	+	+	+	0	-	-	-	+	-	+	+	+	0	-	+	+	+	-	-
Article 7.2	-	+	0	0	+	+	0	+	+	+	-	0	0	0	-	+	-	0	+	+	+	0	+	+	+	-	0
Article 7.3	-	0	-	0	+	0	0	-	+	+	+	0	-	-	-	+	-	0	+	+	+	0	+	+	+	-	0
Article 7.4	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Article 7.5	+	0	0	0	-	-	0	NA	NA	NA	+	+	-	-	0	NA	NA	0	+	+	+	+	+	+	+	+	0
Article 7.6	-	+	+	+	-	0	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Article 7.7	-	+	-	0	0	0	0	NA	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Article 7.8	+	+	+	+	-	0	0	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Article 7.9	0	0	0	0	+	-	0	NA	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Article 7.10	-	0	0	0	0	0	0	-	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Article 8.1	-	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Article 8.2	-	+	-	-	+	0	0	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Article 8.3	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Article 8.4	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Article 8.5	0	+	+	0	-	-	-	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	0
Article 16	NA	NA	NA	0	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Article 17.1	NA	-	-	NA	-	NA	-	NA	0	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	0
Article 17.2	NA	+	-	NA	+	-	-	NA	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	0
Article 19.1	+	0	0	NA	0	NA	NA	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	NA
Article 19.2	+	NA	0	NA	+	NA	NA	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	NA
Article 19.3	0	0	0	NA	0	NA	NA	0	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	NA
Article 19.4	0	NA	0	NA	0	NA	NA	-	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	NA
Article 19.5	+	+	0	NA	+	NA	NA	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	NA
Article 19.6	0	NA	0	NA	0	NA	NA	-	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	NA
Article 19.7	+	+	0	NA	+	NA	NA	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	NA
Article 19.8	0	NA	0	NA	+	NA	NA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	NA

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Article	Albania	Andorra	Armenia	Azerbaijan	Belgium	Bulgaria	Bosnia and Herzegovina	Cyprus	Estonia	Finland	France	Georgia	Hungary	Ireland	Italy	Lithuania	Moldova	Malta	Netherlands	Norway	Portugal	Romania	Slovakia	Slovenia	Sweden	Turkey	Ukraine	
Article 19.9	+	+	+	NA	+	NA	NA	+	+	+	+	+	+	+	+	+	+	NA	+	+	+	+	+	+	+	+	+	NA
Article 19.10	0	NA	-	NA	0	NA	NA	-	-	NA	-	-	-	-	-	-	NA	NA	-	-	-	NA	-	-	-	-	-	NA
Article 19.11	+	+	-	NA	+	NA	NA	0	+	+	+	0	+	+	+	+	NA	NA	+	+	0	NA	+	+	+	+	+	NA
Article 19.12	0	+	-	NA	+	NA	NA	+	+	+	-	-	-	-	-	NA	NA	NA	NA	+	0	NA	+	+	+	+	+	NA
Article 27.1	NA	NA	0	0	NA	NA	NA	NA	+	+	+	0	+	+	0	+	+	NA	+	+	+	NA	0	+	+	+	+	0
Article 27.2	NA	NA	+	+	NA	+	NA	NA	+	+	+	0	+	+	+	+	+	NA	+	+	+	NA	0	+	+	+	+	0
Article 27.3	NA	NA	-	0	NA	-	NA	-	-	-	+	0	0	+	+	-	NA	+	0	NA	+	NA	0	+	+	+	+	0
Article 31.1	NA	0	NA	NA	NA	NA	NA	NA	+	+	-	NA	NA	NA	-	-	NA	NA	0	-	-	NA	NA	-	-	-	-	-
Article 31.2	NA	0	NA	NA	NA	NA	NA	NA	+	+	-	NA	NA	NA	-	-	NA	NA	+	+	0	NA	NA	-	-	-	-	-
Article 31.3	NA	NA	NA	NA	NA	NA	NA	NA	0	0	-	NA	NA	NA	-	NA	NA	NA	0	+	+	NA	NA	-	-	-	-	NA
+ Conformity																												
+ Non-conformity																												
0 Deferral																												
NA Non-accepted provision																												

Summary of the Committee's Conclusions for 2011

Table 3: Overview of the conclusions by year

	2011	2010	2009	2008	2007	2006	2005
Examined situations/ <i>Situations examinées</i>	950	569	572	425	839	915	685
Conformity/ <i>Conformité</i>	459	271	281	185	363	461	305
	48.31%	47.63%	49.13%	43.52%	43.27%	50.38%	43.79%
Non-conformity/ <i>Non conformité</i>	256	184	164	126	230	244	126
	26.95%	32.34%	28.67%	29.64%	27.41%	26.66%	18.39%
Deferral/ <i>Ajournement</i>	235	114	127	114	246	210	254
	24.74%	20.03%	22.20%	26.82%	29.32%	22.95%	37.08%

Table 4: Overview of conclusions 2011 by Charter

Charter/ <i>Charte</i>	Number of conclusions/ <i>Nombre de conclusions</i>			
	Total	+	-	0
Revised Charter	729	339	203	187
1961 Charter	221	120	53	48
	+ Conformity	- Non-conformity	0 Deferral	

Table 5: Conclusions by State

State	Total	+	-	0
Albania	27	11	8	8
Andorra	26	16	1	9
Armenia	32	8	11	13
Austria	20	17	1	2
Azerbaijan	19	7	2	10
Belgium	29	18	4	7
Bosnia and Herzegovina	18	1	9	8
Bulgaria	19	4	8	7
Croatia	16	7	6	3
Cyprus	23	11	8	4
Czech Republic	16	10	4	2
Denmark	3	0	2	1
Estonia	31	21	5	5
Finland	30	24	2	4
France	36	22	12	2
Georgia	29	3	3	23
Germany	23	14	5	4
Greece	26	13	8	5
Iceland	2	1	0	1
Ireland	32	14	13	5
Italy	36	17	16	3
Latvia	6	4	1	1
Lithuania	30	19	6	5
Luxembourg	25	16	4	5
Malta	19	11	5	3
Republic of Moldova	19	6	12	1
Netherlands	35	19	9	7
Netherlands Antilles	1	0	1	0
Netherlands Aruba	1	0	1	0
Norway	29	17	9	3
Poland	23	14	5	4
Portugal	36	21	4	11
Romania	21	7	7	7
Slovakia	27	11	8	8
Slovenia	36	13	12	11
Spain	26	15	6	5
Sweden	31	25	4	2

Summary of the Committee's Conclusions for 2011

State	Total	+	-	0
"Former Yugoslav Republic of Macedonia"	14	2	1	11
Turkey	36	6	20	10
Ukraine	23	7	5	11
United Kingdom	19	7	8	4
Total	950	459	256	235

Table 6: Conclusions by article

Article	Total	+	-	0
Article 16	35	9	23	3
Article 17	13	3	6	4
Article 17.1	22	1	16	5
Article 17.2	22	10	8	4
Article 19.1	26	13	4	9
Article 19.10	22	1	18	3
Article 19.11	19	13	3	3
Article 19.12	15	7	5	3
Article 19.2	23	16	0	7
Article 19.3	25	12	1	12
Article 19.4	23	4	8	11
Article 19.5	26	22	1	3
Article 19.6	24	2	12	10
Article 19.7	27	23	0	4
Article 19.8	23	2	12	9
Article 19.9	27	27	0	0
Article 27.1	17	9	1	7
Article 27.2	21	18	1	2
Article 27.3	18	6	4	8
Article 31.1	12	1	8	3
Article 31.2	12	3	7	2
Article 31.3	9	2	3	4
Article 7.1	32	14	11	7
Article 7.10	36	11	11	14
Article 7.2	36	22	5	9
Article 7.3	35	7	15	13
Article 7.4	34	21	7	6
Article 7.5	30	4	15	11
Article 7.6	31	19	7	5

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Article	Total	+	-	0
Article 7.7	34	20	4	10
Article 7.8	35	25	6	4
Article 7.9	33	17	6	10
Article 8.1	36	18	8	10
Article 8.2	32	13	9	10
Article 8.3	33	25	5	3
Article 8.4	30	25	3	2
Article 8.5	22	14	3	5
Total	950	459	256	235

Table 7: Conclusions by provision of the 1961 Charter

Charter/Article	Number of conclusions			
	Total	+	-	0
1961 Charter Cycle: XIX-4	221	120	53	48
Article 7.1	6	3	1	2
Article 7.2	10	9	0	1
Article 7.3	9	2	1	6
Article 7.4	9	6	2	1
Article 7.5	8	1	4	3
Article 7.6	9	7	1	1
Article 7.7	9	9	0	0
Article 7.8	9	9	0	0
Article 7.9	10	8	0	2
Article 7.10	10	3	3	4
Article 8.1	12	7	2	3
Article 8.2	9	4	2	3
Article 8.3	10	7	2	1
Article 8.4	7	5	1	1
Article 16	14	2	11	1
Article 17	13	3	6	4
Article 19.1	7	6	0	1
Article 19.2	7	4	0	3
Article 19.3	7	3	0	4
Article 19.4	6	1	2	3
Article 19.5	7	6	1	0
Article 19.6	7	0	5	2
Article 19.7	6	6	0	0

Summary of the Committee's Conclusions for 2011

Charter/Article	Number of conclusions			
	Total	+	-	0
Article 19.8	6	1	4	1
Article 19.9	8	8	0	0
Article 19.10	6	0	5	1

Table 8: Conclusions by provision of the Revised Charter

Charter/Article	Number of conclusions			
	Total	+	-	0
Revised Charter Cycle: 2011	729	339	203	187
Article 7.1	27	11	10	5
Article 7.2	26	13	5	8
Article 7.3	26	5	14	7
Article 7.4	25	15	5	5
Article 7.5	22	3	11	8
Article 7.6	22	12	6	4
Article 7.7	25	11	4	10
Article 7.8	26	16	6	4
Article 7.9	23	9	6	8
Article 7.10	26	8	8	10
Article 8.1	25	11	6	7
Article 8.2	24	9	7	7
Article 8.3	24	18	3	2
Article 8.4	24	20	2	1
Article 8.5	23	14	3	5
Article 16	22	7	12	2
Article 17.1	23	1	16	5
Article 17.2	23	10	8	4
Article 19.1	19	7	4	8
Article 19.2	16	12	0	4
Article 19.3	18	9	1	8
Article 19.4	17	3	6	8
Article 19.5	19	16	0	3
Article 19.6	17	2	7	8
Article 19.7	21	17	0	4
Article 19.8	17	1	8	8
Article 19.9	19	19	0	0

Appendix 6

Charter/Article	Number of conclusions			
	Total	+	-	0
Article 19.10	16	1	13	2
Article 19.11	19	13	3	3
Article 19.12	15	7	5	3
Article 27.1	17	9	1	7
Article 27.2	21	18	1	2
Article 27.3	18	6	4	8
Article 31.1	12	1	8	3
Article 31.2	12	3	7	2
Article 31.3	9	2	3	4

Appendix 7

Selection of conclusions of non-conformity 2011 for the attention of the Parliamentary Assembly

Introductory remarks

One of the main conclusions of the meeting held in Strasbourg on 6 October 2011 under the auspices of the Committee on Social Affairs, Health and Sustainable Development on “non-discrimination and equal opportunities in the enjoyment of social rights” was that the co-operation between the European Committee of Social Rights and the relevant committees of the Parliamentary Assembly should be strengthened.

In this respect it was suggested that one of the means of reinforcing the co-operation could consist in having the European Committee of Social Rights directly transmit to the Parliamentary Assembly the decisions and conclusions whose effective follow-up and implementation required governments and national parliament to take appropriate measures and/or draw the attention of the Assembly to such decisions and conclusions. In this way, taking into account their two-fold mandate, European and

national, the members of the Assembly would be able to contribute decisively to the implementation of the conclusions of non-conformity adopted by the Committee.

The present contribution has been drawn up in the spirit of Resolution 1824 (2011) on “The role of parliaments in the consolidation and development of social rights in Europe” (adopted by the Assembly on 23 June 2011) as well as of the Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter (adopted by the Committee of Ministers on 12 October 2011 during the 1123rd meeting of the Ministers’ Deputies).

The European Committee of Social Rights is delighted to be part of this form of co-operation and it wishes to thank the Parliamentary Assembly for developing its vital role in highlighting the importance for States of accepting the collec-

tive complaints procedure thereby strengthening the social aspects of democracy and compliance with the Charter at national level.

Herewith follows a selection of conclusions of non-conformity 2011 in respect of which legislative measures are necessary in order to render effective the application of the Charter at national level.

The 1996 Revised European Social Charter

Albania

Art. 7§1: Definition of light work authorized by legislation is not sufficiently precise as there is no definition of the types of work which may be considered light or a list of those which are not

Art. 7§10: The possession of child pornography for one's own purposes is not a criminal offence

Art. 8§2: Reinstatement is not the rule in case of unlawful dismissal based on pregnancy.

Andorra

Art. 17§1: Corporal punishment is not explicitly prohibited in home, in schools and in institutions.

Armenia

Art. 7§3: The daily and weekly working time for children subject to compulsory education is excessive.

Allowing children to work before school begins in the morning is, in principle, contrary to Article 7§3. Allowing children aged 15 years still subject to compulsory education to deliver newspapers from 6 a.m. for up 2 hours per day, 5 days per week before school is not in conformity with the Charter.

The report states that Article 140 of the Labour Code establishes a shorter working time for young workers at the age of 14 to 16, up to 24 hours per week. The duration of the daily uninterrupted rest for employees at the age of 14 to 16 may not be less than 14 hours, which means that they can work up to 10 hours per day. The Committee makes reference as a minimum framework to Council Directive 94/33/EC of 22 June 1994 on protection of young people at work which establishes that working time of children must be limited in 2 hours on a school day and 12 hours a week for work performed in term-time outside the hours fixed for school attendance, provided that this is not prohibited by national legislation and/or practice and that in no circumstances may the daily working time exceed 7 hours.

The Committee considers, therefore, that the daily and weekly working time for children subject to compulsory education is excessive and thus, not in conformity with Article 7§3 of the Charter.

Art. 7§7: Young workers have the option of giving-up the annual holiday for financial compensation.

Art. 17§1: Corporal punishment of children is not explicitly prohibited in the home; and young offenders may be held in pre-trial detention for up to 12 months.

Art. 27§3: Legislation makes no provision for the reinstatement of workers unlawfully dismissed on account of their family responsibilities.

Azerbaijan

Art. 8§1: Unemployment periods are not included in the calculation of the qualifying period for maternity benefits.

Belgium

Art. 17§1: Corporal punishment is not explicitly prohibited in the home; and young offenders may be held in adult detention facilities.

Bosnia and Herzegovina

Art. 7§4: The limit of 40 hours per week for young workers under the age of 16 is excessive.

The Committee recalls that, under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice. For persons under 16 years of age, a limit of 8 hours a day or 40 hours a week is contrary to the article. However, for persons over 16 years of age, the same limits are in conformity with the article. The report states that Section 29 of the Labour Law in the Federation of Bosnia and Herzegovina, Section 40§1 of the Labour Law in the Republika Srpska, and

Section 22 of the Labour Law in Brčko District prescribe that the working week lasts for 40 hours. This provision is in force for all employees and according to the legislation in place, there are no exceptions of shorter working hours for young persons.

Art. 7§6: Legislative framework does not provide for time spent at the training with the consent of employer, to be counted as a part of the working day.

Art. 17§1: Corporal punishment is not explicitly prohibited in home, in schools and in institutions

Bulgaria

Art. 8§2: The exception to the prohibition of dismissal of pregnant women, in case of relocation of the undertaking where she works if she does not follow the company, is not in conformity with the Charter.

Art. 8§5: Women having recently given birth, who are not breastfeeding, do no benefit from the possibility of adjustments of their working conditions or temporary reassignment to an adequate post.

Cyprus

Art. 19§6: The requirement for foreign workers wishing to be joined by their close relatives to have been residing lawfully in Cyprus for at least two years is excessive.

The Committee considers that States may require a certain length of residence of migrant workers

before their family can join them. A period of a year is acceptable under the Charter.

Estonia

Art. 17§1: Corporal punishment is not explicitly prohibited in schools and in the home.

Art. 19§6: A two years residence requirement which is imposed on migrant workers who are not citizens of members States of the European Union, nor citizens of the European Economic Area is excessive.

The Committee considers that States may require a certain length of residence of migrant workers before their family can join them. A period of a year is acceptable under the Charter.

Finland

Art. 8§2: No provision is made in law for the reinstatement of women unlawfully dismissed during pregnancy or maternity leave.

Art. 27§3: Legislation makes no provision for the reinstatement of workers unlawfully dismissed on grounds of their family responsibilities.

France

Art. 7§2: Legislation does not lay down an absolute prohibition for persons under the age of 18 to work on dangerous activities outside the vocational training context or without having had such training beforehand.

Art. 8§3: Women working in the civil service are not entitled to breastfeeding breaks

Art. 17§1: All forms of corporal punishment of children are not prohibited; and the maximum periods of pre-trial detention (it may not exceed two years) of children are too long.

Art. 19§6: The condition that foreign nationals who wish to be reunited with their family must have been lawfully resident in France for eighteen months is excessive.

The Committee considers that States may require a certain length of residence of migrant workers before their family can join them. A period of a year is acceptable under the Charter.

Georgia

Art. 17§1: Corporal punishment of children is not explicitly prohibited in the home.

Ireland

Art. 17§1: Corporal punishment of children is not explicitly prohibited in the home, and young prisoners are not always separated from adults.

Art. 27§1: Periods of parental leave are not taken into account in the calculation of pension.

Italy

Art. 7§4: Working time of 40 hours a week for persons aged 15 (this length is permitted by Legislative Decree No. 345 of 4 august 1999) are excessive.

The Committee recalls that, under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory

schooling. The limitation may be the result of legislation, regulations, contracts or practice. For persons under 16 years of age, a limit of 8 hours a day or 40 hours a week is contrary to the article. However, for persons over 16 years of age, the same limits are in conformity with the article.

Art. 8§3: Domestic workers and home workers are not entitled to paid breaks for the purposes of breastfeeding their infants.

Art. 16: Unequal treatment of foreigners in matters of family benefit

The birth grant provided under Act No. 326/2003 is reserved for nationals of Italy or of an EU Member State residing in Italy. Similarly, allowances for large families (with at least three children) are payable only to Italian and EU citizens. The report also states that foreign nationals are ineligible for the “purchasing card” entitling holders to €40 of purchases per month, even where they are legally resident.

Art. 19§8: “Security measures” “Pacts for Security” (adopted as of November 2006) and of the so called “nomad” state of emergency Decrees (as of May 2008) and their implementing Orders and Guidelines, represent a discriminatory legal framework which target Roma and Sinti, especially by making it difficult for them to obtain identification documents in order to legalise their residence status and, therefore, permits even the expulsion of Italian and other EU citizens (for example, Roma from Romania, Czech Republic, Bulgaria or Slovakia).

Lithuania

Art. 16: With regard to the payment of family benefits, there is no equal treatment of nationals of other States Parties because of an excessive length of residence requirement (5 years).

Art. 17§1: Corporal punishment is not explicitly prohibited in the home, in schools and in institutions.

Moldova

Art. 17§1: Corporal punishment of children is not explicitly prohibited; and young offenders may be held in adult detention facilities; and young offenders may be held in adult detention facilities.

Netherlands (Kingdom in Europe)

Art. 17§1: Juveniles aged 16 and 17 can be tried under adult criminal law and condemned to prison sentences of up to 30 years; young offenders may be held in adult detention facilities; and unlawfully present children are not provided with shelter for as long as they are in the jurisdiction of the Netherlands.

Art. 19§6: The exclusion of the “welfare support benefits” from the calculation of the income level is likely to hinder family reunion rather than facilitate it

Art. 19§8: Family members of a migrant worker who have come to the Netherlands for the purposes of family reunion they must leave the Netherlands where the migrant worker loses his right to remain (if they have not yet obtained an independent right of residence which is

normally granted after three years under Dutch law) when the migrant worker is expelled.

The Committee considers that migrant worker's family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these family members have an independent right to stay in the territory.

Norway

Art. 7§6: Young workers are not entitled to have their training time paid as working hours.

Art. 17§1: Prison sentences for minors may be up to 21 years.

Portugal

Art. 7§3: The daily and weekly working time for children subject to compulsory education is excessive.

According to Portuguese legislation: Between the ages of 7 and 12: 3 hours per day and 9 hours per week, with an additional three hours added to each limit in cases in which the additional activity takes place on a day on which the child has no school activities. Between the ages of 12 and 16: 4 hours per day and 12 hours per week, with an additional 3 hours added to each limit in cases in which the additional activity takes place on a day on which the young person has no school activities.

The Committee makes reference as a minimum framework to Council Directive 94/33/EC of 22 June 1994 on protection of young people at work which establishes that working time of children must be limited in

2 hours on a school day and 12 hours a week for work performed in term-time outside the hours fixed for school attendance, provided that this is not prohibited by national legislation and/or practice and that in no circumstances may the daily working time exceed seven hours. It considers that for children aged between 7 and 16 years old, the daily working hours are excessive and for children aged 12 to 16 years old the weekly working hours are excessive.

Romania

Art. 7§10: The simple possession of child pornography is not a criminal offence.

Slovakia

Art. 7§3: Definition of light work authorised by legislation is not sufficiently precise

Art. 8§2: The dismissal of pregnant women and women on maternity leave can be justified by the relocation of activities of the undertaking where they are employed.

Art. 16: Entitlement to childbirth allowance and childminding allowance is subject to an excessive length of residence requirement

According to Slovak legislation these allowances are paid only to permanent residents. The permanent residence permit may be obtained only after three years' residence.

Art. 17§1: All forms of corporal punishment of children at home is not explicitly prohibited.

Slovenia

Art. 8§3: Breast feeding breaks are not remunerated.

Art. 16: Equal treatment of nationals of other States parties in the payment of family benefits is not ensured because the length of residence requirement is excessive.

According to Aliens Act No. 7/2003, the permanent residence requirement was reduced to five years.

Art. 17§1: Corporal punishment in the home is not prohibited.

Sweden

Art. 7§9: A regular medical examination for all young workers is not guaranteed by legislation.

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

Art. 17§2: Children unlawfully present in the territory do not have effective access to education.

Turkey

Art. 7§2: The minimum age of admission to employment in occupations regarded as dangerous or unhealthy is below 18 years.

Art. 7§4: Working time for children who have reached the age of 15 or children under 15 is manifestly excessive.

According to Labour Law No. 4857, children under 15 who have completed their compulsory primary education and do not attend school anymore may work for a maximum of 7 hours a day and 35 hours a week. These limits may be raised to 8 hours a day and 40 hours a week with regard to the children who have reached the age of 15. The work time is applied in such a way as to ensure that for each 24-hour period, children and young workers are entitled to a minimum rest period of 14 consecutive hours. During school term children may work up to 2 hours per day and 10 hours per week for children attending school. A 30-minute break is given for work that lasts between 2 and 4 hours, and a 1-hour break is given for work that lasts between 4 and 7 and a half hours.

Art. 8§2: Not all employed women are entitled to reinstatement in case of unlawful dismissal during pregnancy or maternity leave.

According to Labour Law No. 4857, female workers with an open-ended contract that have worked less than six months in the same enterprise, those with an open-ended contract working in an enterprise of less than 30 employees, and those with fixed-term contracts are not entitled to reinstatement in case of unlawful dismissal.

Art. 8§5: Pregnant women, women who have recently given birth or who are breastfeeding are only granted unpaid leave when they cannot be reassigned to another post because of the dangerousness of their usual work.

The Committee underlines that if no reassignment of women who are pregnant or breastfeeding is possible, they should be entitled to paid leave.

Art. 17§1: There is no explicit prohibition of corporal punishment in the home; and prison sentences for minors may be up to 20 years.

Art. 17§2: Children unlawfully present in the territory do not have effective access to education.

Art. 19§6: The requirements imposed on migrant workers, notably with respect to health, are reasonable and likely to facilitate as far as possible the reunion of their family.

The Turkish “Passport” Law does not specify what are the contagious diseases the law refers to which would lead to a refusal of the enjoyment of the right to family reunion. Regarding mental illnesses, the Law does not introduce precisions on the refusal due to public order or security.

The Committee recalls that illnesses which may justify refusal of family reunion are diseases requiring quarantine which are stipulated in the World Health Organisation’s International Health Regulations, or other serious contagious or infectious diseases such as tuberculosis or syphilis. Very serious drug addiction or mental illness may justify refusal of

family reunion, but only where the authorities establish, on a case-by-case basis, that the illness or condition constitutes a threat to public order or security.

Art. 19§8: The Act No. 5683 on The Travelling and Residence of Foreigners in Turkey provides that “foreign nationals whose presence is deemed to pose a threat to State security or to conflict with political or administrative imperatives are requested by the Ministry of the Interior to leave Turkey within a fixed time period”.

Art. 27§2: The law does not provide fathers with a leave to bring up their children.

Ukraine

Art. 7§1: The definition of light work is not sufficiently precise because there is no definition of the types of work which may be considered light or a list of those which are not.

Art. 7§10: All acts of sexual exploitation of children between 16 and 18 years old are not criminalised; and simple possession of child pornography is not a criminal offence.

Art. 31§2: The right to shelter is not guaranteed to persons unlawfully present in Ukraine, including children, for as long as they are in its jurisdiction.

The 1961 European Social Charter

Austria

Art. 19§6: The exclusion of the “welfare support benefits” from the

calculation of the income level is likely to hinder family reunion rather than facilitate it.

With regard to welfare support benefits, the Committee considers that migrant workers who have sufficient income to provide for the members of their families should not automatically be denied the right of family reunion on the ground of the origin of such income, where its origin is not unlawful or immoral and where they have a right to the granted benefit.

Croatia

Art. 7§4: Working hours for persons aged 15 are excessive.

Pursuant to the new Ordinance on the carrying out of employment mediation activities of 2009, the maximum working hours of a young worker who has attained the age of fifteen may not be longer than 7 hours a day or 35 hours per week. In exceptional cases, the limit can be raised to 8 hours a day or 40 hours per week. The Committee considers that this limitation of working hours is satisfactory for young workers over the age of sixteen, but is insufficient in respect of workers under sixteen.

Art. 8§3: Breastfeeding breaks are not paid as normal working hours and the amount of the benefits paid in lieu may result in loss of salary.

Art. 16: Equal treatment of nationals of other States Parties to the entitlement to family benefits is not ensured because of excessive residence requirement (at least three years).

Art. 17: Young offenders are not in all circumstances separated from adults.

Czech Republic

Art. 8§2: The exception to the prohibition of dismissal of women on maternity leave (in case of total or partial relocation of the undertaking's activities), is not in conformity with the Charter.

Art. 17: Corporal punishment is not explicitly prohibited in home, in schools and in institutions.

Denmark

Art. 17: Minors can be subject to 8 months of pre-trial detention which may be further extended; the prison sentence for minors may be up to 20 years; and solitary confinement of minors may last 4 weeks.

Germany

Art. 16: Equal treatment is not guaranteed to nationals of other States Parties to the Charter (with the exception of EU/EEA nationals and persons treated as such in pursuance of international or Community texts, and nationals of the following countries: Iceland, Norway, Liechtenstein, Switzerland, Algeria, Morocco, Tunisia and Turkey; the last four in pursuance of Decision No. 3/80 of the Association Council or the Euro-Mediterranean Agreement) in respect of the granting of supplementary child-raising allowances in Bavaria.

Art. 19§6: The requirement for foreign nationals wishing to be joined by their spouses to have a permanent residence permit – which is granted provided that the foreigner concerned has held a temporary residence permit for

five years – or to have had a temporary residence permit for at least two years, is excessive; requiring applicants for family reunion to produce documentary evidence of their knowledge of German is likely to hinder family reunion rather than facilitate it; and excluding social welfare benefits from the calculation of migrant worker's income is also likely to hinder family reunion rather than facilitate it.

Art. 19§8: Migrant workers and their families (not EU citizens) may be expelled for having recourse to social welfare or for being homeless or for substance abuse.

Greece

Art. 8§1: Periods of unemployment are not taken into account when calculating qualifying periods needed to be entitled to maternity benefits.

Art. 19§5: Not all migrant workers from States Parties to the Charter benefit from the tax exemption for the acquisition of a first family house.

Art. 19§6: The requirement that a migrant worker has lived for a period of two years in Greece before being able to exercise family reunion is excessive.

Art. 19§8: A migrant worker may be considered as a threat to public order and therefore expelled simply where he/she has been prosecuted for a crime punishable by at least three months imprisonment.

Latvia

Art. 16: With regard to the payment of family benefits, there is no equal treatment of nationals of other States Parties because of an excessive length of residence requirement (5 years).

Luxembourg

Art. 19§4: Certain categories of workers (according to the length of stay in Luxembourg) cannot be elected to joint works councils.

Poland

Art. 7§10: The simple possession and storage of child pornography is not a criminal offence if it involves a minor aged 15-18.

Art. 16: There is no guarantee that family benefits will be paid to the nationals of certain States Parties to the Social Charter, as this is decided in accordance with bilateral social security agreements negotiated by Poland on a reciprocal basis.

Art. 17: The maximum length of pre-trial detention of minors is excessive (two years).

Art. 19§6: The condition that foreign nationals with a temporary residence permit who wish to be reunited with their family must have been lawfully resident in Poland for two years is excessive.

Spain

Art. 8§3: Domestic workers are not entitled to breaks for the purposes of breastfeeding their infants.

Art. 19§6: The exclusion of the 'welfare support benefits' from the calculation of the income level is likely to hinder family reunion rather than facilitate it.

With regard to welfare support benefits, the Committee considers that migrant workers who have sufficient income to provide for the members of their families should not automatically be denied the right of family reunion on the ground of the origin of such income, where its origin is not unlawful or immoral and where they have a right to the granted benefit.

“The Former Yugoslav Republic of Macedonia”

Art. 17: Corporal punishment is not explicitly prohibited in the home and institutions.

United Kingdom

Art. 7§10: Child victims of sexual exploitation may be prosecuted.

Article 17: Not all forms of corporal punishment are prohibited in the home; and the age of criminal responsibility (ten years, with the exception of Scotland) is manifestly low.

Art. 19§8: Family members of a migrant worker who are nationals of Contracting Parties that are not members of the EEA or EU, as well as children of a migrant worker who are nationals of EU member states or parties to the EEA but are aged under 17 years of age, are liable to be expelled following a migrant worker's deportation.

Appendix 8

Events marking the 50th anniversary of the Charter

Events organised by the Council of Europe

- ♦ Strasbourg (European Youth Center), 14-18 September: “Enter!” Youth meeting: “Access to social rights for all young people”, organised by the European Youth Centre
- ♦ Strasbourg, 6 October: Celebration of the 50th anniversary of the 1961 Charter and the 15th anniversary of the Revised Charter in the framework of a meeting of the Parliamentary Assembly Sub-Committee on the Social Charter and Employment on the theme of non-discrimination (meeting open to the press and to representatives of civil society)
- ♦ Strasbourg (ENA), 17 October: Round Table “Human rights in the context of economic crisis” organised by the Conference of INGOs of the Council of Europe at the *Ecole Nationale d’Administration (ENA)*
- ♦ Strasbourg, 18 October:
 - Presentation of the Council of Europe’s new communication tools relating to the European Social Charter
 - Brainstorming on the ratification of the collective complaints procedure organised by the Directorate General of Human Rights and Rule of Law and the Commissioner for Human Rights
 - Official ceremony to celebrate the 50th anniversary of the European Social Charter, with the participation of the Secretary General of the Council of Europe, a representative of the Committee of Ministers, the President of the Parliamentary Assembly, the President of the European Court of Human Rights, the Mayor of Turin, the President of the European Committee of Social Rights and other personalities
 - Exchange of views between the European Committee of Social Rights, representatives of the International Labour Organization and the Academic Network of the European Social Charter

Events organised by governments

- ◆ Helsinki (Finland), 8 February: Seminar on the reform of the European Social charter, organised by the Ministry of Foreign Affairs of Finland and the Council of Europe
- ◆ Vilnius (Lithuania), 21 June: Ceremony organised by the Ministry of Social Security and Employment of Lithuania to mark the 50th anniversary of the Social Charter and the 10th anniversary of its ratification by Lithuania
- ◆ Paris, 23 September: The Council of Europe Social Charter: 50 years on, what next?, international Conference marking the 50th anniversary, organised by the French Economic, Social and Environmental Council and the European Social and Economic Committee
- ◆ Kyiv (Ukraine), 29 September: Celebration of the 50th anniversary of the Social Charter organised by the Ukrainian Ministry of Social Policy
- ◆ Paris, 17-21 October: Exhibitions on the European Social Charter with video presentations and commentaries organised by the French Ministry of Health and Solidarity
- ◆ Lisbon (Portugal), 7 December: Workshop on the procedure of collective complaints, organised by the Ministry of Solidarity and Social Security

Events organised by universities

- ◆ Toulouse (France), 3 February: Conference “The European Social Charter, 50 years after 1961-2011” organised by the University of Toulouse
- ◆ Helsinki (Finland), 9 February: Academic Seminar on social rights in Europe, organised by the University of Helsinki
- ◆ La Rochelle (France), 10 June: “Journée des Doctorants”, event marking the 50th anniversary of the Social Charter
- ◆ Turin (Italy), 18 October: Lecture on the Social Charter at the Facoltà Scienze Politiche, Università Piemonte Orientale, organised by Prof. F. Ingravalle
- ◆ Istanbul (Turkey), 25-26 October: Symposium on social rights organised by the University of Kocaeli
- ◆ Metz (France), 2 November: Conference: “50 ans de Charte sociale européenne: droits de l’homme et valeurs au quotidien” presented during the “Université d’automne en Grande Région – Mobilité et valeurs européennes”

Events organised by non-governmental organisations

- ◆ Kirov (Russian Federation), 30-31 March: Seminar dedicated to the 50th anniversary of the Social Charter “European Social Charter – Protection of children and young people” organised by the Centre for Social Pedagogy of Kirov
- ◆ Cracow (Poland), 17-18 October: Exhibition on the Social Charter in the framework of the first Annual Convention of the European Platform against Poverty and Social Exclusion, organised by the NGO ATD Fourth World Poland
- ◆ Zagreb (Croatia), 11 November: Conference “50 years of the European Social Charter – accomplishments and social challenges for Croatia and Europe, organised by PRAGMA, a national NGO

Events organised by various external actors

- ◆ Seville (Spain), 27-28 April: Seminar on guaranteed social rights organised by the Andalusia Forum for Social Rights in collaboration with the Academic Network of the European Social Charter
- ◆ Strasbourg, 9 May: Seminar of experts organised by the International Institute of Human rights: “Réflexions autour d’une jurisprudence de la Charte sociale européenne”
- ◆ *Brussels (Belgium), 6 December*: Communication on the 50th anniversary of the European Social Charter – stocktaking and prospects, presented at the General Assembly of the Paneuropean Regional Council (PERC)
- ◆ Tbilisi (Georgia), 15 December: Conference “European Social Charter and Social Rights Protection in Georgia”, organised by the Public Defender in Georgia in the framework of Denmark’s Georgia Programme 2010-2013 on the promotion of judicial reform, human and minority rights

Appendix 9

Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter adopted by the Committee of Ministers on 12 October 2011 at the 1123rd meeting of the Ministers' Deputies

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 (“the Charter”);

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic

difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;
2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;
3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having

- done so to consider accepting the system of collective complaints;
4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;
 5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;
 6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;
 7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.

Appendix 10

A. Speech by the Secretary General of the Council of Europe Thorbjørn JAGLAND, at the ceremony on the occasion of the 50th anniversary of the Charter, 18 October 2011

Dear Vice-Prime Minister,
Presidents,
Excellencies,
Ladies and Gentlemen,

Over the last two years, we have celebrated the 60th anniversaries of the Council of Europe and of the European Convention on Human Rights.

These anniversaries underlined man's ability to overcome the destruction of a total war and to rebuild Europe by establishing fundamental human rights as legally-binding commitments.

The rights of the Social Charter, whose anniversary we are celebrating today – the right to housing, the right to social security, the right to a fair remuneration are all part of those fundamental rights: even though they are more difficult to achieve than civil and political

rights. We all know about freedom of expression, but do we all know that we have a right to a fair remuneration?

Drawing on their experience of the pre-war years, the founders of the Council of Europe knew that the right to to a fair remuneration was as fundamental as the right to freedom of expression.

They understood that economic crisis and poverty create conditions which can foster political extremism, violence and war. They therefore considered including both sets of rights in one single treaty.

This did not happen: the Human Rights Convention was adopted in 1950, while it took more than 10 years of difficult negotiations before the Social Charter was finally signed in Turin on 18 October 1961.

Much progress has been achieved since then. The adoption in the 1990s of the Revised Charter, and the collective complaints procedure, has made the Charter a true human rights mechanism with 43 States Parties.

Many States have ratified the Revised Charter over the last decade. I am pleased to inform you that Cyprus has just notified me of their acceptance of an additional 9 provisions of the Charter, an example which I hope other States will follow.

But let's be clear:

There is still a long way to go before social rights achieve the same recognition as civil and political rights. Social rights cannot be compared with what is afforded to civil and political rights. It is high time that States redouble their efforts to protect the rights set out in the Charter more effectively.

And it is high time that more States accept the collective complaints procedure. By doing so, we allow our social partners and civil society a role in enforcing social rights and strengthening democratic accountability.

This procedure has strengthened the rights for education for children with autism, housing rights for Roma, working time or protection against corporal punishment of children.

With more ratifications, this mechanism could be used further.

Dear friends,

During the 50 years of the Charter's existence, there have been poignant reminders of the transformative nature of the request for social rights:

- ♦ the emergence of Solidarnosc in Poland in 1980,
- ♦ the collapse of the communist block a decade later,
- ♦ and recently the popular uprisings in the Arab World.

And what these three examples also illustrate is the indivisible link between the social rights and fundamental freedoms.

Social rights are crucial not only to the dignity of individuals, they are part and parcel of what democracy is about. This is what shipyard workers in Gdansk and the protesters in Tunis, Cairo and other cities in the Arab world had in common – they wanted social justice and political freedom.

At present the world faces a serious economic crisis. We see more inequality, more poverty, more discrimination, and more xenophobia.

This crisis is a real test for the rights protected by the Charter, because these are human rights which must be guaranteed independently of whether budgets are austere or not. In other words, protecting social rights is not a policy choice. It is a moral obligation.

Allocutions at the ceremony of the 50th anniversary of the Charter

Social justice and freedom from want are fundamental preconditions for socially cohesive and economically stable societies and,

ultimately, for maintaining peace and stability. This was true fifty years ago, it is true today and will be true fifty years from now.

B. Allocution by Mr Sergiy Tigipko, Vice-Prime Minister, Minister for Social Policy in Ukraine, on behalf of the Ukrainian Chairmanship of the Committee of Ministers at the ceremony of the 50th anniversary of the Charter

The European Social Charter signed in Turin fifty years ago, in 1961, was at that time the second major human rights treaty adopted within the Council of Europe, after the European Convention of Human Rights. Both treaties arise from the decision of the Council of Europe to give binding force to the rights enshrined in the Universal Declaration of Human Rights.

The rights that States Parties are bound to protect and promote under the Social Charter system are currently known as “social rights”, and their common rationale is that human beings must have the right to enjoy decent living conditions as members of the social organised environment in which they live.

The underlying values of the Charter, such as human dignity, solidarity and non-discrimination, imply that as part of a community all persons should be guaranteed, for example, education, just working conditions and fair remuneration, that social and medical assistance should be provided to those who need it, that affordable housing should be guaranteed and that all forms of discrimination in

the enjoyment of social rights be eradicated. These values are important in promoting a sense of collective social responsibility in both the State and the people, something which for example is much needed in my own country.

The 50th anniversary of the European Social Charter is an occasion to have a constructive reflection on the future of this treaty and its supervisory mechanisms. In its history, the Charter has already undergone periods of important normative and institutional reforms, namely in the 1990s, when the protocol providing for a system of collective complaints and the Revised Charter were adopted. It is important to continue exploring avenues for further reforms of the Charter with a view to making the system even more effective.

Of particular importance is that States – besides those already Parties – accept the collective complaints procedure. And equally important that national trade unions and NGOs become more and more aware of its existence and usefulness as a tool to obtain from public authorities an effective

respect for social rights. Considering the virtues and good results produced up to now by the collective complaints procedure when it has been used, the low level of acceptance by States – only 14 – risks to substantially undermine the Charter system of social rights protection.

The reflection on other proposals, for instance related to changes in the reporting system, should also be carefully examined. If the proposed biennial reporting system were to raise the capacity of the European Committee of Social

Rights to focus on major problems in the implementation of the Charter, it should be welcome.

Let's hope that this 50th anniversary will identify steps forward so that the European Social Charter will continue being an effective control and prevention mechanism for social rights violations in Europe. In this respect, it would be desirable that the Declaration adopted by the Committee of Ministers on 12 October serve as a catalyst for any necessary changes and will give political impulse to the Social Charter.

C. Allocation by Mr Mevlüt Çavuşoğlu, President of the Parliamentary Assembly of the Council of Europe, at the ceremony of the 50th anniversary of the Charter

Secretary General, Dear colleagues,

Today we commemorate the 50th anniversary of the European Social Charter. This is a landmark convention, which has brought about great improvements in the lives of millions of Europeans. We are gathered here to reiterate our commitment to promoting the full enjoyment of social rights. We all share the respect to the dignity of the human being. We must ensure that this dignity and the rights which flow therefrom are respected by every entity in a state. Parliaments, governments and economic actors should all act to ensure the full enjoyment of social rights as a matter of priority. The European Social Charter is often compared to the European

Convention of Human Rights, whose 60th anniversary we celebrated last year. These two instruments are major milestones in the development of human rights in Europe.

One being devoted to social, economic and cultural rights, and the other – to political and civil rights, the two conventions together make a whole, giving full value to the principles of universality and interdependence of human rights. They should therefore be treated with equal value.

First of all, they should be treated with equal value when it comes to the number of ratifications. All member states should be bound by both instruments. I think it is no longer acceptable to make excuses when it comes to ratifica-

Allocutions at the ceremony of the 50th anniversary of the Charter

tion of the European Social Charter. All human beings have basic rights, and these include health, employment, and the right to be “free from want”, namely to be protected from poverty and exclusion.

All Council of Europe member states should, therefore, ratify the European Social Charter – in particular, the revised instrument of 1995 – as soon as possible.

Second, the two instruments must be treated with equal value when it comes to the protection by law of the rights enshrined therein at national level. This year in June, the Assembly discussed the role of parliaments in the consolidation and development of social rights in Europe.

Parliamentarians stressed the need to ensure the effective protection of social rights in domestic courts in all Council of Europe member states. We should train our judges, lawyers and civil servants to ensure that they apply the law, also as far as social rights are concerned.

Third, I would like to highlight the importance of states' acceptance of the collective complaints procedure, so as to reinforce social democracy and compliance with the Charter at national level.

Collective action is essential as it brings the values of democracy into the daily functioning of state structures. Collective complaints give people a voice. And this voice cannot and should not be ignored. Governments should not be afraid to be at the service of their people. Collective complaints are a litmus

test of how ready our governments are to listen. This is, really, a democracy test.

I would like to take this opportunity to thank the European Committee for Social Rights for its tremendous work for making the European Social Charter a living instrument, bringing the social rights standards in line with the legal developments in Europe. The Assembly reiterated in June this year that member states should respect their commitments under the charter and comply with the decisions of the Committee to ensure that social rights protection works in practice.

As was the case 50 years ago and ever since, I assure you, dear colleagues, that the Parliamentary Assembly will be at your side to ensure full support by European parliamentarians of the unique system of human rights protection provided by the European Social Charter together with the European Convention of Human Rights.

The Assembly will encourage national parliaments to use the Charter and the case-law of the European Committee for Social Rights when drafting national or regional legislation incorporating principles and rights which are enshrined in the Charter.

Finally, I would like to underscore the important role played by civil society organisations and trade unions which often act as watchdogs for the protection of social rights. We must make sure that their substantial contribution to making our societies better are

acknowledged and that their active participation is praised and supported.

Taking advantage of the past achievements, we shall strive to determine what our future, and that of our children, will be.

The 20th century was considered as the century of political and civil rights. A lot has been achieved, and a lot still remains to be done.

I am convinced that the 21st century will be the century of economic, social and cultural rights.

Let's make that happen!

Thank you.

D. Allocution by Mr Luis Jimena Quesada, President of the European Committee of Social Rights, at the ceremony of the 50th anniversary of the Charter

Your Excellencies, Ladies and Gentlemen,

I feel very honoured, it is a privilege, to take the floor on the occasion of this celebration of the 50th anniversary of the European Social Charter and I would like first of all to thank my colleagues of the European Committee of Social Rights as well as Mr. Régis Brillat and all the staff of the Department of the European Social Charter for making possible the task we perform together in favour of the effectiveness of human rights.

I also would like to express my gratitude to all actors and authorities having promoted the Charter especially during 2011: The Finnish Government launched in February the activities to mark the 50th anniversary by organising a first international seminar on the reform of the Charter; two weeks ago the Ukrainian chairmanship of the Committee of Ministers organised in Kyiv a ceremony on the

occasion of the 50th anniversary; yesterday an important round table organised by the Conference of INGOs took place here in Strasbourg; several national and European bodies as well as many Universities and NGOs have joined likewise these promotional efforts.

In any case, it is not time to proceed to a historical assessment of these 50 years, even if this assessment is rather positive: many national legislations and practices have been improved as a result of the interaction and mutual collaboration of all actors involved in the effective realisation of the rights recognised in the Charter.

It is not only time to feel the weight of history, but above all to feel the weight of our common present and future responsibilities. We cannot go on holding the European flag and the flag of indivisibility of human rights without consistency.

Allocutions at the ceremony of the 50th anniversary of the Charter

We have to continue to forge and heighten the public profile of the Social Charter and respect for it through the consistency of our joint efforts and the way we shoulder our shared responsibilities. The day-to-day implementation of the Social Charter depends not just on the work of the European Committee of Social Rights and the Social Charter Department but also on interaction inside and outside the Council of Europe.

In the context of this 50th anniversary, the Secretary General has shown a positive commitment to the Social Charter during the reform of the Council of Europe. The Human Rights Commissioner is always very positive about the indivisibility of all human rights and the Social Charter. The Parliamentary Assembly has repeatedly expressed its support for accession to the revised Charter and the collective complaints procedure and for the enforcement of the European Committee of Social Rights' decisions. Co-operation with the Committee of Ministers and the Governmental Committee of the Charter are gradually being stepped up with the same goal in mind. In this connection, the European Committee of Social Rights welcomes the positive desire expressed by the Committee of Ministers in its Declaration of 12 October 2011 on the 50th anniversary of the Social Charter. The social partners are one of the other keys to the effectiveness of the rights enshrined in the Charter.

We also need to improve the process of mutual enrichment with the European Court of Human Rights and the Council of Europe's monitoring bodies. Likewise, local and regional authorities are very important channels through which to secure the rights enshrined in the Social Charter (the presence of the Mayor of Turin among us today is highly symbolic). Outside the Council of Europe, interaction with the European Union and other international bodies (including the ILO, the High Commissioner for Refugees and the UN Committee on Economic, Social and Cultural Rights) are crucial for the effective implementation of social rights. Lastly, the Social Charter and the case-law of the European Committee of Social Rights depend on the contribution of national courts, mediators, the media and academics (through mechanisms including the Academic Network of the Social Charter and the International Institute of Human Rights).

Fifty is a very respectable age and an age of responsibilities. It is a good age to continue to deal very firmly with new challenges where it comes to protecting social rights, even – and indeed especially – in a context of crisis, and to do so for at least the next fifty years. The Social Charter deserves to be treated with respect by other institutions both inside and outside the Council of Europe. This is the best gift we can offer to the Charter itself and to the hopes and dreams of future genera-

Appendix 10

tions. A more social Europe implies, above all, more Social Charter, as the Charter is the best instrument with which to tackle the crisis and the best response to attempts to undermine the essential social dimension of human dignity.

Appendix 11

Letter addressed to the President of the Committee of Ministers containing proposals by the Committee on the reform of the reporting procedure

European Committee of Social Rights
Comité européen des Droits sociaux
The President/Le Président
M. Mykola Tochytskyi,
Ambassador Extraordinary
and Plenipotentiary
Chair of the Ministers' Deputies
Council of Europe
67075 STRASBOURG

Strasbourg, 30 June 2011

Dear Sir,

I am honoured to enclose the proposals drawn up by the European Committee of Social Rights concerning the possible reform of the control mechanism of the Charter based on national reports (see Appendix).

These proposals were drawn up by the Committee on the occasion of the 50th anniversary of the Euro-

pean Social Charter. They are based on Article 21 of the Charter and Article C of the revised Charter and take account of the Ministers' Deputies' previous decisions on the matter.

In preparing its proposals, the Committee has also drawn on the conclusions of the Seminar on the Reform of the European Social Charter held in Helsinki in February 2011 by the Finnish Ministry for Foreign Affairs to mark the anniversary of the Charter.

The Committee would be glad to provide the Ministers' Deputies and their Rapporteurs with any additional information.

Yours faithfully,

Luis Jimena Quesada

*Appendix
Proposals by the European
Committee of Social Rights on
the reform of the European
Social Charter reporting
procedure*

The European Committee of Social Rights believes that on the occasion of the celebration of the 50th anniversary of the European Social Charter steps could be taken to give greater prominence to one of the Council's core treaties and strengthen its impact and political relevance. It is important that such steps fit in with the political reform of the Council of Europe, in line, for instance, with the Committee of Ministers' decisions concerning the Council's priority areas of action and biennial budgeting.

In this connection, in accordance with the conclusions of the Helsinki Seminar on the Reform of the European Social Charter,¹⁸ it is proposed that the impact and political relevance of the conclusions adopted under the Charter control mechanism based on national reports be strengthened.

To this end, the European Committee of Social Rights proposes that the above-mentioned mechanism be reorganised as follows:

The States Parties shall send the Secretary General of the Council of Europe a biennial report on the application of such provisions of Part II of the Charter as they have accepted (whether it be the 1961 Charter or the revised Charter of 1996).

The European Committee of Social Rights shall issue its conclusions in the two years following the submission of the reports and in accordance with a timetable established in close co-operation with the Governmental Committee.

The States Parties shall draw up the report with reference to the theme(s) chosen by the European Committee of Social Rights in consultation with the States and, where appropriate, focusing on:

- ♦ *changes in legislation, regulations and/or practice;*
- ♦ *situations that have previously been the subject of findings of non-conformity by the European Committee of Social Rights;*
- ♦ *difficulties in implementing the Charter;*
- ♦ *specific provisions indicated by the Committee.*

There should be a transitional period between the current system and the new one. The European Committee of Social Rights suggests that arrangements could be as follows:

The last report under the current system should be submitted by 31 October 2011. The European Committee of Social Rights would publish its conclusions on this report before the end of 2012.

Provisionally, the first biennial report could be presented by the States in two parts, divided according to the following criteria: a first part, given over to the

18. The seminar was held by the Finnish Ministry for Foreign Affairs in co-operation with the Council of Europe. It took place in Helsinki on 8 February 2011.

Letter addressed to the CM on the reform of the reporting procedure

implementation of certain articles of the Charter referring to the situation of Roma and Travellers, to be submitted by 31 October 2012; a second part, relating to the implementation of the other articles

of the Charter, to be submitted by 31 October 2013. Subsequent reports would be presented by the States Parties every two years, beginning with 31 October 2015.

Appendix 12

Observations by the Committee on texts submitted by the Committee of Ministers

Observations on Parliamentary Assembly Recommendation 1959 (2011) "Preventive health care policies in the Council of Europe member states"

The European Committee of Social Rights (the "Committee") has taken note with great interest of Parliamentary Recommendation 1959 (2011) on preventive health care policies in the Council of Europe member states, which was forwarded to it for information and possible comments. It fully subscribes to the Recommendation's findings and all the requests made to the governments of the member states, particularly those to:

- ♦ adopt a "health in all policies" approach;
- ♦ improve measures to prevent health risks connected with life in the community (towns, housing, transport) and the workplace, rhythms of life, pollution and nutrition;

- ♦ incorporate preventive policies into integrated strategies to combat poverty and reduce inequalities;
- ♦ encourage the development of health education and reliable information on health issues to foster a sense of individual and collective responsibility for health among all population groups;
- ♦ pay particular attention to early prevention of addictions and mental illnesses, taking account of the role of the general economic and social environment in triggering such problems;
- ♦ ensure that preventive strategies and health care plans are properly co-ordinated.

These recommendations are in close harmony with those made repeatedly by the Committee in its conclusions during supervision

Appendix 12

cycles relating to the following Articles of the European Social Charter:

- ♦ Article 3 (the right to safe and healthy working conditions),
 - ♦ Article 7 (the right of children and young persons to protection),
 - ♦ Article 8 (the right of employed women to protection of maternity),
 - ♦ Article 11 (the right to protection of health),
 - ♦ Article 12 (the right to social security),
 - ♦ Article 13 (the right to social and medical assistance),
 - ♦ Article 15 (the right of persons with disabilities to independence, social integration and participation in the life of the community),
 - ♦ Article 17 (the right of children and young persons to social, legal and economic protection),
 - ♦ Article 19 (the right of migrant workers and their families to protection and assistance),
 - ♦ Article 23 (the right of elderly persons to social protection),
 - ♦ Article 30 (the right to protection against poverty and social exclusion) and
 - ♦ Article 31 (the right to housing).
- On several occasions the Committee has taken similar stands when ruling on collective complaints directly or indirectly raising questions connected with preventive health care. This was the case in particular with the following complaints:
- ♦ *Tehy ry and STTK ry v. Finland*, Complaint No. 10/2000, decision on the merits of 17 October 2001: radiation related work in the health sector must be considered as being dangerous and unhealthy within the meaning of Article 2§4 of the Charter, and workers in this sector must be entitled to additional paid holidays or reduced working hours;
 - ♦ *FIDH v. France*, Complaint No. 14/2003, decision on the merits of 8 September 2004: the fact that medical assistance for children of illegal immigrants is limited to situations involving an immediate threat to life, and that access of this group to the medical assistance scheme is only possible after having been on the territory for a certain length of time, is in breach of Article 17 of the Charter;
 - ♦ *Marangopoulos Foundation v. Greece*, Complaint No. 30/2005, decision on the merits of 6 December 2006: the failure of the state concerned to strike a reasonable balance between the interests of persons living in lignite mining areas and the general interest with regard to health is in breach of Article 11§§1, 2 and 3 of the Charter; the failure of the state concerned to monitor effectively the enforcement of regulations on health and safety at work is in breach of Article 3 of the Charter; insufficient safeguards for the compensation for miners because of the arduous

nature of their work amount to a breach of Article 2§4 of the Charter;

- ♦ *INTERIGHTS v. Croatia*, Complaint No. 45/2007, decision on the merits of 30 March 2009: discriminatory statements contained in educational material used in the ordinary school curriculum constitute a violation of Article 11§2 in the light of the non-discrimination clause.

However, if these decisions and conclusions are to contribute as much as might be wished to achieving the objectives to which the Parliamentary Assembly's recommendation rightly attaches so much importance, there will have to be a significant reinforcement of the means available to the competent authorities, particularly the Governmental Committee, as referred to in Article 27 of the European Social Charter as amended by the Turin Protocol and referred to in Part IV of the Revised European Social Charter, to supervise states' implementation of the changes in their legislation and/or practice they have been invited to make.

In addition to the goals set out in Recommendation 1959 (2011), the Committee is particularly concerned about the misinterpretation or lack of commitment, which, in its view, prevents the satisfactory implementation of the following:

- ♦ the provisions of Article 3§1 of the Charter aiming to prevent "injury to health arising out of, linked with or occurring in the course of work" through the

reduction of "causes of hazards inherent in the working environment" and the provisions of Article 7§10 pursuing the same aim with regard to children and young persons;

- ♦ the provisions of Article 11 aiming to prevent epidemic, endemic and other diseases, as well as to improve food hygiene.

As a result, in a number of Council of Europe member states there is still a regrettably high frequency of certain occupational diseases – and statistics probably do not give a full picture of the extent of the problem.

Similarly, perinatal and infant mortality are still abnormally high in several countries. A certain number of diseases (in particular heart diseases and other and related illnesses) are becoming more frequent by reason of a lack of measures to control the quality of nutrition as well as poor food hygiene.

On the first matter, the Committee presented particularly detailed arguments in the aforementioned decision on *Marangopoulos Foundation v. Greece* (Complaint No. 30/2005). The second matter has given rise to many conclusions of non-conformity where national situations do not respect the undertakings given by States Parties under the Charter.

More generally, effective preventive health care inevitably implies a combination of strategies focusing on services, on solvency of all the individuals or social groups which are supposed to benefit from these services, and on prospecting based

on the work of public or private institutions, particularly associations and other voluntary groupings, capable of contributing to the awareness and involvement of all those concerned. In some areas, such as epidemic diseases, prevention policies may completely miss their goal if they leave certain social groups exposed. All of this means that, in a quite different way than in the treatment field, but just as decisively, the lack of an appropriate response to needs, either in the form of services themselves or coverage of the cost of access to these services for all or part of the population, may undermine the success of the strategies implemented. As a result the Committee is concerned about the persistence in many countries of substantial inequalities in service provision or financial coverage, the first being mainly geographical in nature while the second is related to social issues or the patient's status as a

foreign national (whether or not legally present in the country). These inequalities are incompatible with a prevention policy worthy of the name. Excluding irregular aliens or foreign nationals who are in the country lawfully but do not satisfy a length-of-residence requirement from access to services contributing to preventive health care is not only counterproductive, but may also in certain circumstances be contrary to the Charter (see *FIDH v. France*, Complaint No. 14/2003, decision on the merits of 8 September 2004, in particular paras. 31-32).

One of the basic virtues of a proper preventive health care policy is that it reflects the transition from a purely curative approach to health problems to a public health policy approach. Public health cannot be compartmentalised.

Observations on Recommendation 1963 (2011) of the Parliamentary Assembly “Combating poverty”

The Committee of Ministers has asked the European Committee of Social Rights to forward any comments it might have on Recommendation 1963 (2011) of the Parliamentary Assembly. In reply to this request, the Committee wishes to make the following observations:

The Committee fully subscribes to the Recommendation's findings and the requests made to the Committee of Ministers, particularly those to:

- ♦ take all necessary measures to promote the ratification and implementation of the Revised European Social Charter and its protocols and to enable supervision of the implementation of the Revised Charter under Article C thereof, including through the collective complaints procedure;
- ♦ ensure, in particular, that Article 30 of the Revised European Social Charter becomes part of its core provisions under Article A, paragraph 1.b, enabling policy formulation and

progress review in combating poverty. All Council of Europe member states should agree to be bound by the provisions of Article 30.

The Committee emphasizes the importance of the collective complaints and national reporting procedures. It notes that only 15 Council of Europe member states are bound by the provisions of Article 30. It reiterates that the right to protection against poverty and social exclusion is one of the fundamental rights protected under the Revised Charter and that concerted efforts of states to accept and secure this right are therefore pertinent (see §18, General Introduction, Conclusions 2009, Volume 1).

In this sense, the Committee considers that living in a situation of poverty and social exclusion violates the dignity of human beings and affects the indivisibility of fundamental rights, which

imposes on States an obligation to “promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance” (decision on the merits of 9 December 2009 in Complaint No. 51/2008, *CEDR c. France*, §§ 93 et 99), as well as the implementation of a positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of minorities and vulnerable persons in the general culture, media or the different levels of government (decision on the merits of 25 June 2010 in Complaint No. 58/2009, *COHRE v. Italy*, § 107).

In conclusion, the Committee invites States Parties of the Charter which have not yet accepted Article 30 and the collective complaints procedure to do so on the occasion of the 50th anniversary of the Charter.

Observations on Recommendation 1970 (2011) of the Parliamentary Assembly “Protecting migrant women in the labour market”

The Committee of Ministers has asked the European Committee of Social Rights to forward any comments it might have on Recommendation 1970 (2011) of the Parliamentary Assembly. In reply to this request, the Committee wishes to make the following observations:

The European Committee of Social Rights fully subscribes to the requests made to the Committee of Ministers. It welcomes the broad approach of the Recommendation

reflecting awareness of the situation to which migrant women are exposed: they are exposed, at least, to double discrimination, as women and as migrants, both because of their group of origin and the host society. They are also victims, more than others, of trafficking and domestic violence.

The reference to these international treaties, notably the European Convention on the Legal Status of Migrant Workers (ETS No. 93) and the Convention on

Action against Trafficking in Human Beings (CETS No. 197); Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210) as well as the ILO Convention C189 on domestic workers adopted in June 2011 – accompanied by the requested urge to the Council of Europe member states reflects the awareness of the Parliamentary Assembly that only a combined and comprehensive application of all the relevant treaties may address the compound effect of the multiple vulnerability of migrant women.

The Committee notes that the Recommendation does not mention the Revised European Social Charter. It wishes to emphasise that the Charter is not only one among the relevant treaties but it is the only one which tackles from various angles the issue of women's rights and the various types of discrimination they may be victims of, granting a complex and comprehensive protection.

Article 4§3 of the Charter acknowledges the right of women and men workers to equal pay for work of equal value. The Committee refers in this regard to its comments on Recommendation 1907(2010) of the Parliamentary Assembly “The wage gap between women and men” and on Recommendation 1911(2010) of the Parliamentary Assembly “Women and the Economic and Financial Crisis”.

Article 8 of the Charter provides for the right of employed women to protection of maternity.

Under Article 16 on the right of the family to social, legal and economic protection the Committee examines the legal equality of spouses as well as the protection of women against domestic violence, both in law (appropriate measures – including restraining orders – and punishments for perpetrators, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (recording and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims).

Article 20 of the Revised Charter provides for the right to equal opportunities and equal treatment in matters of employment and occupation regardless to sex, which specifically address the situation of women,

Article 26 of the Charter guarantees to all workers the right to protection of their dignity at work and requires from States to adopt measures to prevent and properly sanction sexual harassment.

Unequal division of power and responsibilities in the family is a major cause not only of discrimination against women on the labour market, but also of their limited social and political participation. The Charter also provides for the right to equality of opportunity and treatment for men and women

workers with family responsibilities and between such workers and other workers (Article 27).

Article E of the Revised Charter reads: “The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

In its case law, the Committee has stressed that compliance with the principle of equal treatment requires, in some cases, the same treatment and, in other cases, taking positive account of relevant differences as well as taking adequate steps to guarantee genuinely equal opportunities to all. Affirmative measures are needed to eliminate inequalities originating from the social consequences of historic discrimination and from existing stereotypes.

The Committee established in its case law that the examination of compliance with the Charter must be extended to domestic employees as well as workers in family enterprises including workers who are related to the owner, with special regard to maternity rights and health and safety rules.

The European Social Charter stipulates that most of the rights that it guarantees apply to migrant workers provided they are nationals of Parties, lawfully resident or working regularly within the territory of the Party concerned. Specifically, Articles 18 and 19 contain rights governing exclusively the rights of migrant workers and their

families, respectively their right to engage in a gainful occupation in the territory of other Parties and their right to protection and assistance. This also includes the right to family reunion. In this respect, States are required to prove absence of discrimination, direct or indirect, in terms of law and practice and should take practical measures to remedy cases of discrimination. In other words, it is not sufficient for a government to prove the absence of discrimination merely in terms of the law (Conclusions II, p. 68 and Conclusions III, p. 92).

The Committee recalls that it has already stated that, when confronted with heterogeneous groups which include nationals of state parties to the Charter and third country nationals or persons without residence permit, “it is extremely complex to distinguish to whom the protection guaranteed by the Charter and its Appendix applies without restrictions” and that “the lack of identification possibilities should not lead to depriving persons fully protected by the Charter of their rights under it” (*Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, decision on the merits of 25 June 2010, §33).

The situation of migrant women is of special interest to the European Committee of Social Rights. It recalls that it has underlined that: “the right to family reunion provided for in Article 19§6 must be regarded as conferring on each of its beneficiaries a personal right of residence distinct from the

original right held by migrant worker” (Conclusions XVI-1, Netherlands). Thus, a migrant woman who is granted her residence permit on the basis of family reunion must be able to remain on the territory of the state party even if she separates from her spouse.

The Committee underlines that while the system for the protection of social rights provided for by the European Social Charter does not apply to migrant workers who, though being within the jurisdiction of the States Parties and resident on their territory, are third State nationals (see paragraph 1 of the Appendix to the Charter), the Committee also stated that this restriction “attaches to a wide variety of social rights and impacts on them differently” and that “such restriction should not end up having unreasonably detrimental effects where the protection of vulnerable groups of persons is at stake” (*Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, decision on the merits of 20 October 2009, §37). The Committee also specified that “part of the population at stake which does not fulfill the definition of the Appendix cannot be deprived of their rights linked to life and dignity under the Charter” (*Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, decision on the merits of 25 June 2010, §33).

In this context the Committee holds increasingly timely a reconsideration of the harmony of the

rigid restriction on the personal scope of the Charter with the international obligation of the Member States on protection of human rights. For this reason it particularly welcomes the spirit of the Recommendation and the urge to member states of the Council of Europe not only to ratify the Convention on Preventing and Combating Violence against Women and Domestic Violence as soon as possible but also to ensure that it is applied to all women without discrimination, whether their residence status is legal or not.

The Charter is special not only in terms of the multiple coverage of the rights guaranteed, but also through its double mechanism of supervision: the monitoring system based on national reports on the one hand and the collective complaints procedure on the other.

In conclusion, protecting migrant women in the labour market raises a whole series of issues which would be very useful to look into in more detail. Without waiting for such work to be carried out and with a view to enhance protection of migrant women in the labour market, the Committee invites States Parties of the Charter which have not yet accepted Articles 4§3, 8, 16, 18, 19, 20, 26 and 27 and the collective complaints procedure to do so on the occasion of the 50th anniversary of the Charter.

Observations on Recommendation 1976 (2011) of the Parliamentary Assembly “The role of parliaments in the consolidation and development of social rights in Europe”

The Committee of Ministers has asked the European Committee of Social Rights to send it any comments it may have on Recommendation 1976 (2011) of the Parliamentary Assembly. In reply to this request, the Committee would make the following observations:

1. The Committee shares the Parliamentary Assembly's concern that the largest possible number of states should accede to the revised Social Charter and its protocols, and agree to comply with the collective complaints procedure. It firmly believes that national parliaments can play a decisive role in this respect, not only by ratifying the commitments entered into by the relevant national authorities but also by urging these authorities to take the necessary action. In the Committee's opinion, the satisfactory implementation of the commitments accepted also depends, to a large extent, on the enactment of appropriate legislation, which may be proposed by the government or, as in many countries, by one or more members of the national parliamentary assembly. Using such a right of initiative could only be beneficial, either in promoting the implementation of the commitments accepted, which, in the absence of legislation, may give rise to difficulties, or in removing obstacles

to implementation resulting from the legal situation, in particular those noted by the Committee. More generally speaking, it is part of parliaments' duty, in the context of their supervision of governments, to ensure compliance with existing international commitments, in particular in the field of social rights, including during debates on financial legislation.

2. The European Committee of Social Rights has, in matters concerning the right to health, and in particular the right to a healthy environment, in the context of the supervision cycles and when examining various collective complaints, in particular *Marangopoulos Foundation v. Greece* (No. 30/2005) developed extensive case law. There would be no drawbacks to consolidating this case-law in a Protocol to the Charter, particularly in matters concerning patients' rights, bioethics, social coverage of long, expensive treatment at different times of life, and emergency care, without going into too much detail.
3. The involvement of parliaments, in particular in the Council of Europe and the European Union, in the preparation of new legal instruments is undoubtedly a means of ensuring that the parties concerned have a better understanding of the innovations

planned and of the obstacles that may arise in seeking to improve existing legislation and practices. What applies to national parliaments also applies to the Parliamentary Assembly of the Council of Europe and to strongly decentralised states where there are provincial or regional deliberative assemblies with varying powers similar to those of national parliaments. The European Committee of Social

Rights therefore obviously approves of this proposal.

4. What applies to national parliaments also applies to the Parliamentary Assembly of the Council of Europe and to strongly decentralised states where there are provincial or regional deliberative assemblies with varying powers similar to those of national parliaments.

Observations on Recommendation 1977 (2011) of the Parliamentary Assembly “More women in economic and social decision-making bodies”

1. The European Committee of Social Rights takes note with interest of Recommendation 1977 (2011) More women in economic and social decision-making bodies adopted by the Parliamentary Assembly on 23 June 2011, which was forwarded to it for information and possible comments. It shares the view that more efforts need to be made at the national level to achieve better representation of women in decision-making positions in both the private and public sectors. The Committee also fully subscribes to the request made to the Committee of Ministers to ask States to ensure equal opportunities for women and men in access to employment and promotions, and the reconciliation of private and professional life.
2. The Committee takes this opportunity to underline that several provisions of the Euro-

pean Social Charter (the Charter) have a direct and crucial bearing on the position of women in employment in this regard:

- ♦ First and foremost, Article 20 guarantees the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on grounds of gender. This right is protected at all stages of working life – access to employment, remuneration and other working conditions, including dismissal, vocational training and promotion. The right to equality should be laid down in law in an explicit and sufficiently detailed manner, and appropriate remedies must be available in case of allegations of discrimination as well as adequate compensation.
- ♦ In addition, Article 27 secures the right of workers with family responsibilities to equal opportunities and equal treatment.

This implies that States take measures, *inter alia*, to enable workers with family responsibilities, more often than not women, to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities; to take account of their needs in terms of conditions of employment; and to develop or promote services, public or private, in particular child day care services and other child-care arrangements. With a view to ensuring the exercise of the right to equality of opportunity and treatment for workers with family responsibilities, States must provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child. They must also ensure that family responsibilities are not a valid reason for termination of employment;

- ♦ Other provisions are also of great relevance in the matter, such as Article 8 on the protection of maternity for female workers, and Article 26 which prohibits any form of harassment at work. It should be reiterated that the Charter prohibits discrimination based, *inter alia*, on gender in the enjoyment of all rights encompassed in it (Article E).
3. The Committee stresses that States should thus be strongly encouraged to accept all of the aforementioned provisions if they have not done so yet, and to fully implement them in order to achieve better equality between women and men in employment, thereby creating better conditions for a stronger representation of women in decision-making positions.

Observations on Recommendation 1978 (2011) of the Parliamentary Assembly “Towards a European framework convention on youth rights”

The European Committee of Social Rights takes note with interest of Recommendation 1978 (2011) Towards a European framework convention on youth rights adopted by the Parliamentary Assembly on 24 June 2011, which was forwarded to it for information and possible comments. It shares the view that more efforts need to be made at the national level to achieve better implementation of youth rights. The Committee also fully subscribes to the request made to the Committee of Ministers to ask

States to take measures to facilitate young people’s access to fundamental rights as enshrined in the European Convention on Human Rights and the Revised European Social Charter.

The Committee takes this opportunity to underline that several provisions of the European Social Charter (the Charter) have a direct and crucial bearing on the youth rights in this regard:

Firstly, many of the rights guaranteed by the Charter have a specific relevance to youth; for

example Article 16 (right of the family to social, legal and economic protection) which protects the rights of young persons as family members and Article 11 (right to protection of health);

Secondly, the Charter contains specific rights relating exclusively to youth; Article 7 (right of children and young persons to protection) and Article 17 (right of children and young persons to social, legal and economic protection).

Youth rights in fields such as education and training (Article 7, 9, 10, 17), employment (Article 1, 2, 3, 4, 7, etc.), housing (Article 16 and 31), health and the right to a

healthy environment (Article 11) are already fully covered by the Revised European Social Charter and states having accepted the above-mentioned provisions are under the monitoring system set up by the Charter.

The Committee stresses that States should thus be strongly encouraged to accept all of the aforementioned provisions if they have not done so yet, and to fully implement them in order to achieve better implementation of youth rights with the aim of a wider benefit of young persons to their rights.

Observations on Recommendation 1985(2011) of the Parliamentary Assembly “Undocumented migrant children in an irregular situation: a real cause for concern”

The European Committee of Social Rights has noted with great interest Parliamentary Recommendation 1985 (2011) on “Undocumented migrant children in an irregular situation: a real cause for concern”; it shares the concerns it expresses and agrees with the policies it proposes to the Committee of Ministers and the relevant inter-governmental committees.

However, it believes it necessary:

(a) to pinpoint more precisely than the recommendation does the causes of the “irregular situation” in which many migrant children find themselves;

(b) consequently, to draw a greater distinction between the different types of strategies which the various causes of the irregular situation call for;

(c) to take account of the differing approaches reflected in the United Nations Convention on the Rights of the Child, which is rightly referred to in the recommendation several times, and in the European Union documents dealing with the question, particularly those relating to unaccompanied minors.

(1) The causes of the “irregular situation” in which many migrant children find themselves are as follows:

- ♦ firstly, what is commonly referred to as “de facto family reunion”, in other words, the arrival in the country in which one or both of their parents are residing, of children who may ultimately be entitled to family reunion, even though the conditions laid down by the legislation of the country of residence

(such as a period of prior residence by the parent or housing or income requirements) have not yet been fulfilled;

- ♦ secondly, though less frequently, migration, or the extension of an entire family's initially lawful period of residence in a country, deemed subsequently to be unlawful;
- ♦ thirdly, and more and more frequently, the migration of unaccompanied minors, who may or may not have already been on their own in their country of origin, in connection either with persecution for political, ethnic or religious reasons or with the extreme poverty prevailing in their country.

(2) The preventive or curative remedies called for by the situations described above in the spheres of education, health and housing do, of course, vary depending on their nature

- ♦ cases of de facto family reunion would no doubt be less frequent if appropriate measures were taken:

- to avoid imposing manifestly excessive qualifying periods of residence on parents for entitlement to official family reunion;

- to provide parents wishing to be joined by their families with enough assistance to acquire housing in keeping with the family's needs, at a cost that is compatible with their income and in good time;

- to see to it, in cases of de facto reunion owing to recurring difficulties in fulfilling the conditions for official reunion, that the situa-

tion is regularised quickly so that the persons concerned can have access to the social benefits and services reserved for legal migrants;

more generally speaking, unlawful residence by children or their families should never be regarded as justification for:

- refusing to allow these children to go to school;

- refusing to grant these children, if not the right to social security, then at least the right to subsidiary social protection, including medical assistance, taking an appropriate form not restricted solely to emergency care or treatment of life-threatening conditions as well as access to child protection establishments and services in case of threats to their physical or mental health;

- failing to take account of the accommodation, if not the housing, needs of the persons concerned.

It is also important to note that, more than anyone else, unaccompanied young migrants, whether minors or young adults, need protection from the forms of sexual or economic exploitation to which they may be exposed, and that current protection measures are often very ill-defined and should be improved to ensure that the minors or young adults concerned are not subjected to serious and irreversible physical harm, particularly when, as a result of these inappropriate methods, they run away or find themselves in other unfortunate circumstances.

This is what the European Committee of Social Rights has repeatedly pointed out in its conclusions on Articles 7 (right of children and young persons to protection), 11 (right to health), 13 (right to social and medical assistance), 14 (right to benefit from social welfare services), 17 (right of mothers and children to social and economic protection), 19 (right of migrant workers and their families to protection and assistance), 30 (right to protection against poverty and social exclusion) and 31 (right to housing) and emphasised in particular in its decisions on *FIDH v. France and Defence for Children International v. the Netherlands*.

3) In order to draw attention to the above concerns, the Council of Europe cannot just simply cite principles or appeal to the States Parties to its various conventions. It cannot overlook the fact that several European Union documents of a variably binding nature advocate principles which tend to be significantly less demanding whether simply different or in some cases even in conflict.

This is particularly the case where family reunion and unaccompanied minors are concerned.

These were the subjects of the following instruments:

- ♦ the European Pact on Immigration and Asylum of September 2008;

- ♦ the directive on the return of illegal migrants of June 2008 (the “return directive”);
- ♦ the family reunification directive;
- ♦ the Action Plan on Unaccompanied Minors (2010–2014), which states that such minors are not even covered by the guarantees in the return directive and may rely only on those of the EU Charter of Fundamental Rights, the instruments of the United Nations and the Council of Europe, and national legislation.

However, the forced repatriation agreements negotiated by several EU member states with the governments of countries of origin fail to offer all the guarantees that the Council of Europe is already in a position to demand, and legal remedies are mostly non-existent or inaccessible to those concerned.

Furthermore, the use of detention procedures, which the Parliamentary Assembly wishes quite rightly to restrict as much as possible, is becoming increasingly widespread in these circumstances.

Consequently, the relevant Council of Europe bodies should seek to promote legal remedies that are accessible to minors subject to measures that are incompatible with the principles enshrined in the instruments accepted by its members, and to establish appropriate dialogue with the European Union.

Appendix 13

Judicial decisions referring to the European Social Charter in 2011

National courts

Germany

- ♦ *Bundesarbeitsgericht*, judgment of 19 January 2011, 3 AZR 29/09: pensions, employment periods, indirect discrimination – reference to Article 6 of the Charter.

Spain

- ♦ Supreme Court (Administrative Chamber): Judgment of 21 November 2011 (cassation No. 6739/2009): function of representation by trade unions and possibility of appeal against a general provision adopted by a regional government (reference to Article 5 of the Charter).
- ♦ High Court of Justice of Valencia Region (Administrative Chamber): Judgment No. 179 of 8 March 2011 (application No. 2256/2008): material scope of the subject “education for citizenship” (reference to decision on the merits of 30

March 2009 on Complaint No. 45/2007, *INTERIGHTS v. Croatia*).

- ♦ High Court of Justice of Madrid Region (Social Chamber): Judgment No. 312 of 14 April 2011 (appeal No. 5200/2010): notion of “mobbing” based on the Revised Social Charter (Article 26 – dignity at work).

France

- ♦ Cour de cassation – Chambre sociale, judgment No. 1656 of 29 June 2011: annual working days system
- ♦ Cour de cassation – “Cassation partielle”, judgment No. 276 FS-P+B+R of 31 January 2012: annual working days system

The Netherlands

- ♦ LJN: BP0917, Rechtbank Utrecht, SBR 10/4245 en SBR 10/4246, of 14 January 2011: administrative law, lawful residence, right to assistance – refe-

rence to decision on the merits of 20 October 2009 on Complaint No. 47/2007, *DCI v. the Netherlands*

- ♦ LJN: BP6172, Centrale Raad van Beroep, 09/2080 WWB, of 9 February 2011: social assistance – reference to Article 13 of the Charter

European Court of Human Rights

- ♦ Case *Stummer v. Austria*, application No. 37452/02, judgment of 7 July 2011: prison work – reference to the Committee’s interpretation of Article 1§2 in respect of prison work.
- ♦ Case *Heinisch v. Germany*, application No. 28274/08, judgment of 21 July 2011: dismissal – reference to Article 24 of the Charter
- ♦ LJN: BQ1159, Rechtbank Utrecht, SBR 08/1734, SBR 09/136 en SBR 09/137, of 1 April 2011: administrative law, extension of collective agreements – reference to Article 6 of the Charter.
- ♦ Case *Ponomaryovi v. Bulgaria*, application No. 5335/05, judgment of 28 November 2011: access to education, school fees – reference to Article 17§2 of the Charter.

Appendix 14

Bilateral meetings (third Summit Action Plan), joint programmes CoE/EU, meetings on non-accepted provisions organised in 2011

Meetings in the framework of the third Summit Action Plan

- ◆ Podgorica (Montenegro), 31 March: Seminar on the Social Charter and on the drafting of the first report on its application by Montenegro
- ◆ Moscow (Russian Federation), 20 September: Seminar on the drafting of the first and the second reports on the application of the Social Charter by the Russian Federation

Meetings in the framework of the joint programmes Council of Europe/European Union

- ◆ Kyiv (Ukraine), 15-16 February: TRES seminar for key actors on the children's rights standards of the European Social Charter (revised) and other instruments

Meetings on non-accepted provisions of the Charter

- ◆ Andorra-la-Vieille (Andorra), 18 February
- ◆ Vilnius (Lithuania), 21 June
- ◆ Kyiv, (Ukraine) 30 September
- ◆ Chisinau (Republic of Moldova), 1 December

Appendix 15

Meetings and training sessions, conferences and colloquies

Main meetings organised by the Council of Europe

Ministerial Conference

- ♦ Lisbon (Portugal), 29-30 September: 9th Conference of Health Ministers of the members countries of the Council of Europe on the theme “Child-friendly health care: building a healthy future for and with children”

Meetings of Presidents of monitoring bodies

- ♦ Paris, 13 May

- ♦ Strasbourg, 19 December

Other

- ♦ Odessa (Ukraine), 25 October: Seminar on children’s rights, organised by the Directorate General of Democracy (DG II)
- ♦ Strasbourg, 29-30 November: Seminar on recent case-law of constitutional courts in the field of social security, organised by the Directorate General I – Human Rights and Rule of Law

Events organised by intergovernmental organisations

- ♦ Strasbourg, 15-16 June: Joint Council of Europe/UNHCR Colloquium on the Role of Regional Human Rights Courts in Interpreting and Enforcing Legal Standards for the Protection of Forcibly Displaced Persons
- ♦ Warsaw (Poland), 21-22 November: Fundamental Rights Conference on Dignity and rights of irregular migrants organised by the European Agency for Fundamental Rights (FRA)
- ♦ Geneva (Switzerland), 5 December: Meeting of the ILO Committee of Experts on the application of Conventions and Recommendations: adoption of the conclusions on the European Code of Social Security and its Protocol

Conferences organised by universities (out of the context of the 50th anniversary)

- ♦ Paris, 18 February: Seminar “European and Comparative Social Law”, University Paris 1 Panthéon-Sorbonne
- ♦ Paris, 25-26 May: International Colloquium on the Justiciability of Social Rights: “Vecteurs et résistances”, *Collège de France*
- ♦ Madrid (Spain), 1-3 June: Colloquy on the role of ombudspersons in the protection of human rights, University Alcalá de Henares
- ♦ San Sebastian (Spain), 8-10 June: International colloquy: “Human rights as a hallmark of European policies”, University of San Sebastian
- ♦ Venice (Italy), 27 September: Lecture on the Social Charter at the European Inter-University Centre for Human Rights and Democratisation – European Master’s Degree (EMA)
- ♦ Buenos Aires (Argentina), 2 December: Lecture on the Social Charter at the Colegio Público de Abogados de la Capital Federal (Law Society of Buenos Aires)

Events organised by non-governmental organisations

- ♦ Paris, 27 March: Working day “Extreme poverty and human rights” organised by ATD-Quart Monde and the “*Commission nationale consultative des droits de l’homme*” (CNCDH)
- ♦ The Hague (the Netherlands), 19 May: Housing Rights Watch Conference “Migration and housing rights in Europe”
- ♦ Khabarovsk (Russian Federation), 21-22 June: Fifth international Forum of social workers from Siberia and the Far East: “Modernising social services will help us to improve the quality of life”
- ♦ Berlin (Germany), 2 December: Conference on the Effects of the Financial Crisis on Local Public Services, organised by EURO-FEDOP

Various meetings

- ♦ Valencia (Spain), 30 March: Hearing “Integrating immigrants in regions and cities” organised by the European Social and Economic Committee and the Generalitat Valenciana
- ♦ Paris, 5 April: Exchange of views with the *Commission Nationale Consultative des Droits de l’Homme* (CNCDH)
- ♦ Kyiv (Ukraine), 20-21 September: Conference on the prevention of human rights violations, organised by the Ministry of Justice of Ukraine in co-operation with the Directorate of Monitoring (DGHL) of the Council of Europe in the framework of Ukraine’s Chairmanship of the Committee of Ministers

Meetings and training sessions, conferences and colloquies

- ♦ Limassol (Cyprus), 13-14 October: Forum for the Future of Democracy – The Interdependence of Democracy and Social Cohesion: strengthening representation and democratic participation through public dialogue and civic engagement, organised by the Republic of Cyprus
- ♦ London (the United Kingdom), 21 October: Human Rights Symposium: Realising economic, social and cultural rights in the United Kingdom, organised by the Law Society
- ♦ Monaco, 20 November: Conference co-organised by the Principality of Monaco and the Council of Europe, in the framework of the Strategy of the Council of Europe for children rights 2012-2015: “Construire une Europe adaptée aux enfants – changer une vision en réalité”
- ♦ Dublin (Ireland), 30 November: Seminar on the drafting of the national reports, organised by the Irish authorities in co-operation with the Department of the European Social Charter and the European Code of Social Security
- ♦ Brussels (Belgium), 15 December: Seminar on “the reporting systems in the application of international conventions on social rights throughout time”, organised by the Federal Public Service for Labour, Employment and Social Dialogue

Appendix 16

Books and articles on the Social Charter published in 2011

Books

- ♦ **BENELHOCINE Carole**
La Charte sociale européenne
éditions du Conseil de l'Europe,
2011, 150 p., ISBN 978 92 871
7130 6
- ♦ **Conseil de l'Europe**
*Développements récents de la
procédure de réclamations
collectives de la Charte sociale
européenne*
*Recent developments in the
collective complaints procedure
of the European Social Charter*
(bilingue)
- ♦ **JOHANSON Niko and MIKKOLA
Matti (editors)**
*Reform of the European Social
Charter Seminar presentations
delivered on 8 and 9 February
2011 in Helsinki*
Publication of the Ministry for
Foreign Affairs of Finland, 2011,
90 p., ISBN 978 951 724 943 0
- ♦ **Actes de l'Atelier du 29
novembre 2010 en l'honneur de
M^{me} Polonca KONCAR, 2011,
130 p.**

Articles and communications (by alphabetical order of authors)

- ♦ **AKANDJI-KOMBÉ
Jean-François**
« Le forfait en jours n'est pas
sorti de la zone de turbulence –
A propos de l'arrêt du 29 juin
2011 »
*La Semaine Juridique – Edition
Sociale*, n° 28, 12 juillet 2011
- ♦ « Réflexions sur l'efficacité de la
Charte sociale européenne : à
propos de la décision du Comité
européen des droits sociaux du
23 juin 2010 »
Revue du Droit du Travail, n° 4,
avril 2011
- ♦ **AUBERT-MONPEYSSEN Thérèse**
« Une justiciabilité accrue de la
Charte sociale européenne »
Journal de Droit Européen, n°
180, juillet 2011

- ♦ **BERNARD Nicolas**
« Réparer des privations de propriété (occasionnés sous le régime communiste) sans en créer d'autres – Comité européen des droits sociaux, *Fédération européenne des associations nationales travaillant avec les sans-abri (FEANTSA) c. Slovénie*, 8 décembre 2009 »
Revue Trimestrielle des Droits de l'Homme, 22^e année, n° 85, janvier 2011
- ♦ **DEMIRAJ Rovena et SCAPPUCCI Gioia**
“Il diritto all’abitazione di Rom e Sinti: gli obblighi dell’Italia alla luce della giurisprudenza del Comitato europeo dei diritti sociali relativa all’articolo 31 della Carta sociale europea (riveduta)”,
La condizione giuridica di Rom e Sinti in Italia, tomo II, a cura di P. BONETTI, A. SIMONI e T. VITALE, Giufre Editore, 2011, ISBN 88 14 15676X
- ♦ **FAVENNEC-HERY Françoise**
« Défense et illustration du forfait-jours »
Semaine sociale Lamy, 30 mai 2011, n° 1494
- ♦ **GADKOWSKI Aleksander**
« Les réclamations collectives dans le système de la Charte sociale européenne »
Cahiers genevois et romands de sécurité sociale, CGSS n° 46 – 2011, Faculté de droit, Université de Genève, p. 9-61
- ♦ **GUIGLIA Giovanni**
“Leguaglianza tra donne e uomini nella Carta sociale europea”
AIC – Associazione italiana dei costituzionalisti, n° 4/2011, 11/10/2011
- ♦ “Il diritto all’abitazione nella Carta sociale europea : a proposito di una recente condanna dell’Italia da parte del Comitato europeo dei diritti sociali”
AIC – Associazione italiana dei costituzionalisti, n° 3/2011, 19/07/2011
- ♦ **JIMENA QUESADA Luis**
“Crónica de la Jurisprudencia del Comité Europeo de Derechos Sociales - 2011”
Revista Europea de Derechos Fundamentales, No. 18, 2^o SEMESTRE 2011, pp. 329-352
- ♦ “Educación sexual y no discriminación en la jurisprudencia del Comité Europeo de Derechos Sociales”
Revista Europea de Derechos Fundamentales, n° 17/ 1^{er} semestre 2011, p. 197-219
- ♦ **MACHULSKAYA Elena**
“European Social Charter 1961: 50 years in force – achievements and new tasks”
Labour Law in Russia and abroad No. 4, 2011. P.53-55.
- ♦ “European Social Charter (revised) 1996 and obligations of Russia on its realization”
Labour Law in Russia and abroad No. 3, 2011. P.6-10.
- ♦ **MARGUENAUD Jean-Pierre et MOULY Jean**
« Le Comité européen des Droits sociaux, un laboratoire d’idées sociales méconnu »
Revue du Droit Public et de la Science Politique en France et à l’Etranger, n° 3, mai 2011

Books and articles on the Social Charter published in 2011

- ♦ **MINE Michel**
« Le droit du temps de travail à la lumière de la Charte sociale européenne »
Semaine sociale Lamy, n° 1475, 17 janvier 2011, p. 7-11
- ♦ **MORAND Michel**
« Les forfaits-jours et la Charte sociale européenne »
La Semaine Juridique – Edition sociale, n° 19, 10 mai 2011, p. 10-13
- ♦ **NOLAN Aoife**
“Aggravated violations, Roma housing rights and forced expulsions in Italy, recent developments under the European Social Charter collective complaints system”
Human Rights Law Review, Volume 11 Issue 2 (2011), p. 343-361
- ♦ **SCARLATTI Paolo**
“Tutela dei diritti fondamentali e principio di non discriminazione in una recente decisione del Comitato Europeo dei Diritti Sociali”
Rivista telematica giuridica dell’Associazione Italiana dei Costituzionalisti, n° 1/2011
- ♦ **SWIATKOWSKI Andrzej Marian**
“European Social Charter: the human right to strike and the rule of law”
Selection of works of the participants in the third international scientific Forum on the “Principles of the rule of law and human rights”, Kyiv, 2011

