



Strasbourg, 31 October 2013

GC(2013)25

EUROPEAN SOCIAL CHARTER

GOVERNMENTAL COMMITTEE

REPORT CONCERNING CONCLUSIONS 2012 OF THE EUROPEAN SOCIAL CHARTER (revised)

(Albania, Andorra, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Lithuania, Malta, Republic of Moldova, Montenegro, Netherlands (Kingdom in Europe), Norway, Portugal, Romania, Russian Federation, Serbia, Slovenia, Slovak Republic, Sweden, Turkey and Ukraine)

*Detailed report of the Governmental Committee
established by Article 27, paragraph 3, of the European Social Charter¹*

Written information submitted by States on Conclusions of non-conformity for the first time is the responsibility of the States concerned and was not examined by the Governmental Committee. This information remains either in English or French, as provided by the States.

¹ The detailed report and the abridged report are available on www.coe.int/socialcharter.

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I. Introduction

1. This report is submitted by the Governmental Committee of the European Social Charter and the European Code of Social Security (hereafter “The Governmental Committee”) made up of delegates of each of the forty-three states bound by the European Social Charter or the European Social Charter (revised)². Representatives of the European Trade Union Confederation (ETUC) attended the meetings of the Governmental Committee in a consultative capacity. Representatives of both the International Organisation of Employers (IOE) and the Confederation of European Business (BUSINESSEUROPE) were also invited to attend the meeting in a consultative capacity. IOC attended the meeting held from 30 September 2013 to 4 October 2013.

2. The supervision of the application of the European Social Charter is based on an examination of the national reports submitted at regular intervals by the States Parties. According to Article 23 of the Charter, the Party “shall communicate copies of its reports [...] to such of its national organisations as are members of the international organisations of employers and trade unions”. Reports are made public on www.coe.int/socialcharter.

3. Responsibility for the examination of state compliance with the Charter lies with the European Committee of Social Rights (Article 25 of the Charter), whose decisions are set out in a volume of “Conclusions”. On the basis of these conclusions and its oral examination during the meetings of the follow-up given by the States, the Governmental Committee (Article 27 of the Charter) draws up a report to the Committee of Ministers which may “make to each Contracting Party any necessary recommendations” (Article 29 of the Charter).

4. In accordance with Article 21 of the Charter, the national reports to be submitted in application of the European Social Charter concerned Albania, Andorra, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Lithuania, Malta, Republic of Moldova, Montenegro, Netherlands (Kingdom in Europe), Norway, Portugal, Romania, Slovenia, Slovak Republic, Sweden, Turkey and Ukraine. Reports were due by 31 October 2011.

5. Conclusions 2012 of the European Committee of Social Rights were adopted in December 2012 (Albania, Andorra, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Lithuania, Malta, Republic of Moldova, Montenegro, Netherlands (Kingdom in Europe), Norway, Portugal, Romania, Slovenia, Slovak Republic, Sweden, Turkey and Ukraine).

6. The Governmental Committee held two meetings in 2013 (27-31 May 2013, 30 September-4 October 2013). In accordance with its Rules of Procedure, the Governmental Committee at its autumn meeting re-elected Mme Jacqueline MARECHAL (France) as its Chair. It also elected a new Bureau, which is now composed of Ms Elena VOKACH-BOLDYREVA (Russian Federation, 1st Vice-Chair), Ms Joanna MACIEJEWSKA (Poland, 2nd Vice-Chair) Ms Lis WITSØ-LUND (Denmark) and Ms Kristina VYSNIAUSKAITE-RADINSKIENE (Lithuania). The Chair and the Bureau were elected for a two year period starting on 1 January 2014.

² List of the States Parties on 1 December 2013: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and United Kingdom.

7. Following a decision of the Committee of Ministers taken at its 1151st meeting on 19 September 2012, the Governmental Committee continued and finalised its discussion on the proposals to reflect upon ways of streamlining and improving the reporting system of the European Social Charter.

8. Since a decision of the Ministers' Deputies in December 1998, other signatory states were also invited to attend the meetings of the Governmental Committee (Liechtenstein, Monaco, San Marino and Switzerland).

9. The Governmental Committee was satisfied to note that since the last supervisor cycle the Revised European Social Charter was ratified by Latvia on 28 March 2013.

II. Examination of Conclusions 2012 of the European Committee of Social Rights

10. The abridged report for the Committee of Ministers only contains summaries of discussions concerning national situations in the eventuality that the Governmental Committee proposes that the Committee of Ministers adopt a recommendation or renew a recommendation. No such proposals were made in the current supervisor cycle. The detailed report is available on www.coe.int/socialcharter.

11. The Governmental Committee applied the rules of procedure adopted at its 125th meeting (26 – 30 March 2012). In applying these measures and according to the modalities decided by the Bureau in December 2012, it dealt with Conclusions of non-conformity in the following manner:

Conclusions of non-conformity for the first time: States concerned are invited to provide written information on the measures that have been taken or have been planned to bring the situation into conformity. This information appears *in extenso* in the reports of the meetings of the Governmental Committee. However, because of the gravity of some situations, the Governmental Committee decided at its 127th meeting in May 2013 that it should proceed to an oral examination of some of these situations (see Appendix II to the present report for a list of these Conclusions).

Renewed Conclusions of non-conformity: These situations were debated in the Governmental Committee with a view to taking decisions regarding the follow-up (see Appendix II to the present report for a list of these Conclusions);

The Governmental Committee also takes note of Conclusions deferred for lack of information or because of questions asked for the first time, and invites the States concerned to supply the relevant information in their next report (see Appendix III to the present report for a list of these Conclusions).

12. The Governmental Committee examined the situations not in conformity with the European Social Charter listed in Appendix II to the present report; it used the voting procedure for 7 of them. The detailed report which may be consulted at www.coe.int/socialcharter contains more extensive information regarding the cases of non-conformity.

13. During its examination, the Governmental Committee took note of important positive developments in several States Parties. It also asked governments to take into consideration any previous Recommendations adopted by the Committee of Ministers.

14. The Governmental Committee urged governments to continue their efforts with a view to ensuring compliance with the European Social Charter.

15. The Governmental Committee proposed to the Committee of Ministers to adopt the following Resolution:

Resolution on the implementation of the European Social Charter during the period 2007-2010 (Conclusions 2012), provisions related to the thematic group “Employment, training and equal opportunities”)

*(Adopted by the Committee of Ministers on
at the meeting of the Ministers' Deputies)*

The Committee of Ministers,³

Referring to the European Social Charter, in particular to the provisions of Part IV thereof;

Having regard to Article 29 of the Charter;

Considering the reports on the European Social Charter submitted by the Governments of Albania, Andorra, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Lithuania, Malta, Republic of Moldova, Montenegro, Netherlands (Kingdom in Europe), Norway, Portugal, Romania, Slovenia, Slovak Republic, Sweden, Turkey and Ukraine;

Considering Conclusions 2012 of the European Committee of Social Rights appointed under Article 25 of the Charter;

Following the proposal made by the Governmental Committee established under Article 27 of the Charter,

Recommends that governments take account, in an appropriate manner, of all the various observations made in the Conclusions 2012 of the European Committee of Social Rights and in the report of the Governmental Committee.

³ At the 492nd meeting of Ministers' Deputies in April 1993, the Deputies "agreed unanimously to the introduction of the rule whereby only representatives of those states which have ratified the Charter vote in the Committee of Ministers when the latter acts as a control organ of the application of the Charter". The states having ratified the European Social Charter or the European Social Charter (revised) are (1 December 2012): Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

EXAMINATION ARTICLE BY ARTICLE⁴

Conclusions 2012 – Revised European Social Charter (RESC)

Albania, Andorra, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Lithuania, Malta, Republic of Moldova, Montenegro, Netherlands (Kingdom in Europe), Norway, Portugal, Romania, Russian Federation, Serbia, Slovenia, Slovak Republic, Sweden, Turkey and Ukraine

ARTICLE 1 – THE RIGHT TO WORK

Article 1§1 – Policy of full employment

RESC 1§1 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 1§1 of the Charter on the ground that the number of persons which have access to active labour market measures is too low.

16. No information was provided.

RESC 1§1 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

17. The representative of Armenia provided the following information in writing:

The new RA law “On employment” has been approved by the Government of Armenia on 28 September, 2013. Currently the law has been introduced to the National Parliament for adoption. The new law envisages new active labour market measures and state projects. After the adoption of the law and implementation of new policy measures relevant information will be provided in the next report.

RESC 1§1 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

18 The representative of Bosnia and Herzegovina provided the following information in writing:

Bearing in mind the ECRS’s Conclusion „*that the situation in Bosnia and Herzegovina is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combating unemployment and promoting job creation*”, we want

⁴ State Parties in English alphabetic order.

to draw attention to the following developments in the reporting period, 1 January 2008 – 31 December 2010, which were not, in our opinion, taken into account while drawing the conclusion and which were brought about by the global economic crisis in the BiH labour market.

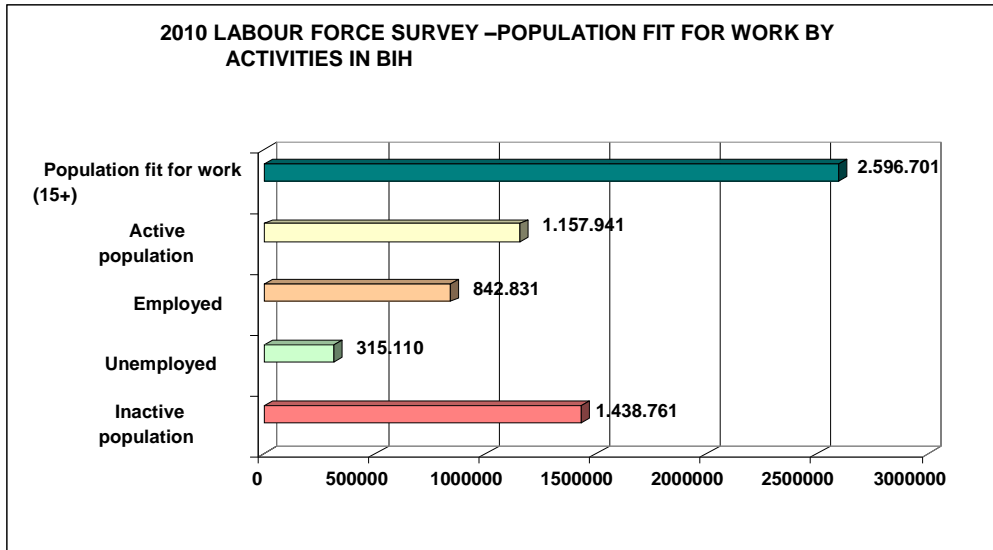
The period between 2000 and 2008 in Bosnia and Herzegovina (hereinafter: BiH) was marked by economic growth and macroeconomic stability, while in 2009 and 2010 the global economic crisis, which significantly affected the economy, slowed down economic activities in BiH. In the period up to October 2008, BiH reduced unemployment so that the rate of employment reached a peak in November 2008 and then started to fall. This could be said to be a turning point when the crisis came to affect BiH. From November 2008 to the end of 2010, employment was decreasing constantly. In that period, the registered unemployed people increased by 44,532. Sectors that employ nearly half of the people (processing industry, wholesale and retail trade and construction) suffered a major negative impact on employment. The most adverse consequences were suffered by companies that were export-oriented or had business arrangements with foreign companies including: automotive, textile and metal processing industries. However, the spread of recession from the most developed countries has not affected BiH only as a short-term disruption or destabilization of one particular sector but, gradually expanding, it grew to become an economic crisis with long-term consequences on the economy of Bosnia and Herzegovina.

Table 1. Bosnia and Herzegovina, key macro-economic indicators⁵

| Year | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---------------------------------------|-------|--------|--------|--------|--------|--------|--------|--------|
| Nominal GDP (USD mil) | 8.367 | 10.020 | 10.889 | 12.346 | 15.222 | 18.481 | 17.054 | 16.758 |
| GDP per capita (USD) | 2.184 | 2.607 | 2.834 | 3.212 | 3.962 | 4.810 | 4.438 | 4.361 |
| Real GDP (growth rate %) | 3,0 | 6,3 | 3,9 | 6,1 | 6,2 | 5,7 | -2,9 | 0,9 |
| Retail price index (%) | 0,6 | 0,4 | 3,8 | 6,1 | 1,5 | 7,4 | -0,4 | 2,1 |
| Current account balance (% of GDP) | -19,4 | -16,3 | -17,1 | -7,8 | -10,4 | -15,1 | -7,5 | -5,2 |
| Trade balance (% of GDP) | -49,5 | -45,6 | -45,2 | -34,6 | -37,2 | -38,2 | -27,8 | -25,7 |
| Foreign debt (BAM mil) | 4.014 | 4.032 | 4.338 | 4.071 | 3.961 | 4.240 | 5.234 | 6.249 |
| Foreign debt servicing (% of exports) | 6,7 | 4,9 | 4,1 | 3,8 | 2,9 | 2,5 | 3,2 | 3,3 |
| Registered unemployment rate (%) | 42,0 | 43,1 | 44,1 | 44,2 | 43,4 | 41,1 | 41,7 | 43,1 |
| Survey-based unemployment rate (%) | -- | -- | -- | 31,1 | 29,0 | 23,4 | 24,1 | 27,2 |
| Population (mil) | 3,832 | 3,842 | 3,843 | 3,843 | 3,842 | 3,842 | 3,843 | 3,843 |

⁵ Central Bank of Bosnia and Herzegovina - "Key macroeconomic indicators", the estimation of population by the Statistics Agency of Bosnia and Herzegovina.

The increase in unemployment has led to additional pressure on budgets with a need to assist vulnerable groups. An additional problem was the reduction of revenue in the budget. The decrease in revenue resulted from reduced income from VAT, which in turn is lower due to reduced consumption. It is important to note that in the reporting period, due to a decrease in employment, i.e. an increase in unemployment owing to terminations of employment, there was a huge allocation of funds for unemployment benefits (unemployment benefits and contributions to health insurance scheme) and the number of the unemployed per a career counsellor increased, too. In this way the employment services were disabled to more adequately meet the challenges in this period.



In 2008 the unemployment rate in BiH was 23.4%, while in 2010 it was 27.2 %. In 2008 the employment services recorded 62,914 people, who registered after the termination of employment and in late 2010, the number increased to 89,324 people. The average number of beneficiaries of monthly unemployment benefits rose from 8,418 in 2008 to 12,341 in 2010, which was an increase of 46.6% or 3,923 people. It was a great financial burden on employment services in the State and certain employment services had a situation where the total liabilities for benefits were higher than the revenue from contributions in certain periods.

| Table 2. Labour force survey – rates of activity in BiH and Entities (%) | | | | | |
|---|-------------|-------------|--------------------------|-------------------------|-----------------------------|
| | | BiH | Federation of BiH | Republika Srpska | Brčko District (BiH) |
| Activity rate (%) | 2008 | 43.9 | 42.4 | 47.0 | 36.8 |
| | 2009 | 43.6 | 41.6 | 47.4 | 38.1 |
| | 2010 | 44.6 | 42.9 | 47.9 | 40.6 |
| Employment rate (%) | 2008 | 33.6 | 31.8 | 37.3 | 25.1 |
| | 2009 | 33.1 | 30.9 | 37.2 | 27.0 |
| | 2010 | 32.5 | 30.4 | 36.6 | 25.8 |
| Unemployment rate (%) | 2008 | 23.4 | 25.0 | 20.5 | 31.9 |
| | 2009 | 24.1 | 25.7 | 21.4 | 29.2 |
| | 2010 | 27.2 | 29.1 | 23.6 | 36.4 |

Although there was a problem in the functioning of employment institutes and services in BiH in the period, it should be noted that the employment services managed to implement active employment policies (which are presented in the core report) so that, for example, the total costs of these activities in 2010 were 0.14% of the total GDP.

FBiH

In the FBiH, an active employment policy is implemented in accordance with Article 50, paragraph 3, item a) of the Law on Mediation in Employment and Social Security of Unemployed Persons („FBiH official Gazette" 55/00, 41/01, 22/05, 9/08), the 2009-2013 FBiH Employment Strategy and the 2009-2013 Action Plan for Employment in the FBiH.

The objectives set in the Strategy relate to various sectors, so that other sectoral strategies (development of small and medium enterprises, agriculture, tourism etc.) were based on an increase of employment in the former.

Maladjustment of the education system to the needs of the labour market is one of the reasons for inadequate addressing of unemployment.

Activities to establish mechanisms of coordination of labour market institutions, improving the education system and the establishment of a lifelong learning system in the coming period will be of great importance for improving the overall situation of the labour market.

We note that the measures in the Employment Action Plan are implemented by the Federation Employment Institute in cooperation with cantonal employment services through programs tailored to the needs of the labour market and they also implement an active policy of employment under the Employment Strategy.

In 2010 as the first year of implementation of the Action Plan for Employment, the Federation Budget provided funds in the amount of BAM 400,000.00, which were transferred to the Federation Employment Institute, which transferred the funds to the cantonal services to support youth employment. The funds appropriated in the Federation Budget together with the funds appropriated by the Federation Employment Institute were spent in the Programme of Employment Co-funding of Young People without Work Experience. A total of 907 young people without work experience were employed.

The 2011 Federation Budget did not appropriate funds for the implementation of the Action Plan, and the Federation Employment Institute, in cooperation with cantonal employment services, continued to fund these activities with a view to implementing the Employment Action Plan, the implementation of which continued in 2012.

The 2012 Federation Budget appropriated funds for the Employment Action Plan in the amount of BAM 360,000.00, which were transferred to the Federation Employment Institute, for training, professional advancement and employment in the field of viticulture.

The 2013 Federation Budget appropriated funds for the Employment Action Plan in the amount of BAM 360,000.00.

Special attention was given to Roma employment, given that the 2010 Federation Budget appropriated BAM 100,000.00, while BAM 90,000.00 were appropriated per year in 2011, 2012 and 2013 each to support employment and self-employment of Roma.

The allocation of resources to meet the needs in the field of employment in the Federation is governed by the Law on Mediation in Employment and Social Security of Unemployed Persons. These funds are provided in accordance with this Law from the following sources:

- a) contributions paid by employers and employees, in accordance with the law;
- b) the interest or income of the activities performed by the Federation Employment Institute and services;
- c) income from movable or immovable property which the Federation Employment Institute and services purchase or acquire, in accordance with the law.

These funds are allocated to the Federation Employment Institute with a share of 30% and to employment offices with a share of 70%.

The Law provides that the funds belonging to the employment services, after deducting administrative costs, are used to pay benefits to the unemployed. If the funds available to the employment services are found to be sufficient to pay benefits to the unemployed persons and to cover administrative costs in the following month, the Employment Service will use the remaining funds for measures to promote the implementation and maintenance of higher employment rates and improvement of employment structure.

There are obvious limits to resources available to public employment services. During this period, the public employment services were additionally burdened with different regulations, primarily respecting the enormous funds allocated to demobilized soldiers and their families, as well as the funds allocated to the Fund for Professional Rehabilitation and Employment of Persons with Disabilities and the implementation of the Social Care Programme for people having lost their jobs in the process of bankruptcy, liquidation and privatization.

All active employment policy measures are implemented in accordance with available resources and in accordance with the law and the 2009-2013 FBiH Employment Strategy.

The 2010 programmes were tested for their effectiveness related to the number of people covered by the programmes who remained in employment for more than 24 months of the start of the programme.

The programmes are as follows:

1. Programme of Employment Co-funding for Young People Without Work Experience in 2010 - 57% people remained in employment for more than 24 months of the start of the programme;
2. Programme of Employment Co-funding for Young People Without Work Experience in 2010 - 57% people remained in employment for more than 24 months of the start of the programme;
3. Programme of Employment Co-funding for Persons with Disabilities and Other Hard-To-Employ Groups of Unemployed Persons (by employers/legal persons) in 2010 - 26% people remained in employment for more than 24 months of the start of the programme;
4. Programme of Employment Co-funding for Persons with Disabilities and Other Hard-To-Employ Groups of Unemployed Persons by self-employment (setting up own business) in 2010 - 38% people remained in employment for more than 24 months of the start of the programme;
5. Employment and Self-employment Programme for Women by employers/legal persons in 2010 - 52% people remained in employment for more than 24 months of the start of the programme;
6. Employment and Self-employment Programme for Women by self-employment (setting up own business) in 2010 - 28% people remained in employment for more than 24 months of the start of the programme;
7. Vocational training, additional training and retraining in 2010 - 77% people remained in employment for more than 24 months of the start of the programme;
8. Self-employment and employment programmes for returnees by self-employment (setting up own business) in 2010 - 40% people remained in employment for more than 24 months of the start of the programme;
9. Self-employment and employment programmes for returnees by by employers/legal persons in 2010 - 62% remained in employment for more than 24 months of the start of the programme;

It should be noted that the program of employment co-funding of young people without work experience has one of the goals to enable the first work experience of 6 or 12 months, depending on the level of education of young people, and we can conclude that all the people, that is 100%, gained their first working experience. That lack of work experience by young people is a major obstacle in applying for jobs and the program wanted to help young people to overcome the barrier.

Also, international projects that focus on public employment services' capacity building in terms of identifying indicators and performance measurements of the active employment policy, i.e. monitoring and evaluation.

A portion of the measures relating to the preparation of the unemployed for the labour market, as well as various forms of group information and training (active job seeking: preparing a CV, preparing a cover letter, preparing for an interview with the employer, IT training, training in foreign languages etc.)

are implemented in 10 centres for information, counselling and training (CISO) that are open in the employment services within the YERP projects (MDG-F –funded Youth Employability and Retention Programme). Eight job seekers' clubs have been recently opened within YEP (Youth Employment Project supported by the Swiss Development Agency). CISO beneficiaries are unemployed people under 30, students needing carrier counselling, employers and other interested parties. The following indicators in these CISO activities are regularly monitored (please find below an example of 2012).

| No. | Informative seminar | Workshop preparing CV and cover letter | Workshop - a a interview by an employer | Individual counselling | Employment plan development |
|-------------------------|---------------------|--|---|------------------------|-----------------------------|
| Total of persons | 5,074 | 3,034 | 2,520 | 3,896 | 1,961 |

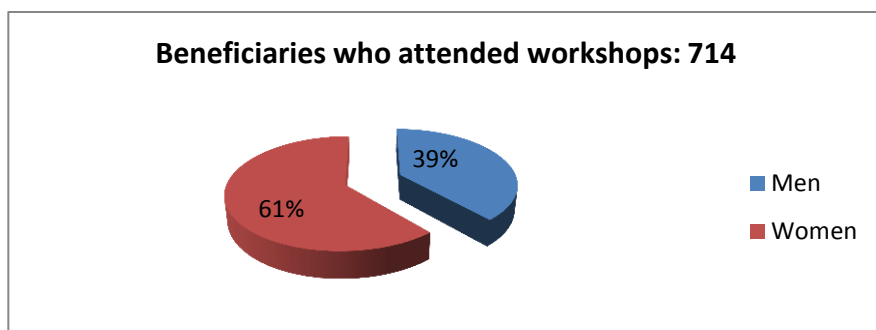
There are other indicators (an example of 2011). 529 young unemployed people under 30 attended IT and language training while 205 beneficiaries were retrained. 487 beneficiaries of CISO services got jobs, while 123 ones volunteered. The information on legal / illegal migrations was given to 820 beneficiaries.

BD

On 5 May 2011 the three-year MDG-F-funded Youth Employability and Retention Programme (YERP), implemented by five UN agencies: UNDP, UNICEF, UNFPA, IOM and UNV in partnership with the Employment Office of the Brcko District of Bosnia and Herzegovina (hereinafter: BD) officially opened the Centre for Information, Counselling and Training (CISO) in BD.

The aim of the CISO centre is to provide access of young unemployed people (15-30 years old) to counselling services, information and professional training in order to find a job. The CISO centre provides access to a library that includes information on education and employment, access to Internet for job searches, individual and group counselling.

Workshops for beneficiaries were: "The rights and obligations of the unemployed and active job seeking", "Writing resumes / CVs" and „Prepare for an interview and job interview simulation" and volunteering was also touched upon at the request of groups that expressed interest.

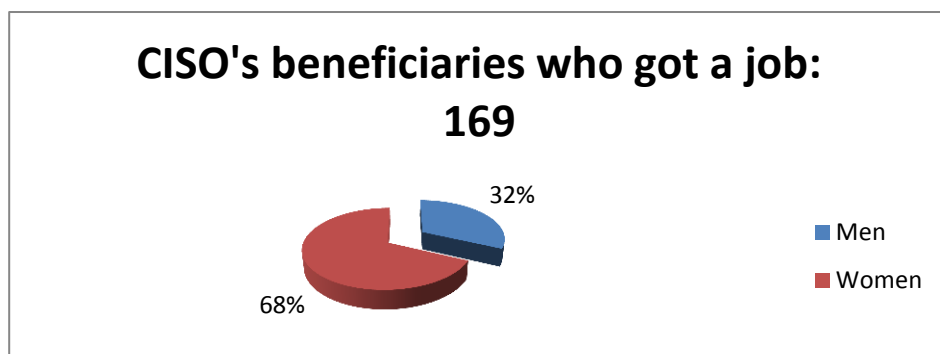


CISO employees worked with beneficiaries to improve their skills of active job seeking, informed them about rights and obligations of the unemployed, made them think about what they could offer to an employer, what skills they needed to improve to be more competitive at the labour market, what vacancies they should apply for, how to communicate with the employer and how to behave during job interviews.

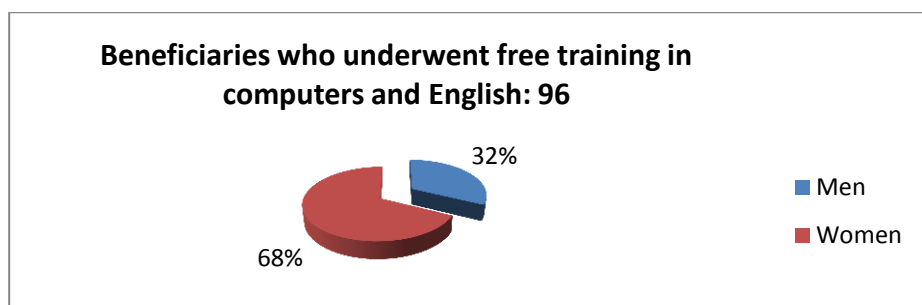
Individual counselling and employment action plans were provided to people who were interested.

The beneficiaries were informed about labour demand in the market, scholarships, training, seminars, job seeking tips and other useful topics through our bulletin board and through Facebook that is much closer to the target group, and we thereby made the communication easier and made ourselves available to young people.

Beneficiaries who got a job following the provision of our services - the total number is 169.



CISO beneficiaries had an opportunity to attend free training in computers (ECDL) and English (Intermediate level) on two occasions, a total of 96 young unemployed persons having received certificates of completion of training that would help them in further job seeking because 90% of vacancies require computer skills and knowledge of foreign languages. We dropped by and checked whether the training classes were getting according to schedule

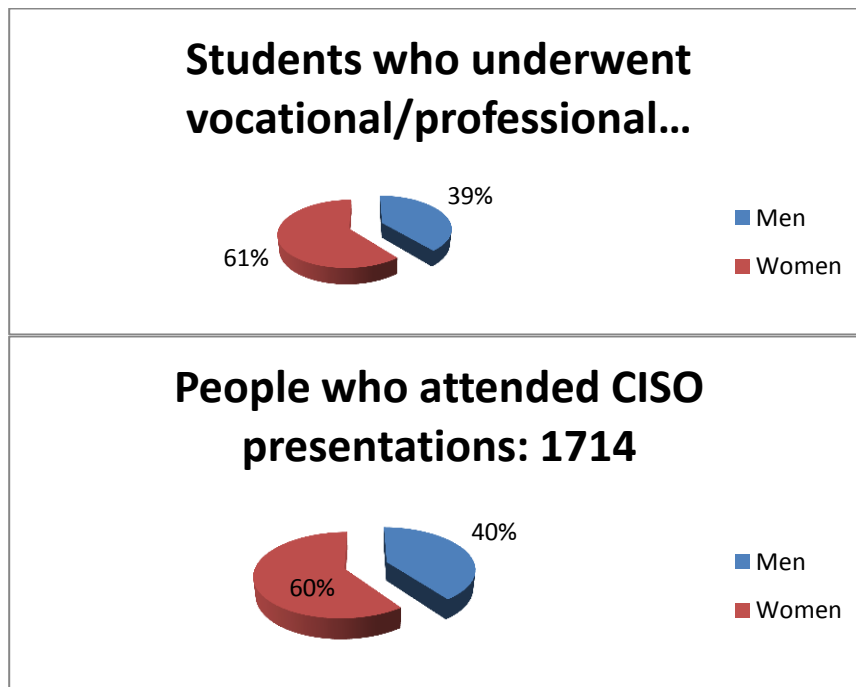


Volunteering is one way of gaining work experience and awareness rising of young people and a total of 44 beneficiaries decided to volunteer in the NGO sector after having been provided our services.

In two public calls that were published by the Employment Institute of BD, CISO organized workshops for the long-term unemployed people who were included in these calls. The topic of the workshops was "Looking for a Job" and about 400 unemployed people registered with the Employment Institute passed the training, which included public call explanation, writing resumes and pro-active presentation to employers in order to get a job.

Since the beginning of CISO we have contacted the NGO sector in the Brcko District and have cooperated with six NGOs in the form of workshops, presentations, marking 5 December as the International Volunteer Day and connecting young people interested in volunteering with the local NGOs. We worked for UZOPI (Union for Sustainable Return) and on two occasions we collaborated in the preparation of training "Education of young people about life skills and core competencies" and in calling them to take part.

Likewise, we have been cooperating with educational institutions in BD, especially in filling out the questionnaire available to young people to assist them in selecting secondary school or college, as well as in informing the leavers in all 4 secondary schools about vocations/professions, the total number students who passed the informative course being 330. We continued cooperation by giving a presentation of the Migration Service Centre on legal migrations and risks of illegal migration, trafficking in persons, the total number of students who attended the presentations being 1019.



The Student Association of RS held "An Education Fair" in the Brcko Youth Centre. The opportunity was taken to inform young people about services provided by CISO.

CISO presented the US Au Pair and Work and Travel programmes in the Centre. It was a presentation of experience in cultural exchange programmes and recruitment of students and young people from Bosnia and Herzegovina in the United States. This presentation was attended by CISO beneficiaries and thus they were informed about the possibilities of going to the U.S. within this programme. Positive reactions indicated that we only need to provide more events and more information to young people.

An assistant in the establishment of a database on children and youth outside the school system on behalf of UNICEF was selected and hired. This is a short-term external position for a young person who will assist in creating a database in the Education Department. After having received and reviewed CVs, the Education Department of BD selected the most successful candidate and hired him.

We were a mediator for jobs in "TERMOELEKTRO" Company and organized interviews with unemployed persons registered with the Employment Institute.

The CISO's "Employment and Retention of Young People in Bosnia and Herzegovina" project in Brcko, including current activities of CISO, had great media coverage.

RS

The Republika Srpska (hereinafter: RS) has made significant efforts to implement the employment policy. At its session held on 24 March 2011 the RS National Assembly adopted the RS 2011-2015 Employment Strategy as the first medium-term plan and strategy document setting out the basis for coordinated and balanced development of employment in the RS. Considering the importance of and general interest in employment matters, before making this strategic document, a detailed in-depth analysis of the labour market was made and it ascertained the general situation, the main features and their impact on the employment situation.

The RS Employment Strategy proposes realistic, achievable and measurable strategic objectives and provides that the strategic objectives are achieved through the preparation and implementation of action plans recommended by the ministry in charge of labour and employment and adopted by the government on an annual basis. The Republika Srpska Government adopted the 2011 Employment Action Plan in Decision no. 04/1-012-2-1748/11 dated 28 July 2011 ("Official Gazette" no. 85/11).

The Action Plan envisaged concrete measures, activities and actions within each of the identified strategic objectives and an amount of BAM 8,650,000.00 was planned for the implementation of these measures. The funds were spent on active measures of the Employment Institute, which together with other activities of the Employment Institute resulted in employment of 24,963 persons.

The Republika Srpska Government adopted the 2012 Employment Action Plan in Decision no. 04/1-012-2-772/12 dated 29 March 2012 ("Official Gazette of the Republika Srpska" no. 35/12).

The Action Plan envisaged concrete measures, activities and actions within each of the identified strategic objectives and an amount of BAM 13,189,230 was planned for the implementation of these measures.

The entire amount was not spent in 2012 because some of the active measures being are being implemented this year. The funds and other activities of the Employment Institute in 2012 resulted in employment of a total of 28,368 people, which is 13.6% more than in the same period of 2011. The number of persons registered in the reporting period decreased by 6.1% compared to the same period in 2011.

The Republika Srpska Government adopted the 2013 Employment Action Plan in Decision no. 04/1-012-2-566/12 dated 26 March 2013 ("Official Gazette of the Republika Srpska" no. 35/12). The Action Plan envisages concrete measures, activities and actions within each of the identified strategic objectives and the implementation of these measures will require the amount of BAM 16,258 million.

RESC 1§1 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

19. The representative of Bulgaria provided the following information in writing:

Chômage et emploi : données pour 2011

L'emploi va en diminuant en 2011 bien que le rythme de diminution des personnes employées pour l'année visée est inférieur à celui pour l'année 2010. Le niveau d'emploi de la population âgée entre 20 et 64 ans en 2011 est de 62.9 % étant donné qu'il est de 65.4 % en 2010 et le taux moyen pour l'UE en 2011 est de 68.6 %.

Les personnes employées âgées entre 55 et 64 ans en 2011 vont en augmentant par rapport à 2010. Le coefficient de l'emploi des personnes âgées entre 55 et 64 de même va en augmentant et en 2011 il s'élève à 44.6 % étant donné qu'en 2010 il est de 43.5 %.

Le coefficient de chômage va en augmentant de 10.2 % en 2010 à 11.3 % en 2011. La valeur pondérée du coefficient de chômage à l'UE en 2011 est de 9.6 %.

Les jeunes au chômage vont en augmentant. Le coefficient de chômage pour le groupe des personnes âgées entre 15-24 ans s'élève à 25.0 % en 2011 étant donné qu'il a été de 23.2 % en 2010 et la valeur pondérée du coefficient de chômage pour le même groupe des personnes à l'UE en 2011 s'élève à 21.3 %.

La part des personnes au chômage constant par rapport à tous les chômeurs pour l'année 2011 est de 55.7 % étant donné qu'en 2010 elle a été de 46.4 % et la valeur pondérée pour l'UE en 2011 est de 42.9 %.

En 2011 les personnes au chômage, qui participent aux programmes et aux mesures d'insertion professionnelle financés par les fonds de la politique active menée sur le marché du travail, sont 50 105. Les personnes au chômage participant aux programmes de formation et d'emploi financés par le Programme opérationnel „Développement des ressources humaines“ sont 91 910. Les personnes au chômage pour 2011 sont en moyenne 332 601. Les personnes ayant participé aux mesures d'insertion actives sont au total 142 015, soit 42.7 % des personnes au chômage.

Au cours de l'année 2012 il n'a pas été observé des changements essentiels en ce qui concerne les coefficients de l'emploi et du chômage par rapport à 2011. Le milieu extérieur incertain continue à exercer des effets négatifs sur le marché du travail. Selon les données de l'Observation de la force de travail, effectuée par l'Institut statistique national, le coefficient de l'emploi de la population à l'âge de 20-64 en 2012 est 63% en restant presque invariable vis-à-vis à 2011 (62.9) et plus bas vis-à-vis à la valeur moyenne de l'Union Européenne pour 2012 de 68,5%.

L'emploi parmi les personnes âgées 55-64 est en train de restauration le plus rapide. Le coefficient d'emploi de personnes âgées 55-64 a augmenté de 1,1 pourcent de 44.6 en 2011 à 45,7% en 2012.

Le coefficient du chômage a augmenté de 1,1 pourcent par rapport à 2011 et a atteint 12,3 en 2012, la valeur moyenne pour l'Union Européenne étant 10.4% en 2012.

Le niveau du chômage des jeunes en ce qui concerne le groupe à l'âge 15-24 en 2012 a augmenté de 3 pourcent envers 2011 et a atteint 28.1%, la valeur moyen pour l'Union Européenne étant 23,2% en 2012.

La partie des chômeurs permanents de tous les chômeurs en 2012 a diminué de 0,6 à l'égard de 2011 et celle-là est 55,3, la valeur moyen pour l'Union Européenne étant 44,4% en 2012.

Politique dans le domaine de l'emploi pour la période 2009-2012

Pour la mise en œuvre de la politique de l'emploi menée par le Ministère de l'emploi et de la politique sociale, nombreuses activités ont été réalisées concernant la mise en œuvre d'une politique active sur le marché de travail en vue de la sauvegarde et la création de nouveaux emplois. Durant la période 2009-2012, qui se caractérise par la stagnation économique, c'est la mesure se rapportant au temps de travail partiel qui a été particulièrement marqué du succès. La mesure a été mise en place en 2009 et en 2010 en vue de limiter la suppression des emplois suite à la crise économique. En vue de compenser la diminution des revenus, des indemnités ont été versées aux travailleurs et aux employés qui ont commencé à travailler à temps partiel dans les secteurs économiques „Industrie“ et „Services“. Les travailleurs et les employés, bénéficiant de l'aide au titre de cette mesure, sont plus de 26 188 personnes travaillant au sein de 700 entreprises. En vue de limiter les licenciements collectifs et la démission des travailleurs et d'employés qui pour des raisons économiques ne peuvent pas atteindre leur salaire entier, c'est le schéma „Adaptation“ au titre du Programme opérationnel „Développement des ressources humaines“ qui a été réalisé. Au titre du schéma ce sont 3 270 personnes qui prennent part à la formation en vue de l'amélioration de leur adaptation et la sauvegarde de leurs emplois.

En vue de l'emploi des personnes en situation précaire sur le marché de travail, des programmes et des mesures prioritairement financés par les fonds du budget public ont été lancés destinés aux : personnes au chômage âgées de moins de 29 ans, personnes au chômage avec une incapacité de travail en diminution constante, parents célibataires, personnes au chômage âgées de plus de 50 ans, personnes au chômage constant et autres. Pour la période 2009-2012 les fonds du budget public pour la politique active sur le marché de travail s'élèvent à 369.8 millions de levas. Pour la même période ce sont 280 000 personnes au chômage qui ont participé aux programmes et aux mesures financés par le budget public.

Les services de placement sont un instrument de base de la politique d'emploi des personnes au chômage, y compris pour les jeunes. Tous les chômeurs inscrits aux agences d'emploi bénéficient des services des agences d'emploi qui les font stimuler et les aident afin qu'ils aient un comportement plus actif sur le marché de travail en contribuant ainsi à l'initiation au travail.

C'est un plan individuel d'action, basé sur l'évaluation complexe des besoins individuels du chômeur qui comprend des mesures concrètes et services visant l'insertion professionnelle de la personne au chômage, qui est préparé pour chaque personne au chômage inscrite aux agences d'emploi.

Des bourses d'emploi spécialisées sont organisées pour les groupes des personnes vulnérables contribuant ainsi à ce qu'un contact direct entre les employeurs et les demandeurs d'emploi soit établi. Pour la période juillet 2009 – 2012 ce sont 124 bourses qui ont été organisées et ont eu lieu.

En 2009 c'est un accord d'échange d'information entre l'Agence pour l'emploi et l'Agence nationale des recettes qui a été signé. Son but est le suivi de la réalisation des personnes ayant pris part à la formation et à l'emploi et l'évaluation de l'impact de la politique active menée sur le marché du travail. Chaque mois l'Agence pour l'emploi et l'Institut national de la sécurité sociale échangent de l'information pour les personnes au chômage inscrites qui bénéficient d'indemnités afin que la législation du travail et le droit d'inscription aux agences de l'emploi soient observée et contrôlé.

Le système d'information intégré pour l'offre et la demande d'emploi comprenant aussi la simplification de l'accès à l'information gratuite pour les libres emplois existants est en train d'être mis au point. En vue de l'amélioration de l'accès aux services d'emploi, des services d'informations et de consultations sur Internet sont en train d'être développés et appliqués. Des services dans les bureaux mobiles sont aussi prestés. Ce sont plus de 420 emplois hors les bureaux standards qui sont créés et sont en train de fonctionner. En vue d'assurer une meilleure information aux employeurs sur les possibilités existantes de création des emplois, sur le courtage dans le domaine de l'emploi et la formation du personnel, de nombreuses activités sont en train d'être réalisées y compris celles visant à assurer une meilleure information aux employeurs en ce qui concerne l'offre des emplois et la simplification de l'accès à l'information pour eux étant donné qu'au début de 2011 la mise au point d'un portail intégré de l'offre des emplois a débuté. Ce sont 24 agences privées d'emploi qui ont fourni jusqu'à la fin de 2011 leurs adresses électroniques afin d'être contactées via la page web de l'Agence pour l'emploi.

Pour inciter des personnes au chômage et celles qui sont inactives, des services individuels, spécialisés et intégrés sont prestés tout comme des consultations psychologiques, orientation professionnelle et guidage, un accès aux services sociaux, médicaux et autres est assuré par des médiateurs spécialement formés au travail avec des personnes issues des groupes vulnérables. Ce sont des programmes et des mesures différents qui sont appliqués, un exemple en est „Le programme national de stimulation de personnes inactives“. Dans le cadre du programme sont prestés des services d'engagement des personnes inactives qui ne cherchent pas de manière active un emploi afin que celles-ci soient inscrites aux agences d'emploi. Au titre du programme 68 médiateurs spécialement formés à cette fin sont engagés. Durant la période juillet 2009 – 2012 plus de 35 000 personnes ont été incitées.

Les personnes au chômage constant participent en priorité aux multiples programmes et mesures. Elles constituent le groupe de base visé par le Programme national „De l'assistance sociale à l'emploi“. Au titre du programme durant la période 2009 – 2012 plus de 100 000 chômeurs ont été employés.

Une attention particulière est portée à l'emploi des jeunes. „Nouveau début“ sous la forme d'insertion à la formation ont obtenu :

- en 2009 – 23 944 jeunes chômeurs âgés de moins de 29 ans dans une période de 4 mois à compter de leur inscription aux agences d'emploi et 20 600 chômeurs âgés de plus de 29 ans dans une période de 12 mois après leur inscription aux agences d'emploi ;
- en 2010 – 25 mille jeunes chômeurs âgés de moins de 29 ans dans une période de 4 mois après leur inscription aux agences d'emploi et 23 mille chômeurs âgés de plus de 29 ans dans une période de 12 mois après leur inscription aux agences d'emploi ;

Dans le cadre des schémas différents au titre du Programme opérationnel „Développement des ressources humaines“ 9 302 jeunes au total âgés entre 19 et 34 ans sont formés, employés après formation, consultés ou font un stage.

En mettant en œuvre la stratégie „Europe 2020“ et une des stratégies principales de la Commission européenne la „Jeunesse en mouvement“ développée à l’initiative nationale „Emploi pour les jeunes gens en Bulgarie“ 2012 – 2013, la Bulgarie vise à prendre part à la mise en place de la „garantie pour la jeunesse“ ainsi appelée afin d’organiser une formation et des emplois pour tous les jeunes pour une période de 4 mois après la fin de leurs études à l’école. Faisant partie de la mise en œuvre de l’Initiative nationale ce sont 41 million levass en 2012 qui ont été complémentaires mis à disposition au titre du Programme opérationnel „Développement des ressources humaines“ et grâce à ce fait plus de 4 600 jeunes âgés de moins de 29 ans obtiendront des services des agences d’emploi, une formation, un stage ou un emploi.

Le Ministère de l’emploi et de la politique sociale fait réaliser des programmes concrets qui d’une part mettent en place des emplois pour des chômeurs dans le domaine de la garde des petits enfants (babysitting) et d’autre part contribuent à l’atteinte d’un meilleur équilibre entre leurs obligations familiales et professionnelles. En application de la disposition de l’art. 53 de Loi sur la promotion de l’emploi, c’est l’emploi des parents célibataires et celui des mères avec enfants âgés de moins de 3 ans qui fait objet de subventions. Sont financés avec les fonds du budget public les dépenses des employeurs pour rémunérations de travail et les versements obligatoires au titre de la législation du travail et la législation de la sécurité sociale. Conformément à l’art. 53a de la Loi sur la promotion de l’emploi ce sont les employeurs qui sont encouragés à embaucher des mères au chômage avec des enfants âgés de 3 à 5 ans. Pour la période juillet 2009 – 2012, aux termes de la mesure de promotion sont incluses au total d’environ 800 personnes. Le soutien dans ce domaine est effectué aussi au titre du Programme opérationnel „Développement des ressources humaines“.

Avec les outils de la politique active, des conditions sont créées pour soutenir les personnes handicapées en finançant des emplois dans le domaine des services sociaux. Dans le cadre du programme national „Assistants pour les personnes handicapées“ pour la période déclarée - juillet 2009 – 2012 - plus de 16 000 chômeurs ont été embauchés en tant qu’assistants personnels aux personnes handicapées. En vue de la mise en place des conditions pour l’emploi des chômeurs handicapés sur le marché du travail, la Loi sur la promotion de l’emploi prévoit des mesures incitatives pour encourager les employeurs à créer des emplois et à embaucher des personnes handicapées au chômage, étant donné qu’ au cours de la période 2009 – 2012 au titre de ces mesures plus de 13 000 chômeurs ont été embauchés.

L’„économie verte“ est un secteur à fort potentiel pour la création des emplois. La promotion des „emplois verts“ est réalisée dans le cadre d’une approche globale pour stimuler la création des emplois dans l’économie réelle. Avec les modifications de 2011 de la Loi sur la promotion de l’emploi, c’est l’application d’une nouvelle mesure qui est réglementée, portant soutien à la création des „emplois verts“ ainsi appelés en rapport avec la production des biens et la prestation des services en faveur de la protection de l’environnement. Depuis le début de 2011 jusqu’à la fin de 2012 au titre de cette mesure ce sont 1 243 „emplois verts“ au total qui ont été créés.

Les mesures de promotion prévues à la Loi sur la promotion de l'emploi sont orientées vers la mise en place des emplois durables et le soutien du secteur privé à créer de nouveaux emplois en subventionnant une partie des coûts du travail des employeurs. En 2011, grâce à des modifications apportées à la Loi sur la promotion de l'emploi et son Règlement d'application, les conditions que les employeurs doivent remplir au cas où ils font acte de candidature et utilisent les mesures incitatives pour la création des emplois, ont été assouplies. Suite à la restructuration du budget de la politique active, l'on observe sur le marché du travail une augmentation de la partie des mesures incitatives que la Loi sur la promotion de l'emploi prévoit mettant ainsi en place des emplois permanents pour les chômeurs sur le marché du travail primaire. La partie des fonds prévus pour des mesures incitatives du budget général des fonds communs pour la politique active a augmenté de 11,9 % en 2009 à 18,2% en 2013.

Une partie principale de la politique de l'emploi comprend des mesures visant à promouvoir la création des emplois. Entre juillet 2009 – 2012 les agents intermédiaires des agences de l'emploi ont fait qu'au marché primaire soient embauchés 400 000 chômeurs au total. Des mesures sont réalisées en vue de l'amélioration de l'efficacité et l'efficience des services d'emploi prestés par les directions des services des „Agences de l'emploi“ étant donné que l'organisation et la mise en place des bourses d'emploi locales continuent à se réaliser. L'interaction entre les institutions publiques et privées qui offrent de tels services est en train de s'élargir. En 2009 une initiative a débuté pour la conclusion d'accords de coopération et de collaboration entre les agences d'emploi privées et les services territoriaux de l'Agence pour l'emploi. À la fin de 2011, ce sont 49 accords au total qui ont été signés. Le résultat en est une augmentation de la participation de l'Agence pour l'emploi sur le marché du travail primaire. En 2011, la part de participation sur le marché de l'Agence pour l'emploi s'élève à 25,7 % ce qui fait 0,9 points de pourcentage de plus que sa part de participation en 2010. Selon les données de l'Institut national de la statistique, la part des demandeurs d'emploi qui font contacter les directions des „Agences d'emploi“ a augmenté de 36,8 % au premier trimestre de 2009 à 40 % au troisième trimestre de 2012.

En 2012 en vue de l'amélioration de l'efficacité et de l'efficience des politiques actives sur le marché du travail, des modifications ont été effectuées dans certains des programmes et des mesures mis en œuvre. Pour restreindre la pratique que toujours les mêmes personnes participent pour une période de temps prolongée dans le programme national „De l'assistance sociale à l'emploi“, la condition que pas moins de 70 % des chômeurs inscrits n'aient pas travaillé au titre du Programme depuis le début de l'année précédente, doit être remplie. En outre, les chômeurs inscrits ont la possibilité d'être inclus dans les programmes de formation en vue de l'acquisition d'une qualification professionnelle et une formation ainsi que des compétences-clés, ce qui est une condition pour leur emploi et pour leur intégration durable au marché du travail.

Une formation de qualité liée aux besoins du marché est proposée aux employés et aux chômeurs par les Centres de formation professionnelle bulgare-allemands (CFPBA) auprès du Ministère de l'emploi et de la politique sociale. Pour la période 2009 – 2012 5 006 chômeurs au total ont participé à la formation professionnelle organisée par les Centres de formation professionnelle bulgare-allemands (CFPBA).

La mise à niveau de la qualification obtenue se fait par le biais des possibilités d'acquisition des compétences pratiques et de l'expérience professionnelle grâce aux stages menés dans un environnement réel de travail immédiatement après l'obtention du diplôme. Une attention particulière est accordée aux jeunes chômeurs. Pour la période juillet 2009 – 2012 par les fonds du budget public pour politique active sur le marché du travail et dans le cadre du Programme „Début de la carrière“ plus de 3 420 jeunes titulaires des diplômes d'études supérieures ont été embauchés afin qu'ils aient un stage de travail au sein de l'administration publique immédiatement après l'obtention du diplôme.

Les bons de formation sont un mécanisme souple grâce auquel les chômeurs et les employés qui souhaitent améliorer leurs connaissances et compétences peuvent choisir eux-mêmes l'organisation de la formation. Grâce au „Système des bons de formation“, près de 200 000 chômeurs et employés, dont 74 000 chômeurs, ont reçu des bons et ont participé aux programmes de formation. Près de 170 000 personnes, dont 71 000 chômeurs, ont réussi à améliorer leurs connaissances et compétences.

Depuis 2010 un Système de qualité et de contrôle de la formation des adultes est organisé par l'Agence pour l'emploi. Le système fixe les règles pour l'organisation, la conduite, la certification et la vérification des résultats de la formation des adultes, tout comme les activités de contrôle effectuées au cours des quatre étapes du processus, et identifie un ensemble de critères d'évaluation de la qualité de la formation. Grâce à l'application de ce système une certitude est atteinte en ce qui concerne l'investissement des fonds pour la formation des adultes lequel se réalise en conformité avec les dispositions légales et les règles du Client. Dans le cadre des activités de suivi de la qualité de la formation, financé par les fonds destinés à la politique active, c'est un échange périodique d'information entre l'Agence pour l'emploi et l'Agence nationale des recettes qui est effectué afin de surveiller la réalisation des chômeurs ayant suivi une formation sur le marché du travail primaire.

Suivi et évaluation de la mise en œuvre de la politique active sur le marché du travail

Un facteur clé de la réalisation des objectifs dans le domaine de la politique active sur le marché du travail est la présence des informations sur les résultats de la mise en œuvre et les effets de la politique de l'emploi sur lesquelles les décisions managériales puissent être prises. Le cycle complet du suivi et de l'évaluation comprend:

Une évaluation préliminaire (évaluation ex ante) des nouveaux programmes et initiatives en vue d'atteindre une meilleure qualité des propositions et un meilleur guidage des actions proposées. Selon les informations disponibles, l'évaluation préliminaire comprend divers éléments tels que: les causes de la survenance d'un problème donné ; les caractéristiques spécifiques du groupe cible ; les résultats généraux et spécifiques estimés des actions prévues ; les indicateurs grâce auxquels l'on mesure la réalisation des objectifs ; différentes approches possibles pour l'atteinte du résultat souhaité ; l'expérience acquise de la mise en œuvre d'autres programmes et mesures ; l'analyse de l'efficacité des actions proposées (type des coûts / bénéfices);

Le suivi continu effectué par les institutions chargées de la mise en œuvre des programmes / mesures spécifiques. L'on travaille pour l'uniformité optimale des réseaux d'information en vue de l'intégration des informations disponibles dont disposent les sources et les institutions diverses. L'intégration des bases de données statistiques nationales avec celles d'EUROSTAT (p. ex. via la base de données pour le marché du travail) soutient ce processus;

L'évaluation postérieure de la mise en œuvre et l'impact suite à la mise en œuvre des programmes et des mesures. Ce sont les évaluations de l'impact (brutes et nettes) qui s'effectuent d'où l'on établit les résultats réels pour les bénéficiaires ultimes de la mise en œuvre des actions au titre des différents programmes menés.

Afin d'améliorer la qualité et l'efficacité de la politique active sur le marché du travail, financée par le budget public, un projet au titre du Programme opérationnel „Développement des ressources humaines“ a été lancé depuis 2012. Dans le cadre du projet une évaluation complète de l'effet de la politique active sur le marché du travail aux niveaux micro et macro sera réalisée. Les activités du projet seront mises en œuvre dans la période juillet 2012 – septembre 2014 et comprennent la réalisation de 3 études:

Une évaluation de l'impact net de la politique active sur le marché du travail, financée par le budget public. L'objet de l'évaluation porte sur les programmes et les mesures contenues dans le Plan d'action national pour l'emploi 2011. L'évaluation de l'impact net ne s'applique qu'aux programmes et mesures pour emploi et formation, financés par le budget public (les services de l'Agence pour l'emploi exceptés). Les programmes et les mesures seront classés au titre de leur efficacité, en évaluant celle-ci par rapport aux personnes individuellement incluses dans les groupes cibles.

Une évaluation ultérieure de tous les éléments (programmes et mesures pour l'emploi) de la politique active sur le marché du travail dans les domaines suivants: mise au point ; pertinence par rapport à la Stratégie pour l'UE „Europe 2020“ ; rentabilité à moindre coût; effectivité ; efficacité. Le but de l'évaluation ultérieure est d'évaluer le degré de réalisation des objectifs posés, l'utilisation rationnelle des fonds provenant du budget public, l'efficacité des outils d'impact.

Une évaluation de la contribution de la politique active sur le marché du travail pour une modification des paramètres sélectionnés qui caractérisent le développement économique et social du pays durant la période 2000 – 2011. Il est prévu qu'un modèle soit mis au point et testé pour évaluer l'impact des politiques menées sur le marché du travail au titre des paramètres caractérisant le développement économique et social du pays (le modèle montrera l'influence de la politique active sur l'emploi et le chômage, les salaires, l'inflation, et autres).

Les activités de contrôle

Le Ministre de l'emploi et de la politique sociale exerce un contrôle global sur le respect de la Loi sur la promotion de l'emploi et les autres règlements dans le domaine de l'emploi et du chômage.

L'activité de contrôle spécialisée est réalisée par l'Agence exécutive „Inspection générale de l'emploi“ auprès du Ministre de l'emploi et de la politique sociale.

Les autorités de contrôle ont le droit de:

1. Visiter à tout moment les endroits où le travail est effectué ou les lieux où s'exerce une profession;
2. Demander aux personnes et entités contrôlées des explications écrites et des informations ainsi que la délivrance des copies certifiées de tous les documents tout comme la délivrance des relevés;
3. Obtenir directement auprès des travailleurs, les employés, les chômeurs et les demandeurs d'emploi les informations dont ils ont besoin;

L'Agence pour l'emploi supervise l'exécution des contrats conclus au titre des programmes et des mesures de formation et d'emploi.

Les membres des commissions de l'emploi et les conseils de collaboration auprès des directions territoriales de l'Agence font contrôler et surveiller les processus de mise en œuvre des programmes et des mesures. (Les commissions de l'emploi et les conseils de l'emploi sont des autorités régionales de l'emploi. Les commissions de l'emploi sont créées par une décision des conseils régionaux pour le développement. Les conseils de coopération sont créés auprès des sections de l'Agence nationale pour l'emploi).

Le deux instruments financiers fondamentaux en Bulgarie qui sont destinés à assurer de la formation et de l'emploi aux chômeurs et aux personnes inactives économiquement sont le Plan national pour une action dans le domaine de l'emploi (PNAE) qui est élaboré, accepté et accompli annuellement et le Programme opératif de développement des ressources humaines (PODRH) pour le période 2007-2013. La réalisation du Plan national est financée avec des ressources du budget d'Etat et la mise en oeuvre des schémas dans les cadres du Programme opératif est financée avec des ressources du Fond social européenne et le co-financement national. En 2013 la Bulgarie a entrepris des mesures pour l'augmentation des ressources financières dans les cadres du Plan national pour une action dans le domaine de l'emploi, comme au mois d'avril le budget pour une politique active sur le marché a progressé de plus 40% - de 73 millions à 103 millions de lévas. Dans la formation financée par des ressources du budget d'Etat il est prévu d'introduire aux environs 7000 de personnes inactives et d'assurer d'emploi à 38 mille chômeurs. Pour 2013 selon le plan dans les cadres du Programme opératif de développement de ressources humaines on prévoit plus de 159 millions de lévas lequel est environ 33% plus vis-à-vis à des ressources réellement dépensées en 2012. Il est prévu, dans le domaine de la formation et de l'emploi selon les schémas du PODRH d'insérer aux alentour de 23 mille personnes inactives. Etant conservé le nombre des chômeurs enregistrés à 360 mille personnes en 2013, il est prévu d'assurer approximativement à 17% d'entre eux de formation et d'emploi subventionné.

Dans les cadres du plan national pour une action dans le domaine de l'emploi en 2013, qui est l'instrument fondamental pour la réalisation de la politique active sur le marché du travail on a basé quatre pylônes prioritaires :

- faire embaucher rapidement et effectivement les chômeurs sur le marché primaire du travail, ainsi bien que dans les cadres de programmes et mesures visées par la loi sur l'encouragement de l'emploi ;
- assurer les cadres nécessaires pour la restructuration et la rénovation technologique de l'économie vers une plus haute productivité du travail et une conformité meilleure avec nécessités du marché du travail ;
- activer les personnes inactives et découragées ;
- limiter l'emploi non déclaré et réduire les violations de la législation de travail.

Les priorités susdites servant de base seront acquises par la réalisation de mesures et programmes d'emploi et de formation, l'amélioration de la qualité des services fournis par l'Agence de l'emploi pour activer les chômeurs de longue durée et les personnes inactives en stimulant la coopération avec les intermédiaires de travail privés. On va poursuivre l'octroi de bons pour la formation de personnes employées et inactives et dans les cadres de projets d'employeurs en travaillant parallèlement pour la motivation et l'orientation professionnelle des chômeurs enregistrés. On va poursuivre l'embauche de places de travail subventionnées, particulièrement de chômeurs des groupes se trouvant dans une situation d'inégalité (personnes d'origine Roma avec un niveau de formation faible et sans qualification, des jeunes personnes jusqu'à vingt-neuf ans, chômeurs de longue durée et d'autres au plus grand risque de marginalisation sociale et appauvrissement). Il est prévu d'augmenter le nombre des chômeurs embauchés sur les places de travail « vertes » e « blanches ».

Au cours de 2013, par l'intermédiaire de la ressource financière dans les cadres du Programme opérationnel de développement des ressources humaines, on continuera la réalisation des projets de formation, des stages, d'emploi subventionnée, l'initiation d'une activité économique indépendante de chômeurs, y compris de personnes handicapés, l'encouragement de la mobilité, les consultations ayant pour but le développement de la carrière et la formation des personnes employées et d'autres.

Pour améliorer l'accès aux services publics d'emploi fournis par les bureaux de travail on développe et met en places des services basés sur l'Internet pour une information et des consultations on-line. On a construit 108 terminaux pour rendre service aux chômeurs et pour concéder des services à des personnes inactives y compris à celles qui sont découragées. De concert avec les intermédiaires de travail qui sont directement engagés dans l'octroi de services de médiation, étant pris en considération les nécessités individuelles des personnes cherchant de travail, auprès des directions « Bureaux de travail » dans tout le pays on a nommé des médiateurs de travail. En 2012 le nombre des médiateurs de travail auprès de l'Agence d'emploi a augmenté jusqu'à 432 personnes dont 82 sont des médiateurs Roma.

Une série de mesures, contribuant à améliorer l'efficacité et la qualité des services de médiation concédés par les directions du « Bureau de travail », sont en train d'être accomplies.

On continue l'organisation et la mise en pratique des marchés de travail généraux et spécialisés, dans les cadres desquels des possibilités sont facilitées pour des rencontres entre les chômeurs et les employeurs et la réalisation des contacts directs et des présentations. En 2012 on a organisé et mené à bonne fin 72 bourses de travail (17 générales et 55 spécialisées, y compris 40 pour des jeunes gens), pour 2013 il est prévu d'organiser 96 bourses générales et spécialisées. L'assistance mutuelle entre les institutions d'Etat et les institutions privées offrant des services de médiation s'accroît.

Une attention spéciale est donnée au service de personnes chômeurs par des équipes mobiles des services d'emploi au niveau local. Ce sont 600 places de travail et filiales déménagées qui fonctionnent et qui facilitent l'accès de chômeurs de lieux éloignés aux services fournis par l'Agence d'emploi.

On continue l'accomplissement d'activités tendant à perfectionner l'organisation du travail et élargir la capacité administrative de l'Agence d'emploi dans le but d'améliorer la qualité des services de médiation fournis. En 2012 on a mené à bonne fin la formation de 1997 fonctionnaires de l'Agence d'emploi (83% de tous les fonctionnaires). Auprès de 46 bureaux de travail (47% de tous les bureaux de travail) on a introduit le principe de service « sur un guichet unique ». Jusqu'à la fin de 2015 tous les 98 bureaux de travail commenceront à travailler selon le principe « sur un guichet unique ».

En 2013 il s'attend que 120 000 chômeurs trouvent de travail par intermédiaire des bureaux de travail sur le marché du travail primaire par rapport à 110 500 en 2012 et 103 000 en 2011. La partie de marché relatif à l'agence d'emploi dans le placement au travail s'accroît de 26,1% pendant les premiers neuf mois de 2011 jusqu'à 28,7% pour le même période de 2012.

RESC 1§1 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

20. No information was provided.

RESC 1§1 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combating unemployment and promoting job creation.

21. The representative of Italy provided the following information in writing:

Le Comité européen des Droits sociaux a soulevé, dans les Conclusions 2012, un cas de non conformité de la situation italienne à l'article 1§1 de la Charte, au motif « *qu'il n'est pas établi que les efforts déployés au titre des politiques de l'emploi soient suffisants pour lutter contre le chômage et favoriser la création d'emploi* ».

Dans le rapport examiné par le Comité, on avait souligné les inévitables répercussions que la récession économique commencée en 2008 a causée sur l'économie mondiale et notamment sur les travailleurs. Jusqu'à 2011, le marché du travail italien avait été touché marginalement par la nouvelle récession. Par rapport à l'évolution du cadre macro-économique global, les résultats récents n'étaient si négatifs vu qu'au début de 2012, bien que les **heures travaillées aient graduellement diminué**, le taux d'emploi n'avait jamais baissé. Compte tenu des caractéristiques des différents secteurs, en 2011 les tendances des dernières années avaient été confirmées. Avant tout, il est important de souligner une distinction dans l'emploi fondée sur le sexe: par rapport à la stagnation de l'emploi des hommes on relevait une hausse dans l'emploi des femmes. **La hausse de 2011 avait intéressé principalement les travailleurs salariés avec un contrat à temps déterminé.** En 2011, **l'emploi des travailleurs indépendants avait diminué**: la baisse avait intéressée surtout les entrepreneurs et les artisans, c'est-à-dire ceux qui avaient subi le plus les difficultés des entreprises, en particulier les petits entrepreneurs.

Le quota des travailleurs à temps partiel involontaires (personnes travaillant à temps partiel en l'absence d'un emploi à temps plein) **avait augmenté.**

Enfin, l'emploi était plus favorable **pour les travailleurs étrangers.** Bien que la crise dans l'industrie et dans la construction aient réduit la demande d'ouvriers, les immigrés travaillaient dans des secteurs où la demande de main-d'œuvre était en hausse, comme, par exemple, celui des employés de maison.

Enfin, la structure par âge du marché du travail avait changé, en défavorisant les travailleurs plus jeunes : par rapport à 2008, plus d'un million d'employés âgés de moins de 34 ans ne travaillaient plus. Ce nombre avait été partiellement compensé par la hausse des employés plus âgés.

Au cours des dernières années, la tenue partielle du niveau d'emploi avait contribué à limiter la hausse du chômage. En effet, le taux de chômage avait légèrement augmenté, passant de 6,1% en 2007 à 8,4% dans la période 2010-2011. La relative tenue du taux de chômage reflétait la baisse dans l'offre d'emploi, compte tenu qu'un nombre croissant de personnes « découragées » préférait interrompre la recherche d'un emploi, et, donc, perdre le statu de chômeuses.

A partir de la fin de 2011, un changement soudain dans la décision de participer au marché du travail avait été observé. En effet, l'offre de travail avait recommencé à augmenter mais, en l'absence de possibilités d'emploi, les chercheurs d'emploi allaient grossir les rangs des chômeurs. Par conséquent, le taux de chômage avait rapidement augmenté.

Tableau 1
Employés - Variation en % - moyennes annuelles

| | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|--|------------|------------|------------|-------------|-------------|------------|
| Total | 2.0 | 1.3 | 0.3 | -1.6 | -0.7 | 0.3 |
| dont : | | | | | | |
| Agriculture | 2.0 | -2.4 | -2.1 | -2.6 | 1.4 | -2.0 |
| Industrie | 1.2 | 0.6 | 0.8 | -4.4 | -3.3 | 0.2 |
| Construction | 1.3 | 3.1 | 0.4 | -1.4 | -1.8 | -3.5 |
| Tertiaire | 2.3 | 1.5 | 0.7 | -0.8 | 0.1 | 0.9 |
| Commerce, exercices publics, transports, communication | 2.7 | 1.5 | 0.5 | -1.2 | -0.5 | 0.9 |
| Crédit, services aux entreprises | 2.7 | 3.4 | 1.7 | -2.6 | 1.1 | 1.6 |
| Education, santé, services publics et services aux personnes | 1.7 | 0.5 | 0.5 | 0.6 | 0.0 | 0.7 |

Source : Elaboration du CNEL sur données ISTAT

Tableau 2
Employés en fonction de l'âge

| | Var % 2010/2011 | Valeurs absolus en milliers | Var % 2008/2011 | Valeurs absolus en milliers |
|-----------|--------------------|--------------------------------|--------------------|--------------------------------|
| 15-24 ans | -5.5 | -68 | -20.5 | -303 |
| 25-34 ans | -2.6 | -131 | -13.3 | -750 |
| 35-44 ans | -0.6 | -44 | -2.5 | -185 |
| 45-54 ans | 3.0 | 188 | 7.2 | 435 |
| 55-64 ans | 5.3 | 143 | 15.2 | 375 |
| 65-74 ans | 3.2 | 10 | -3.2 | -11 |
| Total | 0.4 | 97 | -1.9 | -439 |

Source : Elaboration du CNEL sur données ISTAT

Tableau 3
Employés en fonction de la zone

| | Var % 2010/2011 | Valeurs absolus en milliers | Var % 2008/2011 | Valeurs absolus en milliers |
|------------|--------------------|--------------------------------|--------------------|--------------------------------|
| Nord-ouest | -5.5 | -68 | -20.5 | -303 |
| Nord-est | -2.6 | -131 | -13.3 | -750 |
| Centre | -0.6 | -44 | -2.5 | -185 |
| Sud | 3.0 | 188 | 7.2 | 435 |
| Total | 5.3 | 143 | 15.2 | 375 |

Source : Elaboration du CNEL sur données ISTAT

Tableau 4
Population active, emplois, chômage

| | 2007 | 2008 | 2009 | 2010 | 2011 | 2007-2011 |
|-------------------|-------|-------|-------|-------|-------|-----------|
| milliers | | | | | | |
| Employés | 23222 | 23405 | 23025 | 22872 | 22967 | -255 |
| Population active | 24728 | 25097 | 24971 | 24975 | 25075 | 347 |
| Chômeurs | 1506 | 1692 | 1945 | 2102 | 2108 | 602 |
| Taux de chômage | 6.1 | 6.7 | 7.8 | 8.4 | 8.4 | 2.3 |
| Var% | | | | | | |
| Employés | 1.0 | 0.8 | -1.6 | -0.7 | 0.4 | -1.1 |
| Population active | 0.3 | 1.5 | -0.5 | 0.0 | 0.4 | 1.4 |
| Chômeurs | -10.0 | 12.3 | 15.0 | 8.1 | 0.3 | 40.0 |

Source : Elaboration du CNEL sur données ISTAT

Tableau 5
Taux de chômage (% sur la population active de 15-64 ans)

| | 2009 | 2010 | 2011 |
|--------------------|------|------|------|
| Sexe | | | |
| Hommes | 6.9 | 7.7 | 7.7 |
| Femmes | 9.3 | 9.7 | 9.7 |
| Citoyenneté | | | |
| Italien | 7.6 | 8.2 | 8.1 |
| Etrangers | 11.2 | 11.7 | 12.2 |
| Zone | | | |
| Nord-ouest | 5.9 | 6.3 | 6.4 |
| Nord-est | 4.8 | 5.6 | 5.1 |
| Centre | 7.3 | 7.7 | 7.8 |
| Sud | 12.6 | 13.5 | 13.7 |
| Age | | | |
| 15-24 ans | 25.4 | 27.9 | 29.1 |
| 25-34 ans | 10.5 | 11.9 | 11.7 |
| 35-44 ans | 6.2 | 6.6 | 6.7 |
| 45-54 ans | 4.5 | 5.0 | 5.0 |
| 55-64 ans | 3.4 | 3.6 | 3.9 |

Source : Elaboration du CNEL sur données ISTAT

Comme on l'a indiqué avant, à partir de 2012 l'emploi avait commencé à subir les effets négatifs produits par la crise. De suite, des mesures extraordinaires ont été mises en place par le gouvernement afin de faire face à l'urgence, d'un côté, et de créer un nouveau marché du travail plus dynamique et inclusive, de l'autre. Ces mesures avaient le double but de surmonter les subdivisions et les rigidités du marché du travail et de contribuer à la hausse de l'emploi et de la productivité.

Les différentes manœuvres financières qui se sont succédé au cours de 2011 contenaient des mesures visant à favoriser la création d'emploi. En résumé, trois axes ont été individués par le gouvernement: **la lutte à l'irrégularité ; la mise à jour des parcours de transition école-marché du travail ; la réforme de la législation en matière de travail.**

Le premier axe portait sur les mesures adoptées dans la lutte à l'irrégularité. Par le **Texte coordonné sur le travail** (L. 183/2010) qui a modifié la maxi-sanction pour le travail non déclaré, l'appareil des sanctions ainsi que la procédure d'inspection du travail ont été reformés. En outre, **la Manœuvre bis 2011** (L. 148/2011) a introduit le délit de « médiation illégale et d'exploitation du travail ».

Le deuxième axe portait sur le rencontre entre la demande et l'offre de travail. Par la **Manœuvre économique de 2011** (l. 111/2011) des interventions visant à élever le nombre d'acteurs ont été mises en place. Parmi ceux-ci, il y a les organismes de patronage, les écoles, les universités, les organisations syndicales des employeurs et de travailleurs ainsi que les communes qui ont été expressément autorisées par la loi à exercer un service de médiation (c'est-à-dire qu'elles ne doivent pas être soumises à un contrôle préalable). Dans cet axe, la réforme de l'apprentissage est également contenue. Aux termes du décret-loi 167/2011 (Texte unique pour l'apprentissage), la réglementation revient à la négociation collective, ou bien aux régions, dans le respect des principes généraux fixés par la loi. Suite à la réforme, le contrat d'apprentissage devient le premier outil soit pour le contraste au désalignement entre les qualifications requises et l'offre de travail, soit pour favoriser un stable emploi pour les jeunes. A ce propos il est important de souligner la nature de « contrat de travail à durée indétermi-

née, finalisé à la formation et à l'emploi des jeunes » du contrat d'apprentissage. En effet, ceci prévoit que, face au paiement d'un salaire, l'apprentis outre à exercer une activité lucrative reçoive une formation à caractère professionnalisant. Bien que les dénominations aient changé au fil du temps, la distinction en trois types est restée. Suite à la réforme, les types de contrats d'apprentissage sont les suivants:

- 1) *L'apprentissage en vue de l'obtention d'un diplôme ou d'une qualification professionnelle.* Il s'adresse aux jeunes âgés de 18 à 25 ans. Ce type d'apprentissage permet aux jeunes d'obtenir un diplôme ;
- 2) *L'apprentissage à caractère professionnalisant.* Il s'adresse aux jeunes âgés de 18 à 29 ans. Ce type d'apprentissage permet aux jeunes d'acquérir un « métier »;
- 3) *L'apprentissage de haute formation et recherche* permet aux jeunes d'obtenir des diplômes du niveau secondaire et tertiaire (diplôme secondaire, licences et masters universitaires, doctorat en recherches, spécialisations techniques du cycle supérieur) et de s'inscrire aux ordres professionnels.

Dans le deuxième axe une réforme des stages, aux sens de la L. 148/2011, est aussi contenue. La loi a individué quatre types :

- 1) *les stages visant à favoriser les choix professionnels et l'emploi des jeunes dans la phase de transition allant de la fin des études à l'entrée dans le marché du travail.* Ce type de stage permet une formation sur le lieu de travail. La durée du contrat doit être égale ou inférieure à six mois. Il s'adresse aux jeunes ayant un diplôme d'école supérieure ou un diplôme de fin d'études universitaires de ne pas plus de 12 mois ;
- 2) *les stages inclus dans les plans d'études des universités et des écoles,* finalisés à affiner le processus d'apprentissage et de formation des jeunes avec la modalité de l'alternance école/travail ;
- 3) *les stages d'insertion/réinsertion au travail,* déroulés en faveur des chômeurs, y compris les travailleurs en mobilité. La discipline de ces stages revient totalement aux Régions ;
- 4) *les stages en faveur des personnes handicapées.*

Par le **Maxi-amendement à la Loi** de finances 2012 (l. 183/2011), d'autres mesures en matière d'emploi ont été mises en place. En effet, afin de favoriser l'emploi chez les jeunes et les femmes, d'incitations économiques et réglementaires relativement à certains types de contrats (comme le contrat à temps partiel et le contrat d'insertion) ont été prévues. A côté des incitations susmentionnées, des mesures de dissuasions au sujet des collaborations coordonnées et continues ont été introduites.

Après un cheminement parlementaire de plusieurs mois, le 27 Juin 2012 le Parlement a approuvé le projet de loi concernant la réforme du marché du travail. La réforme portait sur quatre axes :

- 1) favoriser l'adoption de contrats de travail plus stables pour les jeunes, en valorisant l'apprentissage et en contrastant l'utilisation abusive de certains types de contrats ;
- 2) prévoir des normes plus flexibles pour la retraite ;
- 3) simplifier la conciliation des conflits de travail ;
- 4) renforcer les tutelles des jeunes et des femmes en les redistribuant en toute équité et en les liant aux politiques actives afin de favoriser l'emploi et le rencontre entre la demande et l'offre de travail.

En résumé, les quatre axes sont les suivants : **les contrats; une majeure flexibilité pour la retraite; les amortisseurs sociaux et les politiques actives.**

Le premier axe porte sur la **rationalisation des différents types des contrats existants**. Comme on l'a indiqué avant, avec la nouvelle formulation **l'apprentissage** - tout type considéré – devient la « rampe de lancement » pour la formation professionnelle des travailleurs.

Le deuxième axe porte sur la **protection des travailleurs en cas de licenciement illégitime**. Bien que les tutelles prévues contre le licenciement discriminatoire ou le licenciement disciplinaire injustifié du travailleur ne soient pas changées, avec la réforme l'incertitude relativement à l'issue des procédures des licenciements économiques déjà entamées, s'est réduite. Enfin, l'introduction d'une procédure abrégée pour la conciliation des conflits de travail devrait réduire ultérieurement les frais de justice.

Le troisième axe porte sur le soutien au revenu, la formation professionnelle et le recyclage, les incitations à l'emploi ainsi que les politiques actives dans l'ensemble, voire il porte sur la refonte des amortisseurs sociaux et des autres instruments prévus à ce but. A cet égard, il est important de souligner que le nouveau système d'amortisseurs sociaux a introduit, à partir du 1^o Janvier 2013, **l'Assicurazione Sociale per l'Impiego (Aspi) – (Assurance Sociale pour l'Emploi)** qui a remplacé l'indemnité de mobilité, l'indemnité de chômage ordinaire (non agricole), l'indemnité de chômage avec des conditions réduites et l'indemnité spéciale de chômage du secteur de construction. Au même temps, des mesures visant à inclure les catégories des travailleurs à l'heure actuelle exclues de la protection (comme, par exemple, les apprentis et les nouveaux employés) ont été envisagées.

Le quatrième axe porte sur **les politiques actives, les services pour l'emploi et la formation professionnelle**. Il vise à réaliser le renouvellement des politiques actives afin de faire face au changement du contexte économique et de favoriser la création d'emploi ainsi que la hausse du taux d'emploi. La réalisation de ce plan prévoit une stricte interaction entre l'Etat et les Régions. En ce qui concerne **les services pour l'emploi**, la détermination des **niveaux minimum essentiels des prestations** a été également prévue. Dans ce contexte, étant donné le pouvoir législatif concurrent et, dans certains cas, exclusif des Régions, la réforme a conféré au Gouvernement la délégation en matière des services pour l'emploi et en a défini les principes et les critères directifs. En conformité avec les indications de l'Union Européenne, le Ministère de l'Education en accord avec le Ministère du Travail, après avoir consulté les Organisations syndicales des employeurs et des travailleurs ainsi que les Administrations locales, a fixé les règles de **l'éducation permanente**. En particulier, une délégation pour la détermination et la validation des études soit formels qu'informels a été envisagée.

Même si dans une situation d'extrême manque des ressources, une attention toute particulière a été donnée à **l'égalité des chances fondée sur le sexe**. La présence des femmes au sein du marché du travail demeure encore fortement inférieure à celle des hommes. Afin de réduire cet écart, la réforme examine plusieurs aspects. Le premier aspect regarde la prévision de normes contre les soi-disant « démissions en blanc », en faveur de tous les travailleurs et, en particulier, des travailleuses. La nouvelle réglementation prévoit l'adoption de modalités simplifiées et la décharge soit pour l'employeur soit pour le travailleur ainsi que la consolidation du régime de confirmation des démissions des travailleuses ayant des responsabilités familiales. Le deuxième aspect vise à améliorer la division des responsabilités familiales et la conciliation entre les temps de vie et de travail par l'introduction du **congé obligatoire de paternité** et le financement des **mesures en faveur des travailleuses ayant des responsabilités familiales**. (voir au dessous)

Enfin, des vérifications sur les suivis de la réforme, ou bien sur l'impact qu'elle pourra produire en termes d'offre et de demande de travail, ont été envisagées. En effet, la loi a expressément prévu la

surveillance des actions déployées afin d'améliorer le fonctionnement du marché du travail et de mieux répondre aux exigences économiques et sociales du Pays.

Les dispositions d'exécutions

Aux sens de l'art.1, alinéa 9, lettre f) de la loi susvisée, **des modalités de communication concernant la continuation du rapport de travail au-delà du terme fixé à son début**, ont été fixées. En exécution de cette disposition, le Ministre du travail et de politiques sociales a promulgué le Décret 10 Octobre 2012 (publié sur le Journal Officiel n. 251 du 26/10/2012).

Selon les nouvelles dispositions (art. 69 bis, DLgs. n. 276/2003), le rapport de collaboration coordonnée et continue sur projet peut être défini comme une activité exercée par un titulaire d'une TVA. En particulier, les alinéas 26 et 27 de l'article 1 de la loi n. 92/2012 établissent que l'activité exercée à titre de travail indépendant par un titulaire d'une TVA soit considérée comme un rapport de collaboration coordonnée et continue le cas où certaines conditions soient remplies – sauf que le commettant ne fournisse pas une preuve contraire –. Avec le Décret du Ministre du travail et des politiques sociales du 20 Décembre 2012, qui a accompli la loi de réforme du marché du travail, les activités n'étant pas soumises à la nouvelle réglementation ont été recensées. S'agissant d'activités professionnelles pour l'exercice desquelles l'inscription aux ordres professionnels, aux tableaux, aux registres ou aux listes est requise, la présomption dont à l'article 69-bis, DLgs. n. 276/2003, ne s'applique pas.

Deux mesures expérimentales en faveur des personnes ayant des responsabilités familiales ont été envisagées. L'expérimentation terminera le 31 Décembre 2015. Il s'agit de l'introduction du **congé obligatoire de paternité** et des **bons pour la garde d'enfants**. Ces mesures visent soit à favoriser la division des responsabilités familiales soit à surmonter les obstacles limitant la présence des femmes au sein du marché du travail. En accomplissant la nouvelle réglementation, le Décret 22 Décembre 2012 du Ministre du Travail et des politiques sociales, en accord avec le Ministre de l'Economie et des finances, a réglementé les critères et les modalités d'utilisation d'un jour de congé obligatoire pour le père et de deux jours de congé facultatif à utiliser alternativement à la mère. Il a également prévu la possibilité pour la mère travailleuse - à la fin de la période de congé obligatoire de maternité et pendant les onze mois suivants – de demander, à la place du congé parental, une contribution à utiliser alternativement pour la garde d'enfants ou pour les crèches publiques ou privés.

Comme on l'a déjà indiqué avant, la réforme a consacré un grand espace à **l'éducation permanente**, vu qu'un moderne système de protection et de promotion du travail doit nécessairement se fonder sur la formation et l'éducation des personnes. A cette fin, on a individué **la validation des études (non) formels et informels** ainsi que le **système national de validation des connaissances**, en tant qu'outils fondamentaux pour un marché du travail dynamique. Par analogie avec les règles déjà adoptées par d'autres Pays européens, cette discipline vise à aligner les services publics centraux et locaux pour l'éducation, la formation et l'emploi aux lignes directrices de l'UE. Dans la mise en œuvre des lignes directrices de l'UE, le décret-loi 16 Janvier 2013, n. 13 a été promulgué. En tant que résultat d'un travail interinstitutionnel complexe, le règlement vise à reconnaître les connaissances des personnes formellement, informellement et non formellement acquises, afin d'encourager l'échange professionnel et la mobilité, en harmonisant la discipline aux lignes directrices européennes. Le décret a été précédé par :

- l'Accord dans la session de la Conférence Etat-Régions du 19 April 2012, concernant la définition d'un système national de certification des connaissances acquises pendant l'apprentissage ;

- l'Entente dans la session de la Conférence unifiée du 20 Décembre 2012, regardant les politiques en matière d'éducation permanente ainsi que les lignes directrices pour l'individuation des critères généraux et des priorités finalisés à la promotion et au soutien des réseaux territoriaux.

Le 24 Janvier 2013, la Conférence permanente pour les rapports entre l'Etat, les Régions et les Provinces Autonomes de Trente et Bolzano, a promulgué les **Lignes directrices en matière des stages de formation**. En exécution de la loi de réforme du marché du travail, le Gouvernement italien a présenté la disposition susvisée qui a fixé les limites dans lesquelles les Régions doivent adopter un règlement spécifique dans les six mois. En réglementant les stages effectués au sein des entreprises, la disposition a défini les principes communs et les standards minimum auxquels les Régions et les Provinces Autonomes doivent se conformer. Dans le cadre de la poursuite de l'engagement pris en Octobre 2010 par le Gouvernement, les Régions et les Organisations syndicales des employeurs et des travailleurs, l'entente est finalisée à la promotion de l'apprentissage.

En vue de **promouvoir l'emploi chez les jeunes et les femmes** dans le contexte de l'actuelle phase économique, suite à la promulgation du Décret du Ministère du Travail du 5 Octobre 2012, 230 millions d'euros ont été affectés en faveur des emplois effectués jusqu'au 31 Mars 2013. Les ressources déployées visent à encourager la création de rapports de travail stables ou bien d'une durée plus longue. En particulier, les sommes affectées visent à :

- a) inciter la transformation des contrats de travail à temps déterminé des jeunes et des femmes en des contrats de travail à temps indéterminé. En particulier, ces mesures s'adressent aux jeunes et aux femmes ayant un contrat de collaboration coordonnée et continue, un contrat sur projet ou une association en participation, en favorisant la stabilisation de leur rapport de travail par la transformation en un rapport de travail à temps indéterminé. Les stabilisations susvisées s'appliquent aux contrats de travail valides ou résiliés par ne pas plus de six mois. Dans ces cas, la stipulation d'un nouveau contrat de travail à temps indéterminé, soit à temps plein qu'à temps partiel, à condition qu'il n'aie pas une durée inferieure à la moitié de l'horaire ordinaire de travail, a été prévue ;
- b) donner des incitations pour chaque emploi à temps déterminé des jeunes et des femmes avec un horaire de travail ordinaire.

En outre, le projet **AMVA – Apprendistato e mestieri a vocazione artigianale (Apprentissage et petits métiers)** est finalisé à la formation et au placement dans l'industrie manufacturière d'environ 20.000 jeunes âgés de 15 à 29 ans. Le projet vise à améliorer le niveau d'emploi des jeunes en tenant en compte les éléments clé suivants :

- en 2009, en Italie la demande des entreprises artisanes a été évaluée en environ 140.000 unités. Cependant, près de la moitié de la demande a restée insatisfaite au motif que le nombre de travailleurs ayant les compétence professionnelles requises est trop bas ;
- en 2010, la demande des entreprises manufacturières artisanales a été d'environ 236.000 diplômés des écoles techniques et professionnelles par rapport à un' offre de 125.712 jeunes. Donc, environ 110.000 postes ont restés vacants ;
- en 2011, malgré l'aggravation de la crise économique et la hausse du niveau de chômage des jeunes, outre 45.000 postes ont restés vacants (pour la plupart il s'agissait des postes liés à l'exercice des petits métiers à caractère manuel).

Le projet contient des mesures expérimentales visant à favoriser le placement des jeunes par les outils suivants : 15.800 contrats d'apprentissage finalisés au placement des jeunes ; la création de 110 « boutiques de métier » (1 pour chacune des 110 provinces italiennes) en vue de la formation de 3.300 jeunes par un stage au sein des entreprises ; 500 « transferts d'entreprises » de entrepreneurs âgés de plus de 55 ans aux jeunes d'un âge compris entre 18 et 35 ans par un système d'incitations finalisées à promouvoir l'alternance des générations dans le secteur des petits métiers. Enfin, le Réseau national d'acteurs publics et privés du marché du travail a été renforcé en vue de favoriser l'intégration – en matière d'apprentissage et des petits métiers - entre les politiques pour l'emploi et la formation à l'échelle locale et celles à l'échelle nationale.

En vue de réaliser les priorités indiquées dans le Plan d'Action/Cohésion, II^{ème} phase, 10 millions d'euros seront affectés par le Ministère du Travail et des Politiques Sociales afin de soutenir les **expériences de travail et de formation des jeunes au sein des entreprises**, notamment des NEET, « ni étudiants, ni employés, ni stagiaires ». Environ 3.000 jeunes pourront être intéressés par cette mesure, qui prévoit également le versement d'allocations mensuelles pour les stagiaires sous forme de remboursement forfaitaire. L'intervention s'adresse aux jeunes diplômés âgés de 24 et 35 ans des régions du sud de l'Italie qui ne travaillent pas. Pour ce qui concerne les entreprises, celles opérant dans les domaines traditionnels italiens, dans celui de la conservation du patrimoine culturel et environnemental national ainsi que dans les services aux entreprises seront favorisées.

Afin d'augmenter le niveau d'emploi chez les jeunes et le maintien de conditions de revenus suffisants pour les travailleurs plus âgés, le Ministère du Travail et des Politiques Sociales a promulgué le Décret 19 Octobre 2012 visant à la promotion du vieillissement actif. Un pacte intergénérationnel au sein d'entreprises avec la participation de l'INPS a été conclu afin de réduire l'horaire de travail des travailleurs plus âgés en préservant les conditions de retraite et en favorisant la création d'emplois stables, surtout en apprentissage, pour les jeunes.

Suite à l'approbation du décret-loi n. 179/2012, le Gouvernement a mis en place des mesures en faveur des « **démarrages** » **innovants**, guidées par des jeunes talentueux et compétents.

Un groupe de travail composé par le Ministère de l'Economie, le Ministère du Travail, d'académiques, des employeurs, des capitalistes et des fonctionnaires a réglementé les mesures susvisées. En particulier, les mesures visent à favoriser la croissance durable, le développement technologique, le nouvel esprit d'entreprise et l'emploi, notamment des jeunes. En outre, elles ont la finalité de contribuer au développement d'une nouvelle culture d'entreprise, à la création d'un contexte plus favorable à l'innovation ainsi que à la promotion d'une majeure mobilité sociale et à attirer en Italie des talents, des entreprises innovantes et des capitaux étrangers. Des dérogations au droit des sociétés en vigueur ont été également prévues.

Deux importantes dispositions en matière de soutien à l'emploi ont été adoptées le 21 Mars 2013 :

- a) le Décret interministériel signé par le Ministre du Travail et des politiques sociales et le Ministre de l'Economie et des finances réglemente les dégrèvements d'impôts en faveur des employeurs ayant stipulé des contrats d'insertion jusqu'à la date du 31 Décembre 2012 ;
- b) le Décret du Ministre du Travail et des politiques sociales indiquant les soi-disant « travailleurs défavorisés », en exécution des principes établis par le Règlement communautaire CE n. 800/2008.

Les mesures réalisées

Dans le cadre d'un plan d'action global, le Ministère du travail, en concours avec les Régions, a lancé un **programme de communication et de soutien pour l'utilisation du nouvel apprentissage** par une campagne médiatique spécifique adressées aux jeunes. Le programme a également prévu la construction d'un portail d'information et de service dédié, qui relie et met à la disposition de la population toutes les règles et les instruments régionaux.

La promotion de l'emploi chez les jeunes, même par une comparaison entre les deux systèmes éducatifs (l'apprentissage et le système dual) est le but du protocole d'accord signé le 12 Novembre 2012 par le Ministre du Travail et le Ministre de l'Education avec leurs homologues collègues allemands. L'accord prévoit une coopération entre les deux Pays en matière de politique de l'emploi et des politiques de l'éducation et de la formation professionnelle. En ce qui concerne le marché du travail, l'accord indique les mesures à réaliser par des fonds nationaux et des fonds européens. Trois actions sont envisagées, notamment : le début d'une tournée itinérante pour le placement en Italie, parrainée par le réseau EURES des deux pays; la réalisation d'un séminaire sur le suivi des politiques du marché du travail; la promotion de la mobilité transnationale entre les deux Pays ainsi que d'activités de coopération à niveau européen dans le cadre du programme Leonardo da Vinci.

En vue de contrôler et d'évaluer l'impact des politiques adoptées, le Ministère a lancé un processus de suivi et d'évaluation de la réforme du marché du travail, permettant l'accès à certaines bases des données.

En particulier, deux échantillons de micro-données à diffuser pour la recherche scientifique ont été préparés en conformité avec les prescriptions existantes en matière de protection de la vie privée. Le premier échantillon a été sélectionné par le système de communications obligatoires pour la période 2009-2012 ainsi que le deuxième a été extrait des archives de l'INPS pour la période 1985-2010. La diffusion des données revient aux bureaux statistiques du Ministère du Travail et de l'INPS.

Le temps écoulé depuis l'approbation de la loi 92/2012 est encore insuffisant pour dégager certaines tendances quant à son application. Toutefois, la surveillance effectuée par le ministère du Travail et l'Isfol a fourni quelques données initiales sur les nouvelles tendances de l'emploi. Il est important de souligner qu'il y a eu une réduction significative des contrats sur projet (-30%, environ 20.000 de moins), surtout des contrats à terme. Cela correspond au but de la loi qui est celui de lutter contre l'abus de contrats atypiques, tels que *le travail sur projet*.

En effet, en se référant aux données désaisonnalisées découlant des Communications Obligatoires pour le quatrième trimestre 2012, cette tendance a été confirmée : les engagements par des contrats à temps indéterminé (+ 3,7% par rapport au troisième trimestre, égal à 1.642.015 placements) ont recommencés tandis que les collaborations coordonnées et continues (-9,2%) et, surtout, le *travail intermittent* (-22,1%) ont enregistré une baisse. En outre, l'apprentissage a fait enregistrer une hausse significative (de 2,4% à 2,8%) sur le total des placements dans la période Juillet-Décembre 2012. Egalement, une hausse a été enregistrée pour le travail subordonné soit à temps déterminé (de 63,1% à 65,8%) soit à temps indéterminé (de 18,2% à 19%).

En considération de tout ce qu'on illustré au dessus, il est évident qu'en Italie les politiques de l'emploi jouent un rôle fondamental, comme les nombreuses mesures qui se sont succédées au cours des dernières années et, en dernier lieu, la réforme du marché du travail, ont démontré.

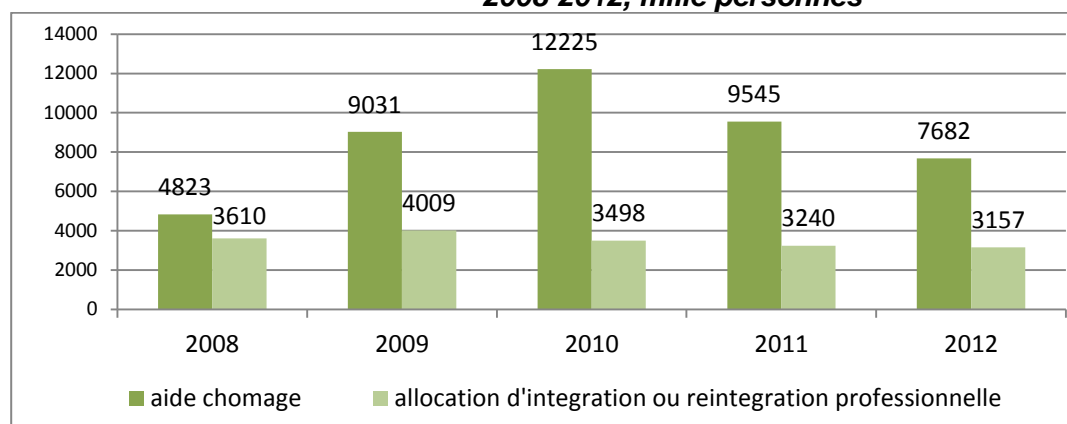
RESC 1§1 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

22. The representative of the Republic of Moldova provided the following information in writing:

La diminution du volume de financement des mesures actives a été conditionnée par la baisse des revenus au budget d'Etat suite à la crise économique durant les dernières années. En même temps, certaines mesures prévues dans la Loi nr.102-XV ont été moins efficaces ce qui constitue encore un motif de leur non-application.

Evolution des mesures passives de protection sociale dans la période de 2008-2012, mille personnes



Source – ANE

Mesures actives de stimulation de l'emploi 2008-2012, mille personnes

| Mesures actives | 2008 | 2009 | 2010 | 2011 | 2012 |
|--|-------|--------|--------|-------|-------|
| Bénéficiaires des services de médiation | 67121 | 105488 | 104457 | 85694 | 71685 |
| Bénéficiaires de services d'information et de conciliation professionnelle | 31526 | 31090 | 56413 | 66989 | 69647 |
| Formation professionnelle (promus) | 4383 | 4453 | 2380 | 2235 | 2485 |

Source ANE

Actuellement on est en train de mettre en place la budgétisation à la base de programmes de performance, avec l'établissement des objectifs concrets et allocation des moyens financiers pour chaque objectif, étant de cette manière assure le financement à la base des résultats. Dans ces conditions le financement des mesures sur le marché de travail dépendra de l'efficacité des programmes sur le marché du travail.

Dans ce contexte, la Loi nr. 102-XV est en train d'être révisée au sujet des mesures actives sur le marché du travail: on imagine d'améliorer certaines mesures existantes, annuler les mesures inefficaces et introduire des nouvelles mesures actives sur le marché du travail pour contribuer à l'intégration des chômeurs sur le marché du travail, y compris en stimulant l'auto-emploi.

RESC 1§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts have been inadequate in view of the persisting high levels of unemployment in a context of relative economic growth.

23. The representative of the Slovak Republic stated that two projects aimed at reducing the number of young unemployed persons are being carried out (since November 2012) in the Slovak Republic (Employment Support for the Unemployed in the Self-governing Regions of the Slovak Republic; Support of Creation of New Work Opportunities) under the operational programme Employment and Social Inclusion. These two projects are aimed at the creation of new jobs for jobseekers under the age of 29 years. These projects will conclude in 2015 and by this time more than 14 000 new jobs for the young unemployed will have been created.

24. A new project aimed at promoting the employment of the long-term unemployed, older persons and school graduates is also underway. The project should conclude in 2015 and by that time several thousand new jobs for the most disadvantaged jobseekers will have been created.

25. In order to reduce the level of unemployment, an important amendment to the Act on employment services was adopted on March 20, 2013 and entered into force May 1, 2013. It ensures a more individualized approach to the provision of employment services especially on the local and regional level, a higher quality of information and advisory services, more specialised vocational training and guidance for the most disadvantaged job seekers – that means the youth, the long-term unemployed persons and older persons.

26. The amendment also increases the importance of taking into consideration the regional situation on the labour market by involving the social partners in decision-making related to the drafting and implementation of active labour market measures. This will be achieved by the social partners' participation in tripartite Committees on Employment.

27. The ETUC raised the issue of the need to provide more statistics and data in order to demonstrate the efficiency of the labour market services.

28. The representative of the Slovak Republic stated that new legislation had very recently entered into force which would make the collection of data easier.

29. The GC took note of the information provided, stressed the need to provide all relevant information in the next report and decided to await the next assessment of the ECSR.

RESC 1§1 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and in promoting job creation.

30. The representative of Turkey provided the following information in writing:

Information on active labour market measures taken in Turkey is summarized below:

i. Vocational Training Courses

They are vocational training and/or vocational rehabilitation activities for the unemployed persons registered to İŞKUR who have no job, are insufficient or whose job is not eligible in the labour market in order to be educated in the professions needed in the labour market and to increase their employability through changing their jobs or improving their skills provided that they meet the conditions.

Conditions for attending the courses

- a) To be unemployed registered to the Institution,
- b) Having finished 15 years of age,
- c) Having the special conditions in conformity with the job specifications,
- d) Not having attended the courses organized by the Institution before in the same profession,
- e) Having the assent of the advisor by benefiting from the services of profession and vocational counselling,
- f) Not being retired,
- g) Not imposing sanctions for not attending the courses.

The students in the evening education and in the distant training can attend the courses. The trainee cannot benefit from a new course before 6 months following the end of the course.

The persons receiving unemployment benefit should attend the training activities on condition that they fulfil the minimum requirements of their last job and that a suitable education opportunity to their personal career and status as well as their education, age and health conditions is provided. The unemployment benefit of the persons who do not accept taking education without presenting a valid reason or complete the education without a valid reason is cut as of this date.

It is compulsory to continue to the courses. The persons having a reasonable excuse by the Institution are permissible. However, these leaves cannot exceed one tenth of the total course period for whatever reason except the five days health leave at maximum certified by the physician's report. In case of exceeding the time limit the trainees are broken off.

It is essential to open these courses in line with the annual labour force plan, the current labour market research results and/or requirements from workplaces in terms of the needs of labour market and the number of professions and persons.

Training Programme, Examination and Certification

The course training programmes can be made up from two parts namely technical and practical. According to the feature of the profession, technical and practical parts can be given together at the courses. The course training programmes are approved by the Ministry of National Education (MoNE). MoNE ensures that the curriculum of the course training programmes to be in accordance with UMS. The contractor, in the vocational courses in which a professional competence certificate can be given, makes the operations of examination, assessment and evaluation as well as certification via the authorized bodies on examination and certification. Those succeeded in the examination, assessment and evaluation which shall be made by the authorized certification body are given professional competence certificate. The vocational training courses can be organized with the distance education methods.

The period of courses

The total period cannot exceed 160 actual days. Courses should be at least thirty and at most forty hours on condition that they should not exceed at least five hours and at most eight hours a day and 6 days a week.

The liability of employment after the course

At least 50% of the trainees can be employed as far as the actual course period at least on condition that being not less than 120 days provided that they should be inaugurated within 30 days at the latest from the date of the announcement of the course examination result.

Employment is realized in the profession which the trainee is taking education. In the courses organized with the private sector workplaces; the trainees should be employed in the workplace or workplaces subject to the contractor in order to fulfil the liability of employment.

The expenses that can be covered

To each trainee who attend the courses an indispensable expenditure is paid (20 TL for 2013) for each actual training day determined by the Governing Bod of the Institution. The universal health insurance as well as occupational accidents and diseases insurance premium of the trainees are deposited by İŞKUR.

Service providers

The Institutions/Organizations that can be in cooperation with/purchase service in carrying out labour force training services:

- a) Educational institutions affiliated to the Ministry of National Education.
- b) Universities
- c) Private educational institutions and private educational enterprises established in accordance with the Law of Private Education Institutions No. 5580
- d) Private sector workplaces
- e) Public institutions and organizations and the professional organizations having the characteristic of a public organization, labour, employer's and artisan's unions, the banks and their organizations established with a private law and the workplaces affiliated to them as well as the associations and foundations having commercial enterprises.

Within the framework of the related legislation within the scope of offering active labour force services, cooperation or service purchase with the private employment agencies was established within the scope of the Law No. 4904.

ii. Vocational Training Of The Employees

Within the framework of the related provisions of the Regulation on Active Labour Services, the workers of the workplaces which service is purchased or cooperated with can attend the courses in the workplaces in order to improve their professional knowledge and skills and to adapt to new technologies. Courses can also be organized for the workers employed in heavy and hazardous work by the Institution.

Moreover, courses can be organized only for the employees through cooperation. In the trainings organized within this framework, the expenditure of the trainer can be paid to the contractor on a monthly basis on condition that it should not exceed two fold of the price of additional course hours determined by MoNE in case the trainer cannot be provided from the sources of the contractor.

The trainees, attending the courses organized within the scope of the vocational training of the employees, are not paid any income by the Institution; but are given a certificate for completing the course or a certificate in accordance with the related legislation.

iii. The Project of GAP 2

South-eastern Anatolia Project: It is a regional development project aiming at raising the income level and living standards of the locals, removing the interregional differences and contributing to the economic improvement and social stability at national level in order to reveal the potential that the South-eastern Anatolia Region has through using the sources of the country. **Provinces of the Project:** Adiyaman, Batman, Diyarbakır, Gaziantep, Kilis, Mardin, Siirt, Şanlıurfa, Şırnak.

Implementation Period of the Project: It is between 2008-2012; the Project Period in the Investment Programme of Ministry of Development for 2013 was indicated as 2008-2015 and the implementation period of the Project was extended.

The field of activity of İŞKUR within the scope of the Project: Vocational training activities were realized in charge of İŞKUR within the scope of GAP2 Project implemented between 2008-2012. Labour Training Courses, Programmes for Utility, Programmes for Entrepreneurs, Programmes for On-the-Job Training and courses within the scope of UMEM.

iv. Job Training Programs

Job Training Programs are organized for people registered as unemployed in the registered workplaces in order to provide professional experience and / or to consolidate the theoretical knowledge they have acquired previously.

Job Training Programs are formed through the results of labor market researches, the needs identified by the business and vocational counselor during the workplace visits or discussions that they made with unemployed people and the demands of the employers or participants candidates.

Job Training Programs aim to increase the employability of participants by giving professional experience, for this reason the program cannot be organized for the jobs required any particular skills (manual workers, cleaning personnel, transport workers, tea sellers ...)

Conditions of Participation for Job Training Programs

To be registered unemployed, to be at least 15 years of age, not to be first or second degree blood relative of the employer are the conditions of participation for the job training programs.

Job training program beneficiaries, three-months before the beginning of the program, should not be registered or informal workers in list of insured service of the workplace in which the program will be held.

Evening education and open education students and college students, with a view to compensate for a lack of work experience after graduation and see the application of theoretical knowledge; can participate in the program.

Beneficiaries of the programs who benefit from the business and vocational consulting services are required to obtain the consent of their consultant.

People, who have graduated from courses; provided that they start to work in the same profession within one month from the end of the course, can participate in the job training programs.

People who receive unemployment benefits can be participant. Retired people cannot participate in the program.

Participants are required to attend the program. The employer or employer's representative can give a casual leave to participants who have an acceptable excuse. These permits are written on participants' continuity schedules. However, the sum of the duration of this permit, Except for five-day health care permission certified by a doctor's report, cannot exceed one-tenth of the total duration of the program. In the opposite case, the participant will be dismissed from the program. Sick leave period which is in excess of five days will be deducted from the one-tenth leave period.

Duration of the programs

The minimum numbers of hours to work in a day is 5 hours and the maximum numbers of hours to work in a day is 8 hours. The maximum numbers of hours to work in a week is 45 hours and the total number of working days is 160 days. The maximum participating day in the program is 160 working days in 24 months. The duration of the program for people with disabilities is 320 working days in 24 months.

Covered expenses

An allowance to cover essential expenses of trainees is paid to each participant attended to Job Training Program. (25 Turkish liras for the year 2013 - for each training day) General health insurance premiums and work accident insurance premiums and occupational disease insurance premiums of participants are paid during the program by Turkish Employment Agency.

Number of Participants and Starting the Program

Employers who have between two or ten employees can demand one participant for the Job Training Program. Employers who have more than 11 employees can demand for the number of one-tenth of total insured employees.

Implementation of the Programs in Workplaces

Job Training Programs can be implemented in :

- a- Registered workplaces who have at least 2 employees subject to Labor Law no 4857 and sub paragraph (a) of fourth paragraph of the Law No 5510 on Social Insurance and General Health Insurance dated 05.31.2006,
- b- Economic enterprises that public institutions / organizations shares are less than fifty per cent.

If the program participant is employed after completing training; the program can be organized in associations, foundations, public professional organizations, professional associations, trade unions, chambers of commerce and industry, notaries and other places.

v. Specialized Vocational Training Centers Project (VET-UMEM)

Specialized Vocational Training Skills '10 Project (VET-UMEM Beceri' 10) was initiated to offer a solution to unemployment arising as a result of mismatch between supply and demand in labour market. As a result of a protocol signed between Turkish Employment Agency (İŞKUR), Union of Chambers and Commodity Exchange (TOBB) and Ministry of National Education (MEB) within the context of the Project which aims to increase employment, courses will be organized in 213 technical and industrial vocational high schools determined in 81 provinces and the workplaces which are members of TOBB will be able to apply for On-The-Job Training Programmes as well.

At the very beginning this Project was initiated in 19 provinces within the scope of a protocol signed between Union of Chambers and Commodity Exchange (TOBB), Ministry of Labour and Social Security, Ministry of National Education and TOBB- University of Education and Technology (TOBB-ETÜ) and is being implemented in 81 provinces currently. The unemployed people who want to benefit from this Project should get registered to İŞKUR from its website: www.iskur.gov.tr

Goals of the Project:

- Organizing the vocational training courses in line with the needs of firms and increasing their effectiveness,
- Renovating the infrastructure of vocational high schools and increasing adaptation of trainers with technology,
- Making Provincial Employment and Vocational Training Institutions functional,
- Promoting participation of chambers and employers to the process of management of vocational training courses.

Implementation Process of the Project:

- Gathering labour demand from employers: employers from all over the country submit their demands to the Chamber of Industry and Trade or to the web page of the Project online.
- Matching: Employer and the workplace where the trainee will take on-the-job training will be matched before the beginning of the courses in Project schools or workplaces in line with demand.

- Initiating courses: The courses will be organized in schools or workplaces. Trainees, who pass the exams after being trained on theoretical part of the vocation, will start on-the-job training.
- On the-job Training: Trainees will practically receive on-t-he job training from experienced employees/trainers in workplaces determined after matching process.
- Employment: Trainees who complete their trainings are employed in claimant workplaces. The insurance premiums of the trainees who graduate from İŞKUR courses are covered by the State.

The job seekers within the scope of VET Skills' 10:

- will be trained in schools whose equipment is just renovated with state of the art technology in 81 provinces.
- will acquire a profession after theoretical and practical trainings that will take maximum six months and will be paid per diem for both vocational training and on the job training periods.
- who succeed at the end of the training will get the chance to be employed. Insurance premiums for occupational accidents and professional diseases for and universal health insurance premiums of the trainees will be covered by Turkish Employment Agency (İŞKUR) during the courses.

Firms will:

- provide for initiation of the courses in the area of the vocation needed.
- provide apprenticeship for the trainees without any financial obligation.
- Take the opportunity of observing the trainee they plan to employ on the job.
- both have the chance to employ skilled employees and benefit from incentives when they employ the trainees within VET Skills' 10 Project.

How can the firms benefit from the Project?

The applications for the Project will be received in two ways:

- from the web site of the Project (<http://bbs.beceri.org.tr/BBS/welcome.do>) via the tab ; "Seeking for a skilled employee"
- direct application to the Chamber of Commerce and Industry

vi. Vocational Training and Rehabilitation of the Disabled, Convicted And Former Convicted People

While specifying the vocational training and rehabilitation programs for disabled people, Provincial Directorates of Labour and Employment Agency contacts and exchanges opinions with associations, foundations and vocational rehabilitation centers which are established for the benefit of disabled people. The qualifications of disabled people are determined in line with the vocations within these pro-

ceedings. The opinions and demands of the Provincial Employment and Vocational Training Boards are being taken into consideration in implementation of the projects for the disabled groups as well.

In the process of organizing courses for convicted and former convicted people, cooperation is made with penal institutions affiliated to the Ministry of Justice. Vocations that are appropriate for the convicted and former convicted people are specified in consultation with Provincial Employment and Vocational Training Boards and trainings/programs are organized.

Provincial Directorates of Labour and Employment Agency will give priority to the people who have no professions while determining the participants of the trainings/programs which will be held by taking the professions suitable for the disabled people who are registered as seeking jobs or set up their own business. The people, who receive disabled pension with regard to the Law No. 2022 can attend these trainings/programs as well.

Courses/trainings will be organized only by covering indispensable expenditures of the trainees, insurance premiums for occupational accidents and professional diseases and universal health insurance within the scope of the Project which is reimbursed by İŞKUR.

vii. Programs for the Benefit of the Society (PBS)

Definition: Programs with the aim of short term employment and education of unemployed individuals, particularly in times of high unemployment. They can be carried out directly or with a contractor.

Scope: Generally, these programs are carried out in order to prevent registered unemployed individuals from having financial troubles and to resist their loss of discipline and to provide them with short term employment and education, particularly in times of:

- 1) Economic crisis,
- 2) Privatization,
- 3) Economic structuring,
- 4) Natural disasters,
- 5) High unemployment

Services that may be provided:

- 1- All programs must be directed at public interest.
- 2- Programs may have the following fields as their subjects;
 - a. Environmental cleaning
 - b. Renewal of public infrastructure
 - c. Environmental planning, maintenance, repair and sanitation of public schools affiliated to the Ministry of National Education
 - d. Restoration and protection of historical and cultural heritage
 - e. Afforestation, landscaping
 - f. Valley and stream remediation
 - g. Prevention of erosion
- 3- With the condition of prioritizing the general needs of the city, priority will be given to areas in which the public interest is higher while determining the field of the program. In this aspect, programs will be evaluated by project based proposals and proposals directed at a specific job will not be evaluated.

Program duration:

Maximum program duration is 9 months. The period for benefiting from PBS may not be longer than 9 months in a year. After finishing the 9 month PBS, the participants should wait 3 months to benefit from another PBS. The maximum working time of participants is 45 hours in one week. According to the characteristics of the work to be done, part-time programs may be carried out.

Conditions for participating in the programs:

- 1- To be unemployed and registered
- 2- To be over 18 years old
- 3- Participant should not have pension, disability or survivors benefits

Selection of Participants and Limitations:

Participants will be chosen from zones that are closest to the locale of the program

The provincial directorate may directly choose the participants in order to increase and promote the employability of disadvantaged groups (long term unemployed, women, people with lower education, etc.), to prevent potential problems of recruitment of trainees to active labour programs, to realize practices wary of socio-economic differences between regions and to prevent individuals who may hinder these programs. In addition it is also possible for provincial directorates to determine all participants by draw or 80% by draw and 20% directly.

Participants may use unpaid time off for a duration of 1/20 of the total duration of the program without excuse. Also they may use paid time off for a duration of 1/20 of the total duration of the program. These programs cannot be reason for the dismissal of a worker who is currently working in a relevant institution. In case of such practice, the institution will be banned from carrying out another program for two years. If this is the case and the institution is the same with the institution relevant to the contractor, all payments will be taken back.

The inspection of this situation is carried out by monitoring the records of the employer and worker in social security institution.

Institutions which may give proposals to the programs

- 1) Non-governmental organizations
- 2) Private enterprises
- 3) Local public institutions

Although there are no obstacles before NGOs and private enterprises to carry out programs, in case of emergencies such as earthquake or natural disasters all programs will be carried out with local public institutions.

viii. Entrepreneurship Training Programme

Entrepreneurship Training Programme (GEP) are organized to help Institution enrolees setting up and developing their own business, and to provide them applying *Small and Medium Enterprises Development Organization (KOSGEB) New Entrepreneur Consolidation*.

The main purpose of this Program is; that the entrepreneur candidate in the end of that training, gains knowledge and experience about preparing and practicing plans of its own business ideas.

The registered participants, who have the feature of appropriate qualification of their entrepreneur training, are being elected by contractor and corporate staff, according to the principle of impartiality and equality of opportunity.

Participation Terms of Entrepreneurship Training Programme

- a) Be registered to the Institution
- b) Have completed 18 years of age
- c) Have not taken advantage of the same module in the Entrepreneurship Training Programme.

In this context, within the Institution enrollee, also especially for those who want to improve their own company, can be given Entrepreneurship Training.

Besides, those in agricultural activities and optional insurance holders, green card holders, recipients of disability pension and widows 'and orphans' pensions can benefit from trainings.

Participants are required to attend training. The participants, who have an acceptable excuse, can be given compassionate leave by the trainers. However, including the medical report, for whatever reason, the sum of that leaves cannot exceed the 1/10 of the total training time. In case of prescription, the participants will be dismissed.

Training Programme and Period of Training

The Training within the context of the Protocol signed between the Institution and KOSGEB, contains the theme of Basic Level Entrepreneurship Training and consists of a total of 70 hours of classroom training and workshops.

In addition, trainees taking basic education, can be provided additional basic, second and third level educations, provided that the conditions of accession and content of this educations are determined by the Institution. The total period of this four level educations can not exceed 180 actual days.

The educations within the framework of the program, can be proceed maximum forty hours a week, with the condition of maximum eight hours daily and 6 days weekly.

Training Modules

- Module 1: Testing of qualifications of entrepreneurship, developing of work ideas and practices of creativeness- 8 (eight) hours
- Module 2: Term of work plan and units (market searching, marketing plan, production plan, management plan, financial plan)- 18 (eighteen) hours,
- Module 3: Atelier works for the reinforcement of units of work plan (market searching, marketing plan, production plan, management plan, financial plan)- 24 (twenty four) hours,
- Module 4: Issues which should be taken into consideration at the preparation and presentation of the work program- 20 (twenty) hours.

In the trainings will be used case studies, practice etc. practical and interactive techniques. In the atelier works will be the studies/researches of the participants reviewed jointly with the examples submitted by the educators.

Costs Which Can be Met

Each participant who has taken part on the program is paid, for each actual training day, a trainee compulsory cost (For the year 2013). During the program premiums of the trainees in context of health and occupational accidents and diseases is paid by ISKUR.

Service Providers

Service providers who are able of service procurement Training Programm for Entrepreneurship (GEP);

- a) Universities,
- b) Private education institutions constituted in regard of the Law of Private Education Institutes with no. 5580,

Employee associations and professional chambers which meet minimum standards needed for education.

Article 1§2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

RESC 1§2 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 1§2 of the Charter on the grounds that it has not been established that the restrictions on access of foreign nationals to employment are not excessive

31. No information was provided.

RESC 1§2 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 1§2 of the Charter on the grounds that:

- *the duration of alternative labour service replacing military service amounts to an excessive restriction on the right to earn one's living in an occupation freely entered upon;*
- *it has not been established that the exceptions to the prohibition on forced labour are in conformity with the Charter.*

32. The representative from Armenia provided the following information in writing:

33. There had been no change to the situations but that the Conclusions of the ECSR would be taken into account in the future.

RESC 1§2 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 1§2 of the Charter on the grounds that

- *there is no shift in the burden of proof in discrimination cases, and*
- *the prohibition on foreign nationals being employed in the civil service goes beyond that permitted by the Charter.*

First ground of non- conformity

34. The representative of Azerbaijan recalled that discrimination in labour relations is prohibited under Article 16 of the Labour Code.

35. He further stated that the submission of evidence to a court in discrimination cases is regulated by the Civil Procedure Code of the Republic of Azerbaijan, as follows:

“Each party shall prove circumstances used as grounds for its claims and objections.”

36. He further described the legal system and indicated that the Government was unclear how a shift in the burden of proof in discrimination cases could be incorporated into the national legal system without interfering with the principles of the justice system. He requested further information and assistance in this respect.

37. The Lithuanian delegate emphasized how important it was for there to be a shift in the burden of proof in discrimination cases as discrimination could be very difficult for a plaintiff to prove.

38. The Polish delegate stated that perhaps the ECSR or Secretariat could provide assistance to the Government of Azerbaijan in this respect. This assistance could consist of facilitating access to information concerning similar legislation in other countries as well as of providing information on the case law of the European Social Charter in the respective field.

39. The GC urged the authorities to bring the situation into conformity with the Charter as soon as possible and decided to await the next assessment of the ECSR.

Second ground of non- conformity

40. The representative of Azerbaijan stated that in the existing legislation relating to the public service of the Republic of Azerbaijan, there is no direct restriction on foreign nationals being employed in the civil service.

41. According to the Article 55.2 of the Constitution of the Republic of Azerbaijan, foreign nationals and stateless persons can access the civil service under procedures established by legislation. The Law of the Republic of Azerbaijan “On Civil Service” dated September 1 2001 contains no restriction on foreign nationals’ access to the civil service
He further stated that despite this, there are no special normative or legal acts regulating this issue in the country.

42. However the representative stated that a Working Group headed by Commission for Civil Service had been established in order to elaborate a Draft Code for the Civil Service of the Republic of Azerbaijan. The above-mentioned Draft will provide rules for the recruitment of foreign nationals and

stateless persons in the civil service. The Draft Code is to be submitted to the National Parliament for possible adoption in the next year.

43. The GC took note of the positive developments in the situation and decided to await the next assessment of the ECSR.

RESC 1§2 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 1§2 of the Charter on the ground that the restrictions on foreigners non nationals of EEA member states or Swiss nationals occupying posts in the federal civil service go beyond those permitted by the Charter.

44. The representative of Belgium stated that there had been no real change to the situation. Article 10 of the Constitution reserves statutory posts in the federal civil service to nationals. However access to employment in the federal civil service may be opened to non-nationals by virtue of the direct effect of certain treaties (such as the EU treaties) which take precedence over national norms, even without Constitutional revision.

45. However Article 1§2 of the Charter does not have such direct effect. The Constitution was to be revised first before putting into place any modification as suggested by the ECSR. Meanwhile, the relevant Article of the Constitution had been declared “revisable” by the Parliament meaning that it was now up to the government to present a proposal for amendment.

46. The representative of Belgium pointed out that “contractual jobs” in the federal civil service were open to non-nationals.

47. The GC took note of the information provided and urged the Government of Belgium to bring the situation into conformity with the Charter.

RESC 1§2 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§2 of the Charter on the grounds that:

- *Nationals of States Parties to the European Social Charter which are not members of the European Union or of the European Economic Area may not be employed in public service posts, which constitutes discrimination on grounds of nationality;*
- *the upper limit on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive;*

First ground of non-conformity:

48. The representative from Bulgaria stated that Article 7 of the Civil Servants Act in its current version states that a civil servant may be a person who is a Bulgarian citizen, a citizen of another Member State of the European Union, of another state - party to the Agreement on the European Economic Area or the Swiss Confederation;

49. The representative of Bulgaria further stated that until 2008, only Bulgarian citizens had the possibility to be appointed as civil servants. After the accession of Bulgaria to the EU, and in order to

comply with the principles of free movement of people, the scope of persons who may be appointed to civil service has been extended now, citizens of other Member States of the EU, of a state-party to the Agreement on the European Economic Area or the Swiss Confederation may also be appointed as civil servants.

50. The Commission for Protection against Discrimination, has expressed an opinion (Decision Ne 202/2012, Third Panel) in which it accepted that prohibition on third-country nationals from being employed under a service contract aims to preserve the national sovereignty. Furthermore, in the same decision, the Commission for Protection against Discrimination has accepted the justification of the requirements for citizenship by Article 45, para 4 of the TFEU, which allows the provisions on freedom of movement for workers not to apply in relation to employment in public administration, in order to protect national sovereignty.

51. According to Article 2 of the Civil Servants Act, "Civil servant" means a person who, by virtue of an administrative act on appointment, occupies a salaried tenured position in the state administration and assists a body of state power in the exercise of the powers thereof. The representative stated that according to Bulgarian legislation there is a difference between those employed under employment contracts and those in a civil service relationship. In cases of persons employed under employment contracts the Labour Code applies, and for those appointed under a civil service relationship the Civil Servants Act applies.

52. In Decision No. 13189/5 November 2009, delivered by the Supreme Administrative Court, it was found that the requirement for Bulgarian nationality shall not constitute unequal treatment because according to Article 7, para 1, item 1 of the Protection against Discrimination Act it shall not constitute discrimination to treat persons differently on the basis of their nationality/citizenship or of persons without citizenship where this is provided for by a law. The Court accepted that the conclusion is consistent with the adopted Article 3, para 1 of the Foreigners in the Republic of Bulgaria Act whereby foreigners shall have any and all rights and obligations under the laws of Bulgaria and all ratified international treaties to which the Republic of Bulgaria is a signatory, excepting those rights and obligations expressly requiring Bulgarian citizenship.

53. However, in view of the conclusions of the ECSR and the compliance with the international commitments of Bulgaria, the question will be brought to the attention of the Government and the social partners.

54. The GC invited the Bulgarian authorities to provide all relevant information in their next report and decided to await the next assessment of the ECSR.

Second ground of non-conformity:

55. The representative of Bulgaria stated that Article 225, para 1 of the Labour Code provides in cases of unlawful dismissal, for compensation. However compensation is subject to a maximum of sum equivalent to 6 months of the employee's previous gross salary.

56. However under Article 71 of the Protection against Discrimination Act individuals who believe they have been discriminated against, inter alia in employment, may bring their cases before the civil courts and may seek and receive a compensation for damages caused by the violation.

57. Compensation may be awarded for both material and non-material damages - affected honor, dignity, pain and suffering. Compensation shall be determined on an equitable basis.

58. Judicial practice accepts that the concept of “equity” is not abstract, and in determination of fair compensation should be considered and discussed all specific circumstances that are relevant to determining the amount of compensation in order to be fair. Therefore there are no limits to compensation awarded under this legislation.

59. The text of Article 225, para 1 of the Labour Code and Article 71, para 1, Sections 1-3 of the Protection against Discrimination Act complement each other, claims may be brought under both pieces of legislation.

60. The reason for this is that the grounds for awarding compensations are different. The compensation under Article 225, para 1 is awarded to the worker because he/she was unemployed for a certain period of time due to any kind of unlawful dismissal, while the compensation under Article 71, para 1 of the Protection against Discrimination Act is awarded for acts of discrimination, not only in the workplace but in all cases of discrimination actions.

61. The GC took note of the information provided and requested the Bulgarian authorities to provide all the relevant information in the next report. Meanwhile it decided to await the next assessment of the ECSR.

RESC 1§2 CYPRUS

The ECSR concludes that the situation in Cyprus is not in conformity with Article 1§2 of the Charter on the ground that the duration of alternative military service amounting to almost three years is excessive and constitutes a disproportionate restriction on the right to earn a living freely entered upon.

62. The representative from Cyprus stated that alternative military service is fulfilled exclusively in camps or services of the National Guard and the recruit is assigned to special duties which do not require the use or training in the use of weapons.

63. Recruits serving alternative social service do not have any military capacity and they are placed in public utilities usually performing desk duties. They follow the working hours of the public utility in which they serve, in contrast to the military service which is fulfilled on a 24 hour basis within the camps and involves on-going training exercises, etc.

Given the special circumstances that exist in Cyprus and the needs of the National Guard for a maximum of 24 month military service, the Ministry of Defence is of the opinion that the provisions of the law regarding the maximum alternative social service do not create any distinction between recruits, considering that normal military service is fulfilled on a 24 hour basis while alternative social service is fulfilled under the working hours (normally 38 per week) and conditions of the public utility in which the recruit serves.

64. The representative from the ETUC and the Chair highlighted that there had been no change in the situation since 2007 and no willingness to change.

65. The representative from Belgium asked whether those performing alternative service received wages and whether the ECSR took into account the different conditions under which alternative service is performed.

66. The Cypriot representative stated that neither group received a wage merely a stipend.

67. The Secretariat confirmed that the ECSR did not take into account the different conditions under which alternative service was performed. It considered the length of such service, its proportionality

ty to military service and its overall duration during which an individual is prohibited from entering an occupation freely entered upon. It referred the GC to the ESCRs interpretative statement on this issue in the General Introduction to Conclusions 2012.

68. The Cypriot representative stated that those performing alternative service could take a part time job freely as they generally worked in the public sector, which worked until 14.30.

69. The Chair questioned whether this would be legal.

70. Finland suggested that the working days of those performing alternative service could be lengthened and correspondingly the overall duration of alternative service could be reduced.

71. The representative from Romania stated that almost 3 years was too long a period and pointed out there was no willingness to change the situation.

72. The representative from Greece stated that there was a logic behind the Cypriot law on alternative service, it was in fact proportionate to compulsory military service, not so much longer, further the Committee should take into account the conditions under which each type of service was performed and the special circumstances of Cyprus.

73. The Committee took note of the information provided, however it urged the Government to bring the situation into conformity with the Charter.

RESC 1§2 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 1§2 of the Charter on the grounds that:

- *it has not been established that there is adequate protection against all forms of discrimination in employment*
- *it has not been established that a worker's right to earn his living in an occupation freely entered upon is adequately protected.*

74. No information was provided.

RESC 1§2 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 1§2 of the Charter on the grounds that:

- *access for non-EU nationals of States Parties to public service employment is excessively restricted;*
- *the Navigation Code provides for criminal penalties against seafarers and civil aviation personnel who desert their post or refuse to obey orders, even in cases where there is no threat to the safety of the vessel or aircraft.*

First ground of non-conformity

75. The representative of Italy confirmed that public service posts were only open to nationals and EU citizens. However there was a contradiction/conflict between domestic legislation as this ban on the employment of foreigner nationals (non EU citizens) was difficult to reconcile with Article 2 of the

Immigration Act which appears to permit all those lawfully present to work without discrimination. There have been several judgments in favour of non-EU nationals who wish to have access to public employment. However the conflict between the legislation will have to be resolved by the Constitutional Court alternatively the new Minister for Immigration will propose legislation.

76. On the proposal of the Chair the Committee decided to take note of the information provided by Italy and urged the Government to take into account the conclusion of the ECSR.

Second ground of non-conformity

77. The representative from Italy stated that the draft law repealing the provisions in question was still there but was not making much progress. However Italy was now in the process of ratifying the ILO Maritime Convention which would also require the repeal of these provisions therefore they would be repealed as part of the ratification process.

78. The GC took note of the information provided and urged Italy as quickly as possible to bring the situation into conformity with the Charter. Meanwhile it decided to await the next assessment of the ECSR⁶.

RESC 1§2 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 1§2 of the Charter on the grounds that:

- *the upper limits on the amount of compensation that may be awarded in discrimination cases (with the exception of gender discrimination cases) may preclude damages from making good the loss suffered and from being sufficiently dissuasive;*
- *army officers cannot seek early termination of their commission unless they repay to the state at least part of the cost of their education and training, and the decision to grant early retirement is left to the discretion of the Minister of Defense, which could lead to a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation.*

First ground of non-conformity

79. The representative of Ireland stated that the financial compensation available to victims of discrimination under Irish employment equality law is only one of a set of remedies provided, and its effectiveness should be looked at in that context. The guiding principle adhered to by the Equality Tribunal and the Labour Court in cases where discrimination has been held to occur, is to place the complainant in the position he or she would have been in had the discriminatory treatment not taken place. Redress can take the form of financial compensation for the discrimination, proportionate to the harm suffered, and separate awards can be made for different forms of discrimination, be it direct or indirect discrimination, harassment, sexual harassment or victimisation. Significant awards in the amounts of €125,000, €315,000 and €327,000 have been made to date. Redress is not limited, however, to financial compensation and may also include orders for re-instatement or re-engagement, or changes to work practices and conditions, which are of real and practical benefit to the victim.

80. Secondly, sanctions act to penalise employers who have findings of discrimination made against them. Such employers will be obliged to pay the compensation awarded to victims. Employers

⁶ A Recommendation was previously adopted on this issue RChS(94)4 and remains in force.

may also be subject to orders that a named person or persons take a specific course of action. This option is widely used by the Equality Tribunal to disseminate good practice and prevent reoccurrence of discriminatory policies and practices and has a radiating or more systematic effect in combating discriminatory practices. Examples include requiring employers to produce and implement equality policies and to train staff appropriately.

82. The Chair pointed out that there was no new information and no indication of an intention to change the situation.

83. The GC took note of the information provided, asked Ireland to bring the situation into conformity and decided to await the next assessment of the ECSR.

Second ground of non-conformity

84. With regard to the second finding, the representative of Ireland stated that Ireland accepts that there has been no effective change in respect of the requirements relating to the retirement of Commissioned Officers from the Permanent Defence Forces of Ireland since the determination of non-compliance by the Governing Committee of the European Social Charter. It continues to be the case under the provisions of the Defence Act that Officers require permission of the Minister of Defence to resign their commissions in advance of the expiry of the full term of their careers as officers. Ireland's arguments for not being in a position to change continue to centre on the need to maintain a minimum level of service, which is a potentially greater problem than in other countries in light of the small number of military personnel in Ireland. Nevertheless, the Department of Defence confirmed to the ECSR that no officer of the Permanent Defence Force has, since 1992, had an application to retire refused by the Minister.

85. The representative of Turkey pointed out that this was a long standing violation of the Charter , there was no indication of any intention to change and that the GC should proceed to vote on a recommendation.

86. The GC proceeded to vote on a recommendation which was not carried (one vote in favour, 23 against). The GC then proceeded to vote on a warning which was not carried (15 in favour 17 against).

87. The Chair stated that this was very problematic.

88. The representative of Romania suggested that the GC send a strong message.

89. The representative of the United Kingdom highlighted that there was no problem in practice.

90. The GC took note of the information provided, urged the Government to amend the situation and in the meantime decided to await the next assessment of the ECSR.

RESC 1§2 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 1§2 of the Charter on the grounds that:

- *It has not been established that discrimination on the ground of age is prohibited;*
- *discrimination on the ground of sexual orientation is not prohibited;*

- *nationals of other States Parties do not have access to civil service jobs;*
- *exceptions to the general prohibition of forced labour are too wide.*

First ground of non-conformity

90. The representative from the Republic of Moldova stated that indeed there was legislation prohibiting discrimination on grounds of age, Article 8 of the Labour Code prohibits both direct and indirect discrimination, inter alia, on grounds of age. This is not a new provision. However to date there has been no case law on the issue.

91. The GC requested the Republic of Moldova to provide all the necessary information and decided to await the next assessment of the ECSR.

Second ground of non-conformity

92. The representative from the Republic of Moldova stated that in May 2013 a Framework Law on Equality had been adopted and which in its Article 7 specifically prohibits discrimination on grounds of sexual orientation. Further there is draft legislation currently before parliament which will amend Article 8 of the Labour Code and explicitly include sexual orientation as a prohibited ground of discrimination.

93. The GC requested the Republic of Moldova to provide all the necessary information and decided to await the next assessment of the ECSR.

Third ground of non-conformity

94. The representative from the Republic of Moldova stated that the Law on the Public Service requires those who are employed as “*fonctionnaires*” to have Moldovan citizenship. The corresponding posts are those which by definition require the exercise of public authority. However other posts in the public service which do not require the exercise of public authority is open to other nationals have these are not posts of “*fonctionnaires*”.

95. Further the representative from the Republic of Moldova stated that there are bilateral agreements which permit non- nationals to work in the public service.

96. The GC requested the Republic of Moldova to provide all the necessary information and decided to await the next assessment of the ECSR.

Fourth ground of non-conformity

97. The representative of the Republic of Moldova said that national legislation does not contain explicit provisions defining the notion of “civil obligations” used in the Labour Code. At the same time it should be mentioned that the contents of Article 7 of the Labour Code has its origin in ILO Convention No 29 on forced labour. According to Article 2 of the said Convention the term “forced or obligatory labour” does not include small village works carried directly in favour of the community by these mem-

bers. Such work can be regarded as normal civil obligation. Consequently, this term must be understood in that sense.

98. The Chair stated that she believed that this was again a problem of miscommunication, that the report should be more detailed.

99. The GC requested the authorities to provide all relevant information in the next report and decided to await the next assessment of the ESCR.

RESC 1§2 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 1§2 of the Charter on the ground that the Merchant Navy Criminal and Disciplinary Code provide for prison sentences against seafarers who abandon their posts even when the safety of the ship or the lives or health of the people on board are not at stake.

100. The representative from Portugal stated that there had been no change to the situation. The Bill repealing the Code which dated from 1943 was still before parliament. However due to the change of Government, alongside with a financial and economic adjustment programme, which required major reforms within the Public Administration Services, the Port and Maritime Authority was being restructured and this would mean that the passage of the Bill would be further delayed. In addition she stated that parts of the Code had been repealed by the Constitutional, Criminal and Labour legislation that has entered into force since 1943 and in any event had not been applied for 30 years. Also most of the disciplinary and labour regime applied to maritime workers is set out in collective labour agreements, which also define the disciplinary statute governing such workers. The national situation is in full compliance with the rules of ILO Conventions.

101. The representative from Portugal stated that there had been no change to the situation. The bill repealing the Code which dated from 1943 was still before parliament. However due to the Government's change, alongside with a financial and economic adjustment, which required major reforms with the Public Administration Services, the Port and Maritime Authority was being restructured and this would mean that the passage of the Bill would be further delayed. In addition she stated that parts of the Code had been repealed by the Constitutional, Criminal and Labour legislation that has entered into force since 1943 and in any event had not been applied for 30 years. Also, most of the disciplinary and labour regime applied to maritime workers was set by collective labour agreements, which also defined the disciplinary statute governing such workers. The national situation was in full compliance with the rules of the respective ILO Conventions.

102. The representative from Belgium stated that this Code must be abrogated and the GC must push Portugal to do this.

103. The representative from Estonia and United Kingdom pointed out that this was a similar situation to that in Italy, Portugal is also required by the EU to ratify the ILO Maritime Code Labour Convention and will have to repeal the provisions violating the Charter.

104. The representative of ETUC acknowledged that there were some similarities in the situation but stated that in the case of Italy (and previously France) there had been recommendations. The GC needed to vote on a recommendation against Portugal. He also stated that it was a pity that change would occur as a result of the ratification of another international instrument.

105. The GC took note of the information provided and urged the Portuguese Government to bring the situation into conformity with the ECSR.

RESC 1§2 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 1§2 of the Charter on the ground that it has not been established that the restrictions on access of foreign nationals non EU/EEA nationals to posts in the public/state service, not linked to state sovereignty, are not excessive.

106. The representative from the Slovak Republic stated that the Act 552/2003 Coll on the public service defines the prerequisites for employment in the public sector of the Slovak Republic (Article 3). Slovak citizenship is not a prerequisite for work in the public service. Article 3 of this act states that if a person wishes to work in the public service, they, for example, have to: be fully qualified for such a work; they may not have committed a crime; have full legal capacity; be medically capable to carry out work, if they apply for a position which list medical capability as a prerequisite. These positions form the majority of posts and positions in the public sector.

107. Several posts of the public sector are governed by the Act 400/2009 Coll on the state service. Slovak citizenship is a prerequisite to be enlisted in the state service as these positions are state posts in service offices that are of extraordinary importance, high level managing posts and posts that require authorisation for access to state secrets or intelligence services.

108. The GC took note of the information provided and stressed the importance of providing all the necessary information in the next report. Meanwhile it decided to await the next assessment of the ECSR.

RESC 1§2 TURKEY

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 1§2 of the Charter on the grounds that

- *there is insufficient protection against discrimination in employment, in particular on grounds of age and sexual orientation.*
- *the upper limits on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive;*
- *restrictions on access of nationals of other States Parties to several categories of employment are excessive;*
- *under Martial Law, it is possible to suspend or transfer civil servants and local government employees because their employment posed a threat to security in general, law and order or public safety;*
- *the Commercial Code authorised during the reference period the captain of a ship to use force to bring sailors back on board, even in cases where there is no threat to the safety of the vessel.*

First ground of non-conformity

109. The representative of Turkey said that all forms of discrimination are prohibited in Turkey. Article 10 of the Turkish Constitution, Article 122 of the Turkish Penal code, and Article 5 of the Labour Code all contribute to ensure protection against discrimination.

110. Article 5 of the Labour Code provides that “it is forbidden in the work environment to discrimi-

nate on grounds of language, race, sex, political opinion, philosophical belief, the religion, confession and other ground. Although discrimination based on age and on sexual orientation does not appear among the expressly mentioned ground, the Turkish Authorities consider that the expression of other similar ground includes these and that they are thus prohibited by the national legislation. Indeed, the court decisions confirm that the above-mentioned Article of the Labour Code prohibits discrimination based on age and or sexual orientation. In addition, in the Ministry of Social Security and Labour, a department has been established called the “Department for disadvantaged groups”. This department has the role of ensuring social inclusion and of increasing the participation in the job market of disadvantaged groups.

111. The Belgian and ETUC representatives pointed out that this was new information.

112. The GC took note of the information provided, including the evolution in the situation and decided to await the next assessment of the ECSR.

Second ground of non-conformity

113. The representative from Turkey announced that as a result of the conclusion of the ECSR the Ministry of Labour and Social Security had agreed to modify the provision in question, inserting the phrase “an appropriate compensation of an amount at least equal to 4 months salary”, instead of the current wording: appropriate compensation of a maximum amount of not more than 4 months salary. A legislative amendment will be on the agenda shortly.

114. The representative of the ETUC pointed out this was new information.

115. The representative of Poland stated that the GC could take note of this but that it should nevertheless send a strong message as there was no timetable for change.

116. The GC took note of the decision to amend the legislation and while welcoming this nevertheless urged the Government to bring the situation into conformity with the Charter.

Third ground of non-conformity

117. The representative of Turkey informed the GC that by Decree law of 11 October 2011 certain health care professions were opened up to foreigners.

118. As regards other professions still closed to foreigners an inter-ministerial study is currently under way. It is envisaged to modify the legislation to allow nationals of states parties to the Charter on the basis of reciprocity to exercise the professions which are at the moment closed to them.

119. Certain representatives questioned the meaning of reciprocity in this context.

200. The GC took note of the information provided and decided to await the next assessment of the ECSR.

Fourth ground of non-conformity

201. The representative of Turkey underlined that the provisions under Martial law -only apply in a states of emergency and have not been applied since 2002. In order to declare a state of emergency there must inter alia, be extremely serious and exceptional circumstances such as generalized move-

ments of violence seeking to destroy the democratic regime and the rights and freedoms of man, or a situation of war or risk of war, or a generalized movement of violence which puts in danger the national unity or the territorial integrity of the country. It is only in these conditions the Council of Ministers can after seeking the opinion of the Council of National Security proclaim a state of emergency and only for a period of 6 months. This decision furthermore must be approved by the National Assembly of turkey.

202. The representative of Turkey emphasized it is only in these circumstances can the provisions of Martial law be implemented, circumstances which are akin to those set out in Article f of the Revised Social Charter.

203. The GC took note of the information provided and asked that all relevant information be provided in the next report. Meanwhile it decided to await the next assessment of the ECSR.

Fifth ground of non-conformity

204. The representative of Turkey confirmed that on 13 January 2011 a new Code of Commerce was adopted and Article 1467 of the previous Code which was not in conformity with the Charter had been deleted.

205. The GC congratulated Turkey on this reform.

Article 1§3 Free placement services

RESC 1§3 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 1§3 of the Charter on the ground that it has not been established that free placement services operate in an efficient manner.

206. No information was provided.

RESC 1§3 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 1§3 of the Charter on the ground that it has not been established that employment services operate in an efficient manner.

207. The representative of Portugal provided the following information in writing:

The table below shows the number of placements promoted by the Public Employment Service (PES), say, Employment and Vocational Training Institute (IEFP), within the reference period.

Placements promoted by IEFP

| | 2007 | 2008 | 2009 | 2010 |
|-------------------|-------------|-------------|-------------|-------------|
| Placements | 53.244 | 56.732 | 57.048 | 62.430 |

Source: IEFP

The table below shows the number of unemployed registered in the Public Employment Service, number of vacancies received and the number of placements promoted by PES.

Unemployed registered and number of placements in reference to vacancies received by IEFP

| | 2007 | 2008 | 2009 | 2010 |
|-------------------|---------|---------|---------|---------|
| Unemployed | 377.436 | 402.545 | 504.775 | 519.775 |
| Vacancies | 113.251 | 121.066 | 118.935 | 124.851 |
| Placements | 53.244 | 56.732 | 57.048 | 62.430 |

Source: IEFP

In what concerns the period between the registration and the placement of the registered unemployed, the IEFP's data only shows the number of unemployed registered less than a year and the ones registered up to a year or more, as the table shows below:

Structure of placements, according to the registration time

| | 2007 | % | 2008 | % | 2009 | % | 2010 | % |
|---|--------|-----|--------|-----|--------|-----|--------|-----|
| Placements | 53.244 | 100 | 56.732 | 100 | 57.048 | 100 | 62.430 | 100 |
| Registered less a year | 45.983 | 86 | 50.175 | 88 | 51.107 | 90 | 52.072 | 83 |
| Registered up to a year and more | 7.261 | 14 | 6.557 | 12 | 5.941 | 10 | 10.358 | 17 |

Source: IEFP

Article 1§4 - Vocational guidance, training and rehabilitation

RESC 1§4 ANDORRA

The Committee concludes that the situation in Andorra is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream training is effectively guaranteed.

208. See Article 15§1.

RESC 1§4 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right to vocational guidance is guaranteed.

209. See Article 9.

RESC 1§4 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that people with disabilities are guaranteed an effective right to mainstream training.

210. See Article 15§1.

RESC 1§4 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§4 of the Charter on the ground that access to vocational guidance, training or rehabilitation for nationals of other States Party is subject to an excessive length of residence requirement.

211. The representative of Bulgaria stated that the right of foreigners to use vocational guidance services, to participate in motivational training, vocational training and the training for acquisition of key competences is regulated by the Employment Promotion Act (EPA).

212. According to Article 18, para 1 of the Employment Promotion Act every Bulgarian citizen, and every citizen of another Member State of the European Union or of another country - party to the Agreement on the European Economic Area or Swiss Confederation, who is actively seeking employment may become registered in the territorial division of the Employment Agency. Bulgarian citizens and citizens of other Member States of the European Union or of other country - party to the Agreement on the European Economic Area or Swiss Confederation, registered as unemployed, may access the vocational guidance services, participate in motivational and vocational trainings and acquisition of key competencies.

213. The provision of Article 18, para 3 of the Employment Promotion Act has been supplemented (SG. № 9 of 26.01.2011) and foreigners with long-term residence permits and foreigners with permanent residence permits in the Republic of Bulgaria have been given the right to use vocational guidance and to participate in motivational and vocational trainings.

214. According to the Law on Foreigners in the Republic of Bulgaria, the long-term residence has an approved initial period of 5 years which is renewable upon request, and permanent residence – for approved indefinite period. A status of long-term residence is granted to a foreigner who has resided legally and continuously on the territory of the Republic of Bulgaria within 5 years before applying for long-term residence permit.

215. It should also be noted that a preparatory work has begun in the Republic of Bulgaria in order to bring national legislation into full conformity with Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, adopted in 2011. The deadline for implementation of the requirements of the Directive by the Member States is the end of 2013.

216. The Directive provides that workers from third countries under Article 3, paragraph 1, letters b) and c) enjoy the right to equal treatment like the citizens of the Member State, in which they reside, in respect to:

217. The GC took note of the information provided and encouraged the Government to make the necessary amendments to the legislation. Meanwhile it decided to await the next assessment of the ECSR.

RESC 1§4 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 1§4 of the Charter on the ground that career counseling services in the labour market are accessible only to unemployed persons and workers given notice of redundancy.

218. See Article 9.

RESC 1§4 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that:

- *the right to continuing vocational training for workers is guaranteed;*
- *specialised guidance and training for persons with disabilities is guaranteed.*

219. No information was provided.

RESC1§4 HUNGARY

The Committee concludes that the situation in Hungary is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream training is effectively guaranteed.

220. See Article 15§1.

RESC 1§4 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 1§4 of the Charter on the grounds that:

- *access to vocational guidance for nationals of the other States Parties which are not members of the European Union is not guaranteed*
- *there is indirect discrimination of nationals of other States Parties residing or working lawfully in the country due to the length of residence condition for access to continuing vocational training.*

221. See Article 9 and 10§3.

RESC 1§4 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that:

222. The representative of the Republic of Moldova provided the following information in writing:

- *the right to vocational guidance within the education system and labour market is guaranteed;*
- *continuing vocational training services operate in an efficient manner;*
- *the right of persons with disabilities to mainstream training is effectively guaranteed.*

1) En conformité avec l'article 6 de la Loi de l'enseignement nr.547 du 21.07.1995, l'Etat assure les chances égales d'accès aux institutions d'Etat de l'enseignement de lycée, professionnel, moyen de spécialité et supérieur, en fonction des aptitudes et des capacités.

A partir 2010 le curricula modernisé pour la discipline *Education civique* comprend les composantes suivantes sur l'orientation professionnelle des élèves dans l'enseignement primaire, gymnasial, y compris dans les écoles pour les enfants aux déficiences de développement intellectuel ou physique et dans les lycées:

- a) Module „Développement personnel et orientation en carrière” (cl.V-XII);
- b) Droit de travail. Possibilité d'emploi dans le pays et à l'étranger. Contrat individuel de travail (Xème classe).

Conformément au Plan-cadre pour l'année d'enseignement 2012-2013, on a proposé une série de cours optionnels dans les gymnases: (i) Protection de consommateur, (ii) Education pour l'égalité de sexe, (iii) Education sociale et financière (classes V-IX), (iv) Education pour les droits de l'homme, (v) Education économique, (vi) Esprit d'entrepreneur etc. Les lycées ont introduits les cours optionnels: (i) Ethique des affaires, (ii) Protection du consommateur, (iii) Instruction entrepreneuriale, (iv) Education pour les droits de l'homme, (v) Education pour égalité de sexe et chances égales, etc.

Les institutions d'enseignement général effectuent des activités extracurriculaires au niveau de la classe, institution, communauté (activités d'orientation professionnelle dans le cadre des heures du form-maitre, excursions, entrevues avec les spécialistes en droit légal, avec les agents économiques).

2) La formation initiale et continue des travailleurs qualifiés est réalisée dans les institutions d'enseignement secondaire professionnel. En vue de réaliser l'objectif de développement d'un système de formation professionnelle, orienté vers l'assurance avec des ressources humaines compétitives en conformité avec les nécessités courantes du marché du travail, on a entrepris des mesures de relancement et de rénovation de l'enseignement vocationnel (secondaire professionnel et moyen de spécialité).

Les objectifs généraux du procès éducationnel dans l'enseignement secondaire professionnel et moyen de spécialité consiste dans la consolidation des relations avec le milieu des affaires pour améliorer la qualité de formation professionnelle et satisfaire les exigences du marché du travail, diminuer le déphasage d'entre la formation professionnelle dans les institutions d'enseignement et le milieu des affaires.

En vue de réviser le concept du système d'enseignement secondaire professionnel et moyen de spécialité, en formant un système unique de formation professionnelle – enseignement vocationnel/technique, ont été élaborés et approuvés par la Décision du Gouvernement nr.97 du 01.02.2013 La Stratégie de développement de l'enseignement vocationnel/technique pour les années 2013- 2020 et le Plan d'actions pour sa mise en œuvre.

L'objectif général de la Stratégie est de moderniser et rendre plus efficace l'enseignement vocationnel/technique, en vue d'augmenter la compétitivité de l'économie nationale en préparant la main-d'œuvre compétente et qualifiée, en conformité avec les exigences actuelles et futures sur le marché du travail.

L'objectif stratégique n 2 de la Stratégie prévoit l'assurance de la formation professionnelle dans l'enseignement vocationnel/technique basé sur les compétences et leur raccord aux exigences du marché du travail pour que le taux d'emploi augmente avec 10% en 2020, par rapport à 2012 pour les promus de l'enseignement moyen de spécialité et celui secondaire professionnel.

Pour ce qui est l'enseignement supérieur on a amélioré le curricula pour les études supérieurs (licence et master), y compris en élaborant/comptabilisant/expertisant les plans d'enseignement pour les spécialités dans le domaine 14 Sciences de l'éducation (conformément au Nomenclateur).

Suite à l'adhésion de l'enseignement supérieur de la République de Moldova au Procès de la Bologne, les actions de réforme/modernisation ont visé l'amélioration et la modification de la base normative de l'enseignement supérieur, la structuration de l'enseignement supérieur par cycles, l'implémentation du master dans une nouvelle formule, la modernisation et la corrélation du curricula universitaire avec les exigences de l'économie de marché, la mise en œuvre du système d'évaluation académique et d'accréditation des institutions, la promotion de nouvelles stratégies d'organisation et d'évaluation du procès didactique, la mise en œuvre du Système Européen des Crédits Transférables etc. En vue de comptabiliser les qualifications accordées dans l'enseignement supérieur national avec celles européennes, le nouvel Nomenclateur des domaines et des spécialités pour l'enseignement supérieur a été approuvé, étant raccordée à l'ISCED et EuroSTAT.

Dans le contexte de la mise en œuvre du Programme de développement de l'éducation inclusive dans la République de Moldova pour les années 2011-2020, à partir le 01.09.2012 le cours *Education inclusive*, partie composante obligatoire du standard de formation initiale des cadres didactiques a été élaboré et mis en œuvre dans les universités et les collèges aux spécialités pédagogiques.

La consolidation du dialogue social dans l'enseignement supérieur s'est manifestée par la participation active des agents économique, des patronats, des syndicats à l'élaboration de certains actes normatifs: Cadre National des Qualifications (26 participants), le Règlement sur le stage pratique dans l'enseignement supérieur (3 agents économiques), la participation dans le cadre des commissions de finalisation des études de licence et de master, etc.

Un élément spécial est le développement du partenariat public-privé dans le cadre des universités. Par conséquent, par ce partenariat, les institutions de l'enseignement supérieur font consolider leur base matérielle, par exemple: l'ouverture du Centre d'instruction et de consultance en affaires, le Centre de développement économique et affaires publiques, le Centre d'instruction linguistique, l'Incubateur des affaires - tous concentrés à l'Académie des Etudes Economiques, le Centre CE-NIOP – à l'Université Technique de Moldova, le Centre de Guidage en Carrière et Relations sur le Marché du Travail – à l'Université d'Etat de Moldova, etc.

Dans le cadre de l'Université d'Etat de Moldova et de l'Université Technique de Moldova il y a deux centres de formation professionnelle et de placement des étudiants, créés à la base des projets TEM-PUS.

Toutes les activités de ces centres mènent indiscutablement à une performance académique plus haute des étudiants, à un meilleur et sur placement, le guidage en carrière pour les futurs candidats, à l'organisation de forums des professions pour les jeunes, etc.

3) Le Programme de développement de l'éducation inclusive dans la République de Moldova pour les années 2011-2020, approuvé par la Décision du Gouvernement n 523, du 11 juillet 2011, prévoit le changement et l'adaptation continue du système éducatif pour répondre à la diversité des

enfants et des besoins qui en découlent, pour offrir une éducation de qualité à tous dans les contextes intégrés et moyens d'enseignements communs.

Le droit à l'orientation professionnelle sur le marché du travail est stipulé dans l'article 18 et prévu de manière expresse dans l'article 26 de la Loi n 102 du 3.03.2003 sur l'emploi et la protection sociale des personnes demandeurs d'emploi.

Le cadre juridique sur la formation professionnelle continue inclu:

- La Loi de l'enseignement qui régit le procès d'organisation de l'enseignement en général, y compris l'instruction des adultes. L'article 35 de la Loi prévoit que l'enseignement pour les adultes assure aux citoyens l'accès à la science et la culture en vue de les adapter aux changements de la vie sociale et le développement des compétences professionnelles. L'enseignement pour les adultes est réalisé par diverses formes d'instruction et d'auto instruction; enseignement à plein temps, de soir, avec fréquence réduite, à distance, indépendamment ou à la base d'un contrat avec les différentes institutions d'enseignement d'Etat ou privées; des cours auprès les entreprises, etc. Les personnes qui ont suivi individuellement le programme d'un niveau d'enseignement ont le droit de subir des examens, après quoi ils reçoivent le document confirmant les études respectives. Les ministères, les départements, les entreprises, autres personnes juridiques, ainsi que celles physiques, peuvent organiser, en commun avec les institutions d'enseignement ou séparément, des cours de formation et de recyclage professionnel des adultes, leurs propres salariés, ou leurs futurs salariés et la protection sociale des chômeurs et leur réintégration professionnelle.

- **Le Titre III du Code du Travail**, qui régit le procès de formation professionnelle et la formation professionnelle continue des salariés, l'employeur étant obligé à créer des conditions nécessaires et favoriser la formation professionnelle et technique des propres salariés. Dans chaque entreprise l'employeur en commun avec les représentants des salariés dresse et approuve annuellement les plans de formation professionnelle. Les conditions, les modalités et la durée de la formation professionnelle, les droits et les obligations des parties, ainsi que les moyens financiers alloués à ces fins (en montant minimum de 2% du fonds du salaire de l'entreprise), sont établis dans le contrat collectif de travail ou dans la convention collective. Le salarié a le droit à la formation professionnelle, y compris à l'obtention d'une nouvelle profession ou métier. Ce droit peut être réalisé en concluant par écrit des contrats de formation professionnelle, additionnels au contrat individuel de travail.

- **la Conception sur l'orientation, la formation et l'instruction professionnelle des ressources humaines**, approuvée par la Décision du Parlement n 253-XV du 19.06.2003, élaborée en conformité avec les prévisions de la Convention de l'OIT nr.142 sur l'orientation professionnelle et la formation professionnelle dans le domaine de la valorisation des ressources humaines (Genève, 23 juin 1975), ratifiée par la République de Moldova le 28 septembre 2001 et sert comme base pour la l'élaboration des stratégies et des programmes dans le domaines de l'orientation professionnelle et du soutien psychologique de la population en matière de carrière, instruction, recyclage professionnel des jeunes et des adultes, y compris des chômeurs, en concordance avec les problèmes-clés existantes sur le marché du travail.

- **Le Règlement sur l'organisation de la formation professionnelle continue** approuvé par la Décision du Gouvernement n 1224 du 09.11.2004 „Sur l'organisation de la formation professionnelle”, qui régit les modalités d'organisation et de fonctionnement du système de formation professionnelle continue des adultes et indique en même temps sur toutes les activités organisées dans le cadre du système national d'enseignement et hors lui, visant à faciliter le procès de formation d'une société capable à s'adapter à la dynamique des changements dans le monde contemporain.

- la **Stratégie nationale de développement „Moldova 2020”, approuvée par la Loi n 166 du 11.07.2012.** L'une des 7 priorités de développement sous aspect des objectifs stratégiques de long terme de la Stratégie est la Corrélation du système éducationnel aux exigences du marché du travail en vue d'augmenter la productivité de la main-d'œuvre et le taux de l'emploi dans l'économie.

En conformité avec la vision stratégique du compartiment **Etudes: appropriées pour la carrière,** la corrélation d'entre la demande sur le marché du travail et l'offre éducationnelle aura un impact considérable sur le développement économique, tandis que la modernisation du système de formation professionnelle et la perfection des mécanismes de formation continue de la main-d'œuvre permettront aux citoyens de s'adapter aux nouvelles conditions du marché du travail. L'augmentation de la qualité du procès éducationnel contribuera à la création d'un climat d'investissement attirant et bénéfique, grâce à la main-d'œuvre qualifiée, responsable, flexible, tout en contribuant à la productivité du travail et à la compétitivité, tandis que la formation de la main-d'œuvre qualifiée sera assurée par la promotion de l'orientation en carrière, à partir l'enseignement général et par l'offre des possibilités de formation professionnelle continue au cours de toute la vie.

Au cours des dernières années on a enregistré une tendance de croissance du nombre de salariés qui ont participé aux cours de formation professionnelle continue. Les données de la Recherche statistique des entreprises concernant la formation professionnelle des salariés, en 2012, dans 5720 des entreprises, le nombre du personnel constituait 589818 personnes dont 70892 personnes ont suivi une formation professionnelle, dont le poids représente 12% du nombre total, tout en enregistrant une tendance de croissance dans les dernières années du poids du nombre de personnes qui ont suivi une formation professionnelle dans les entreprises de 10% en 2010 et 11,6% enregistrés en 2011.

En 2012 **53368 d'administrateurs, spécialistes et d'autres fonctionnaires ont suivi une formation professionnelle,** dont 24624 personnes (46,1%) ont été formés dans les institutions d'enseignement d'Etat du pays; 22852 personnes (42,8%) - dans le cadre de l'entreprise; 3448 personnes (8,5%) – à l'étranger, et 1739 personnes (3,3%) ont bénéficié de formation professionnelle du compte des organisations internationales.

En 2012 **17524 de travailleurs ont été formés, dont 62,7%** ont été formés dans le cadre de l'entreprise; 32,9% - dans les institutions d'Etat du pays; 0,6% – à l'étranger.

- **Droit des personnes handicapées de suivre une formation dans un milieu ordinaire est garantie effectivement.**

Le droit des personnes handicapées de suivre une formation dans le milieu ordinaire est garantie par la Loi n 60 du 30.03.2012 sur l'inclusion sociale des personnes handicapées, qui prévoit:

Article 28. Assurance de l'éducation préscolaire des enfants handicapés

(1) En vue d'offrir des possibilités réelles d'éducation des enfants handicapés de l'âge préscolaire et accorder l'aide nécessaire visant leur réhabilitation, le Ministère de l'Education et les autorités de l'administration publique locales créent dans les institutions préscolaires des conditions favorables pour les enfants handicapés.

(2) Dans le cas des enfants à un handicap sévère dont l'état de santé exclue leur présence dans les institutions préscolaires, le procès éducationnel est assuré, à la demande des parents, par les autorités de l'administration publique locales par formes alternatives d'éducation ou par divers services

sociaux communautaires et spécialisés ou, selon le cas, ceux-ci sont référées vers les services sociaux de haute spécialisation.

Article 29. L'accès aux études générales (gymnase, lycée), les études moyennes de spécialité et les études supérieures

(1) Les personnes handicapées suivent leurs études générales, moyennes de spécialité et les études supérieures dans les institutions d'enseignement dans l'ordre établi par le Gouvernement.

(2) En vue d'assurer l'accès des enfants handicapés aux services éducationnels, ceux-ci sont assurés, en cas de nécessité avec des cadres didactiques de soutien/assistants personnels/ autres services de support et/ou avec une adaptation raisonnable.

(3) Pour les enfants handicapés soignés ou en procès de récupération dans les institutions médico-sanitaires ou balneo-sanatoriales une période plus longue ont créé des conditions pour la continuation des études dans le cadre de ces institutions.

(4) Lorsque les personnes handicapées soutiennent leurs examens d'admission et se trouvent dans les mêmes positions avec d'autres prétendants (évaluation, nombre de points, etc.), ceux-ci sont admis prioritairement dans les institutions d'enseignement.

(5) Du nombre total des lieux prévus dans les institutions d'enseignement dans le plan d'immatriculation avec le financement budgétaire (pour chaque spécialité/ domaine de formation professionnelle, forme d'enseignement et niveau éducationnel), 15% seront attribués aux aspirants handicapés, tandis que dans le cas où il n'existe pas de demandes de leurs part ou leur nombre est sous le quota indiqué, les lieux restantes seront complétés à la base du principe général.

(6) Les personnes handicapées, y compris les enfants, bénéficient des bourses sociales dans les conditions de la législation en vigueur.

En vue de réaliser les prévisions de la Loi respectives la Décision du Gouvernement n 312 du 27 mai 2013 „Sur les plans d'immatriculation en 2013 dans l'enseignement secondaire professionnel, moyen de spécialité et supérieur” prévoit que le Ministère de l'Education, le Ministère de l'Agriculture et de l'Industrie Alimentaire, le Ministère de la Santé, le Ministère de la Culture, d'autres autorités publiques qui ont des institutions d'enseignements supérieurs et moyennes de spécialité subordonnées attribuent des places avec le financement budgétaire dans les plans d'immatriculation approuvés par cette décision, aux personnes handicapées, en conformité avec la législation en vigueur.

L'immatriculation effective aux études est effectuée en correspondance avec le Règlement d'admission approuvé par le Ministère de l'Education.

En Moldavie il existe deux institutions secondaires professionnelles spécialisées pour les enfants handicapés et les invalides.

(i) Ecole des Métiers pour les aveugles et les cécitieux du mun. Chisinau, qui prépare les professions suivantes: opérateur de l'ordinateur et soignant des malades à la maison;

(ii) Ecole des Métiers pour les sourds et les malentendants du mun. Chisinau, qui prépare les professions suivantes: sculpteur sur bois et écorce de bouleau, couturière (pour les confectios), cordonniers – réparateur des chaussures.

Durant l'année de l'enseignement 2012-2013, l'enseignement secondaire professionnel et moyen de spécialité a immatriculé en total 502 enfants handicapés et les enfants invalides, y compris 231 d'enfants invalides de degré I et II et 271 d'enfants avec un handicap physique et sensoriel, qui après la fin des études, pourront s'intégrer avec succès dans la société.

En conformité avec le Règlement d'organisation et le déroulement de l'admission dans l'enseignement secondaire professionnel, moyen de spécialité et aux études supérieures de licence (cycle I), dans les institutions d'enseignement de la République de Moldova on établie le quota de 15 pourcent du nombre total de places (pour chaque spécialité/domaine de formation professionnelle et forme d'enseignement) prévu dans les plans d'immatriculation avec le financement budgétaire, pour les enfants invalides avec le degré I et II, les enfants aux déficiences physiques et sensorielles, les enfants dont tous les deux parentes sont des invalides.

RESC 1§4 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right of children with disabilities, and particularly children with intellectual disabilities, to mainstream training is effectively guaranteed.

223. The representative of Slovenia provided the following information in writing:

The Republic of Slovenia strives for the implementation of the principle of equal treatment of persons with disabilities in all areas of life.

Legal regulation of special needs education in Slovenia follows a multi-track approach towards inclusion, which means that a variety of services between mainstream education and special needs institutions are offered. Education of children with special needs is regulated by the Placement of Children with Special Needs Act (Uradni list RS [Official Gazette of the Republic of Slovenia], Nos. 54/2000, 118/2006 and 58/2011) and the rules for the implementation of the Act. The National Education Institute is responsible for the administration of placement procedures.

The "Guidance for Children with Special Needs" regulates and defines possibilities for guiding children to the various educational programmes. Professional and administrative activities are coordinated by the Guidance Commission. The Commission follows the principle of "placement in the most enabling environment" which is in the child's best interests. It has to be stressed that the integration principle prevails.

From the relevant data it can be seen that in 2012 more than 80% of pupils and students were integrated into mainstream settings. The number of pupils and students integrated into mainstream settings has been increasing since 2007 and the number of pupils and students in residential settings and children's homes has been decreasing in the same period. However, the number of pupils in schools with adapted programmes has been slightly increasing since 2007.

| | Pupils and students in mainstream settings | Pupils in schools with Adapted programmes | Pupils and students in residential settings | Pupils with mental disabilities in children's homes |
|---------|--|---|---|---|
| 2007/08 | 7,348 | 2,407 | 722 | 282 |
| 2008/09 | 8,400 | 2,484 | 706 | 249 |
| 2009/10 | 9,955 | 2,508 | 690 | 244 |

| | | | | |
|---------|--------|-------|-----|-----|
| 2010/11 | 10,642 | 2,550 | 688 | 229 |
| 2011/12 | 11,800 | 2,760 | 594 | 214 |
| 2012/13 | 12,791 | 2,898 | 592 | 199 |

The data on vocational training of persons with disabilities integrated into mainstream settings was presented in the report. The number of persons with special needs passing the mainstream vocational exam has been increasing since 2007. The number of students in residential settings where vocational training is also provided has been decreasing since 2007.

RESC 1§4 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 1§4 of the Charter on the grounds that it has not been established that:

- *vocational guidance services operate in an efficient manner;*
- *the right to vocational training of employed and unemployed persons is adequately guaranteed;*
- *the right of persons with disabilities to mainstream training is effectively guaranteed*

224. The representative of the Slovak Republic provided the following information in writing:

In 2012, almost 66 000 job vacancies were registered by the offices of labour, social affairs and family in the Slovak Republic which is by 33 000 less than in 2011. At the end of each month in 2012, 5 500 job vacancies were registered by the offices on average, which is by 2 700 less than the year before. The most job vacancies in 2012 were registered in August and the least in December.

On average, the most job vacancies registered were for craftsmen and qualified producers – 24.8%; for employees in the technical, healthcare and educational sector – 18.5%; for factory and machine operators – 17.5%. The least amount of job vacancies registered were for professional soldiers and army staff and for qualified agriculture and forestry workers – 0.9%.

The highest amount of job vacancies per month was in the Bratislava region for almost the whole year 2012 – 1 269 job vacancies. The lowest number was in the Košice region – 404 job vacancies.

Due to the fact that a new information system is being implemented in the network of the Central Office of Labour, Social Affairs and Family of the Slovak Republic, it is currently not possible to evaluate the amount of these job vacancies being filled with jobseekers.

In accordance with the Act 5/2004 Coll. on employment services, offices of labour, social affairs and family and their external workplaces provide employment services and set active labour market measures. Because the ECSR requested a short overview of the employment services, they are as follows:

- A) Measures aimed at supporting the increase of employability
- Information and advisory services (Article 42),
 - Professional consultancy (Article 43),
 - Education and preparation for the labour market of the job seeker and for the person interested in employment (Article 46),
 - Contribution during the education and preparation for the labour market of a disabled person (Article 48b),
 - Contribution for employing a disadvantaged job seeker (Article 49a),

- Contribution for the graduate practice (Article 51),
 - Contribution for activation activity performed in the form of minor communal services performed for a municipality or a self-governing region (Article 52),
 - Contribution for activation activity performed on a voluntary basis (Article 52a),
 - Preparation for employment of the disabled person (Article 55a).
- B) Measures aimed at supporting employment, creation and sustainability of jobs
- Mediation of employment (Article 32),
 - Education and preparation of an employee for the labour market (Article 47),
 - Contribution for self-employment (Article 49),
 - Contribution for employing a disadvantaged jobseeker (Article 50),
 - Contribution for supporting the sustainability of employment of low wage workers (Article 50a),
 - Contribution for supporting the creation and sustainability of jobs in a social undertaking (Article 50b, c),
 - Contribution for supporting employment for the execution of measures adopted as a protection against floods and solving the related incidents (Article 50j),
 - Contribution for commuting to work (Article 53),
 - Contribution for resettlement for work (Article 53a),
 - Contribution for transport to work (Article 53b),
 - Contribution for creating a new job (Article 53d),
 - Projects and programmes (Article 54),
 - Contribution for establishing and maintaining a sheltered workshop or a sheltered workplace (Article 56),
 - Contribution for keeping a disabled citizen in employment (Article 56a),
 - Contribution for a disabled citizen to operate or perform business activities on a self-employed basis (Article 57),
 - Contribution to the renovation or technical improvement of the tangible assets of a sheltered workshop or sheltered workplace (Article 57a),
 - Contribution for the activities of a work assistant (Article 59),
 - Contribution towards the operating costs of a sheltered workshop or sheltered workplace and towards the cost of employee transport (Article 60).

An important part of the agenda of the offices of labour, social affairs and family in 2012 was vocational education – provision of information and advisory services during employment selection for the unemployed, advisory services for the employers when selecting the right employees, etc. These services were carried out in either individual form or in a group form.

Jobseekers were provided with information on:

- Conditions of being listed as a jobseeker with their office of labour, social affairs and family, their rights and responsibilities;
- Conditions for the application of the unemployment benefit and material need benefit;
- Current situation on the labour market and expectations;
- Currently vacant jobs in the region, in the Slovak Republic and abroad;
- Possibilities of finding job by the use of services of a temporary employment agency of supported employment agency;
- Types of occupations and prerequisites that have to be met by the jobseeker;
- Qualification and health prerequisites for jobs;
- Active labour market measures and how to use them;
- Realisations of national projects;

- Work with informational technologies and the Internet;
- Ability to discover new information on services provided by the information centres;
- List of services of vocational guidance;
- Active job seeking – information on written document forms (CV, application for employment, motivational letter, etc.), on communication with the employer, preparation for the selection procedure for a job;
- Legal relations.

Disabled jobseekers

The offices have provided the disabled jobseekers with information on solving their situation on the labour market.

For the 23 641 registered disabled jobseekers, 6003 information and services regarding the vacant jobs in their region and in the Slovak Republic were provided, 1704 information and services regarding selection procedures were provided, 526 information and services regarding services of information centres for the disabled citizens were provided, 635 information and services regarding health and qualification prerequisites for jobs were provided.

Employers

In 2012, employers were provided with information and services on:

- finding a suitable candidate for a specific job,
- possibilities and conditions of participating on individual active labour market measures,
- labour market situation,
- obligations of employers when employing a disabled citizens,
- projects related to employing disadvantaged jobseekers,
- employing foreigners and EU citizens,
- illegal work and illegal employment,
- legal aspects of collective redundancies.

Employers were provided with 3648 information and services, 3321 out of that were of individual character, 327 of group character.

Citizens threatened by the loss of job were provided with information and services on:

- the actual labour market situation,
- employers in their region and job vacancies in the Slovak Republic and abroad,
- conditions for being listed as a jobseeker in the office of labour, social affairs and family,
- conditions for the application for the unemployment and material need benefit,
- possibilities of participating on active labour market policy programmes,
- vocation guidance,
- possibilities of early retirement,
- legal aspects of work relations.

Vocational guidance and information services for primary and secondary education facilities

Information services and vocational guidance provided by the offices for the pupils of primary schools were focused on the selection of a suitable employment – complex characteristics of individual occupations, prerequisites, health and qualifications requirements based on the “Information System of Occupation types” and information on possible education on secondary schools.

Information services and vocational guidance provided by the offices for the pupils of secondary schools were focused on possibilities of further education on universities, occupations preferred by the regional labour market, proper communication with a future employer, services provided by the offices.

Both primary and secondary schools pupils were provided with information on the labour market, on individual occupations (using numerous publications, such as “The World of Work”, information leaflets; but also by electronic sources like interactive DVDs on individual occupations).

Vocational training of employed persons is guaranteed by the Article 46 of the Act on Employment services based on the evaluation of their abilities, skills, work experience, accomplished level of education, health conditions, etc. In accordance with Article 47 of the Act on Employment services, employees of an employer are provided with training related to a creation of new jobs and maintain the existing jobs.

In 2012 the training and preparation for the labour market in the Slovak Republic (except for the Bratislava self-governing region) was carried in the form of national projects NP III-2/A “Education and Training for the Labour Market” and NP III-2/B “Increasing Employment and Employability of the Disadvantaged Jobseekers” in the operational programme Employment and Social Inclusion. For education and preparation for the labour market 1 300 045, 21 EUR was used, while the placement rate after undergoing this training was approximately 24%.

ARTICLE 9 – RIGHT TO VOCATIONAL GUIDANCE

RESC 9 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 9 of the Charter on the ground that it has not been established that the right to vocational guidance is guaranteed.

225. The representative of Azerbaijan provided the following information in writing:

The right to vocational guidance of citizens of the Republic of Azerbaijan has been determined in the Constitution of the Republic of Azerbaijan and in other normative and legal acts. Thus, according to the Article 35 of the Constitution of the Republic of Azerbaijan, “everyone has the right to choose independently based on his/her abilities, kind of activity, profession, occupation and place of work”.

According to the Article 7.5 of the Law on employment, “citizens have the right to get free advice, as well as relevant information on vocational guidance, vocational training and in-service education in order to choose type of employment, place of work and working conditions at relevant authority (State Employment Service)”.

According to the Article 8.2 of the Law, state guarantees to support jobseekers and unemployed citizens in choosing an appropriate work and their employment, to provide free vocational guidance, vocational training and in-service education throughout the relevant authority (State Employment Service).

According to paragraph 2.17 of “The State Program on Implementation of Employment Strategy of the Republic of Azerbaijan for 2011-2015” approved by Decree of the President of the Republic of Azerbaijan on November 15, 2011, No. 1836, relevant measures have been taken in the direction of devel-

opment of vocational guidance system organizing of training courses on, self-employment and entrepreneurial activity in the framework of present educational load in general educational institutions.

As a result of activities carried out by State Employment Service (SES) under Ministry of Labour and Social Protection of Population, schools have been provided with vocational guidance service, necessary methodical tools and questionnaire materials. The total number of people covered by vocational guidance service in education system and labour market continues to grow. Thus, the number of people covered by vocational guidance services was 20882 (19902 in education) in 2009, 108486 (96552) in 2010, 108922 (96822) in 2011 and 111956 (98521) in 2012.

There is no additional expenditure or staffing foreseen for these measures as all activities are carried out within available resources of local SES offices.

The consultations on vocational guidance were conducted with people with disabilities applied to the Employment Services, as well as in the framework of cooperation with blind and deaf associations. In 2012, 67 people with disabilities were involved in vocational training courses in order to be integrated into the labour market.

In the framework of “Vocational Guidance Services for Youth” component of the Social Protection Development Project implemented jointly by the Ministry of Labour and Social Protection of Population and World Bank, relevant measures have been taken in order to choose appropriate workplace and employment opportunities, development of employment and training programs, launching of consulting services on workplaces and career development, preparing various assessment tests and selection of most reliable and useful method from abovementioned in order to eliminate long-term unemployment. In this framework the work on establishment of new Vocational Guidance Centers in line with international standards had been started and international experts had been involved in preparation of relevant Concept Paper. The support was provided to Baku Employment Center selected as pilot center in application of developed programs.

RESC 9 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 9 of the Charter on the ground that career counselling services in the labour market are accessible only to unemployed persons and workers given notice of redundancy.

226. The representative of Estonia informed the GC that new steps were taken to bring the situation in conformity with Article 9 of the European Social Charter. In particular, according to the programme “The Development of Career Services in Estonia 2007-2013”, all persons under 26 years of age have the possibility of benefitting from career counselling which is free of charge. Career counselling, delivered by the Estonian Unemployment Insurance Fund, is provided also to registered unemployed and people who have received notification of redundancy. Individual and group counselling are proposed. Since 2010, this Fund offers the career information rooms to all interested persons, regardless of their age or professional status. Since January 2012, the Estonian Unemployment Insurance Fund provides job search counselling also to persons who are not registered as unemployed.

227. The number of persons who visited career information rooms: in 2010 - 13 025, in 2011 - 11 979 and in 2012 - 11 202 people.

228. Providing career counselling services to all adults is under discussion. Subject to available funding, the career counselling services to all adults will be launched as from the next programming period of the EU Structural Funds (2014-2020).

229. In reply to a question from the Chair, the representative of Estonia confirmed that career counseling services are free of charge and they are offered to all interested persons, including the people over 26 years old.

230. The GC noted these positive developments, invited the Government of Estonia to include all the relevant information in its next report and decided to await the next assessment by the ECSR.

RESC 9 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 9 of the Charter on the ground that access to vocational guidance for nationals of the other States Parties which are not members of the European Union is not guaranteed.

231. The representative of Ireland stated that there is no restriction due to residency on accessing the Adult Education Guidance Initiative services, which provide extensive guidance and information on Vocational Educational Committee Services. As part of their work, the Adult Education Guidance Initiative services provide information on vocational education and further education to the general public. Similarly, FÁS, the National Training and Employment Authority, provides information to the public on the training it provides and how to access it.

232. The secretariat stated that perhaps the relevant parts of the Irish report had not been properly understood.

233. The GC took note of the information provided and decided to await the next assessment by the ECSR.

RESC 9 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 9 of the Charter on the ground that it cannot be established that the right to vocational guidance within the education system and labour market is guaranteed.

234. The representative of the Republic of Moldova provided the following information in writing:

En conformité avec l'article 18 de la Loi n 102-XV du 13.03.2003 sur l'emploi et la protection sociales des personnes demandeurs de l'emploi l'information et l'counseling professionnels est réalisée dans le cadre des agences territoriales de l'emploi. Ces services sont accordés gratuitement aux personnes demandeurs d'emploi. Le paragraphe 4 du même article souligne que la counseling sur la carrière est réalisée dans le cadre des agences, centres d'information et de counseling en matière de carrière ou à la demande, dans le cadre d'autres formes organisées d'instruction.

Les services d'information et de counseling professionnels prêtés par les structures territoriales de l'Agence Nationale de l'Emploi sont accordés par biais des séminaires d'information, d'instruction en matière des techniques et méthodes, les séances du Club du Travail, où l'on invite des personnes demandeurs d'emplois, dans la plupart des cas celles qui sont enregistrées dans les agences de l'emploi avec un statut de chômeur, tenant compte du nombre modeste de personnes aux agences, ainsi que le manque d'une structure au sein de celles-ci.

Les informations et les consultations dans le domaine de l'emploi sont accordées également aux personnes qui ne sont pas enregistrées en tant que chômeur. Dans ce sens l'Agence Nationale de

l'Emploi du mun. Chisinau dispose du Centre d'information sur le marché du travail et du Centre d'Appel –Marché du Travail qui octroie des services d'informations et de counseling professionnels à toutes les personnes demandeurs d'emploi. A la demande, les spécialistes des agences territoriales et ceux du Centre d'information accordent des services d'information et de counseling sur la carrière aux élèves des gymnases et des lycées, qui sont en train de terminer une institution d'enseignement.

En 2012 696600 personnes ont bénéficié des services d'information et de counseling professionnels, dont 48652 personnes sont des chômeurs enregistrés dans les agences territoriales de l'emploi, ce qui représente 94,7% du nombre total de chômeurs enregistrés en 2012. Du nombre de bénéficiaires de services d'informations et de counseling professionnels 36% ont été des jeunes âgés de 16 - 29 ans, 17,3% - des femmes.

| | Indicateurs | 2011 | 2012 | I sem. 2013 |
|----|---|-------------|-------------|--------------------|
| 1. | Bénéficiaires des services d'information et de counseling, <i>dont:</i> | 66754 | 69660 | 50343 |
| 2. | Femmes | 34680 | 12040 | 25297 |
| 3. | Jeunes 16-29 ans | 25137 | 25081 | 17273 |
| 4. | Personnes handicapées | 486 | 649 | 805 |
| 5. | Personnes avec un statut de chômeur | 48860 | 48652 | 33288 |
| 6. | Bénéficiaires d'orientation professionnelle | 1691 | 2536 | 2468 |

Pour ce qui est des dépenses sur l'information et le counseling professionnels veuillez voir ce qui suit:

| | Dynamique des dépenses, mille lei | 2011 | 2012 | 2013 approuvé |
|--|--|-------------|-------------|----------------------|
| | Information et counseling professionnels | 31,7 | 32,8 | 32,0 |

Vue que les agences territoriales prêtent également des services de formation professionnelle gratuite pour les chômeurs, les personnes qui sont entraînées dans les cours de qualification participent aux séminaires informatifs au sujets de formation professionnelle et complètent des testes et des méthodes de diagnostic des qualités professionnelles ayant comme but l'orientation professionnelle du chômeur.

Au cours de l'année 2012 2536 chômeurs (38% femmes) ont bénéficié des services d'orientation professionnelle, c'est de 900 personnes plus qu'en 2011. Dans le premier semestre de l'année 2013 2468 chômeurs, y compris 39% femmes, ont bénéficié des services d'orientation professionnelle.

RESC 9 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 9 of the Charter on the ground that it has not been established that vocational guidance services operate in an efficient manner.

235. See Article 1§4.

ARTICLE 10 – THE RIGHT TO VOCATIONAL TRAINING

Article 10§1 – Technical and vocational training; access to higher technical and university education

RESC 10§1 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 10§1 of the Charter on the ground that the indirect discrimination of nationals of other States Parties due to the length of residence requirements does not guarantee equal access to higher education for all.

236. The representative of Ireland stated that as regards to access to vocational training, for courses run by Vocational Educational Committees the following categories of non-Irish nationals are treated on the same basis as Irish nationals in terms of access to vocational training programmes within the Further Education Sector:

- EU nationals;
- persons who have refugee status in Ireland;
- persons in the State as the spouse of an EU national, where the EU national has moved from one country to another within the EU to work;
- persons (including their dependent spouse and children) who have been granted leave to remain in the State on humanitarian grounds;
- persons who have permission to remain in the State as the parents of a child born in Ireland;
- those asylum applicants who have a letter from the Asylum Division of the Department of Justice and Equality stating that they are eligible to seek work.

237. Similar rules apply to training programmes run by FÁS, the National Training and Employment Authority. Asylum seekers in the “right to work” category are provided with work orientation programmes and supports organised specifically for their requirements by an Asylum Seekers Unit within FÁS, the Jobs and Training Authority.

238. With regard to persons who do not meet the nationality requirements, generally vocational training is available to those who have demonstrated a degree of integration into the State by meeting a residency requirement (1 year). However, a number of vocational training courses do not contain any residency requirement. For example, the Vocational Training Opportunities Scheme operated by Vocational Educational Committees provides vocational training to unemployed persons aged 21 and over. It has a requirement that the person be unemployed for 6 months or more i.e. in receipt of welfare payments. There is no requirement as to length of residency.

239. Accordingly, limitations on access to vocational training may apply to foreign nationals who do not meet the above nationality requirements or have not demonstrated the required degree of integration into the State by meeting a residency requirement.

240. In reply to a question from the representative of the Netherlands, the representative of Ireland specified that a residency requirement applies only to persons who undertake studies free of charge.

241. The representative of Turkey observed that on the previous occasion the representative of Ireland said that the legislation on the length of residence condition (Articles 9, 10, 15 and 18 of the Charter) was still being considered by interdepartmental committees to establish whether it could be modified. In reply, the representative of Ireland informed that no information was available as regards the results of the work of the interdepartmental committees.

242. The Representatives of the Netherlands and Romania pointed out that a residence requirement of one year is not excessive.

243. The GC took note of the information provided and it encouraged the Government of Ireland to provide information necessary for the next assessment by the ECSR.

RESC 10§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 10§1 of the Charter on the ground that it has not been established that the right to vocational education is adequately guaranteed.

244. The representative of the Slovak Republic informed the GC that the new act on vocational education and training, Act 184/2009 Coll, was adopted in 2009 and amended in 2012. It has been in force since January 2013.

245. This act provides a complex solution for vocational training and education in the system of secondary education of the Slovak Republic. The education combines both theory and practice carried out by the students in the premises of a company in which the student undertakes the practical training. Students are remunerated for their productive work by the company or entity for which they carry out this work.

246. The amendment strengthens the coordination of vocational training and education in order to be better suited to the needs of the labour market and it also aims to support study specialisations which are important for the labour market but are currently too few.

247. The representative of the Slovak Republic underlined that according to this amendment, the Ministry of Education, Science, Research and Sport together with the Ministry of Labour, Social Affairs and Family will prepare statistical data on the level of employability of graduates in each self-governing region, study specialisation, etc. twice a year and based on these statistical data they will adopt new policies and divide financial support among the schools to further address the needs of the labour market.

248. The GC took note of the legislative changes announced and its effects, it invited the Slovak Government to include all the relevant information in its next report and decided to await the next assessment by the ECSR.

Article 10§2 – Apprenticeship

RESC 10§2 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 10§2 of the Charter on the ground that it has not been established that the right to apprenticeship is adequately guaranteed.

249. The representative of the Slovak Republic confirmed that his statement regarding Article 10§1 applies to Article 10§2 as well.

250. The GC took the same decision as in relation to Article 10§1.

Article 10§3 - Vocational training and retraining of adult workers

RESC 10§3 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 10§3 of the Charter on the ground that it has not been established that nationals of other States Parties legally resident or regularly working in Belgium are guaranteed equal treatment as regards access to continuing training in the German-speaking community.

251. The representative of Belgium declared that nationals of the other State Parties which resided legally or worked regularly in Belgium had access to vocational trainings (continuous) in so far as they met the other requirements such as the duration of unemployment, age, diploma etc. Nationality was no reason for exclusion from training. Equal access to training was thus guaranteed in the German-speaking Community.

252. The representative of Belgium stressed that with regard to third-country nationals, they would also have access to vocational training provided that they were exempted from obtaining the work permit or provided that they have the work permit pursuant to the law of April 30th, 1999 relating to the occupation of foreign workers. In addition, the representative of Belgium drew attention to the Decree of the German-speaking Community of March 19th, 2012, aiming to combat against certain forms of discrimination.

253. The GC took note of this information.

RESC 10§3 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 10§3 of the Charter on the ground that there is indirect discrimination of nationals of other States Parties residing or working lawfully in the country due to the length of residence condition for access to continuing education.

254. The representative of Ireland confirmed that his statement regarding Article 10§1 applies to Article 10§3 as well.

255. The GC took the same decision as in relation to Article 10§1.

RESC 10§3 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 10§3 of the Charter on the grounds that it has not been established that:

- *the right to vocational training of employed persons is adequately guaranteed, and that*
- *the right to vocational training of unemployed persons is adequately guaranteed.*

256. See Article 1§4.

Article 10§4 - Long term unemployed persons

RESC 10§4 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 10§4 of the Charter on the ground that it has not been established that the equality of treatment as regards access to training for long-term unemployed persons is guaranteed to nationals of other States Parties in German-speaking community.

257. The representative of Belgium provided the following information in writing:

Nationals of other states parties who reside legally or work regularly in Belgium have access to training services” Equal access to training services in the German speaking community is thus guaranteed.

Further as concerns nationals of third party states, they have the same access to professional training when they are exempt from hold a work permit or when they hold a permit by virtue of the application of the Law of 30 April 1999.

RESC 10§4 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 10§4 of the Charter on the ground that it has not been established that the right to vocational training is guaranteed for the long-term unemployed.

258. No information provided.

RESC 10§4 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 10§4 of the Charter on the ground that it is not established that the right to vocational training for long term unemployed is guaranteed.

259. The representative of Portugal provided the following information in writing:

The table below shows the number of trainees, per year, by training arrangements.

Number of trainees, per year, by training arrangements

| Training arrangements | 2008 | 2009 | 2010 |
|----------------------------------|----------|--------|--------|
| | Trainees | | |
| Education and Training of Adults | 24.825 | 31.935 | 31.574 |
| Modular Training | 29.817 | 93.632 | 96.038 |

Source: IEFP

In Portugal all the unemployed have the right to be enrolled in the existing training measures promoted by PES aimed at fighting unemployment, irrespectively the unemployment period.

The following table shows the number of trainees, per year and according with the training modalities, as well as the expenses related (in thousand of euros).

Number of trainees and expenses, in thousand of euros

| | 2008 | 2009 | 2010 |
|--------------------------------------|--------|--------|--------|
| Education and adults training | | | |
| Trainees | 24.825 | 31.935 | 31.574 |
| Expenses m€ | 44.937 | 80.522 | 86.199 |
| Modular Training | | | |
| Trainees | 29.817 | 93.632 | 96.038 |
| Expenses m€ | 2.785 | 11.432 | 15.552 |

Source: IEFP

Article 10§5 - Full use of facilities available

RESC 10§5 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 10§5 of the Charter on the ground that nationals of other States Parties legally resident or regularly working in Belgium are not granted equal treatment regarding financial assistance for training.

260. The representative of Belgium said that this provision of the Charter covered the private sector scheme which was called paid training leave in Belgium. This involved the payment by the state of the wages of workers who, with the consent of their employers, took general training courses, for the purpose of vocational training and retraining, for a certain number of hours or credits. It was more a matter of financial assistance for employers than for workers. If the workers concerned were not Belgian or were not EEA or Swiss nationals and were lawfully resident in the country and had work permits, they would not be discriminated against in relation to nationals.

261. This scheme had never been applicable in the federal public service. In the latter, training activities were agreed between line managers and officials. If the training activity was carried out within the federal administration, it was deemed a work activity, which meant that the officials concerned continued to receive their remuneration. In the case of training activities conducted outside the federal administration, officials were granted dispensation from work a maximum of 120 hours a year.

262. The training had to be in line with the development desired for the official and the dispensation could be refused or granted only in part for administrative reasons.

On a proposal by the representative of Turkey and in accordance with the rules of procedure, the GC held a vote on a recommendation, which was not carried (0 votes in favour, 24 against). It then held a vote on a warning, which was also not carried (8 votes in favour, 23 against).

263. The GC asked the Government of Belgium to bring the situation into conformity with the European Social Charter.

RESC 10§5 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 10§5 of the Charter on the ground that it has not been established that the equal treatment of nationals of other States Parties as to fees and financial assistance is guaranteed.

264. The representative of Cyprus provided the following information in writing:

Student grants - Financial Assistance

According to the Student Grant Laws of 2011 and 2012, the beneficiary of the student grant is a family, permanently residing in the territory under the effective control of the Republic of Cyprus, which has a student who attends regularly a recognized I accredited tertiary educational institute (private or public) in Cyprus or abroad, for an undergraduate or graduate course of study, provided that the beneficiary meets the relevant income and assets criteria.

"Permanent resident", for the purposes of the Student Grant Law, means a family who resides permanently in areas controlled by the Republic of Cyprus for a period of 30 months during the last 3 years prior to the beginning of studies.

The law provides that the student has to be a Cypriot citizen or a citizen of a Member State of the European Union (EU). It also provides that if the student is not a Cypriot or EU citizen, in order to be eligible for the student grant, one of his/her parents must be Cypriot or EU citizen who works and lives in Cyprus, and the student must have graduated from a secondary school in Cyprus. Nationals of non-EU States Parties lawfully residing or regularly working in Cyprus are not eligible for the student grant.

The current financial situation in Cyprus and the austerity measure constraints that are imposed on public expenditures do not allow the adoption of the suggestions of the Committee. In case these suggestions are adopted, they would have the following consequences:

Any citizen of the European Union or national of non EU State Parties coming to Cyprus in any capacity, e.g. visitor, and is an undergraduate or graduate student at a recognized I accredited tertiary educational institute (private or public) in Cyprus or abroad, would be eligible for the student grant, regardless of the period of his/her residence in Cyprus. This would lead to an unlimited number of applications from nationals non EU State Parties and will result in significantly high costs for the Republic, given its current fiscal constraints. At this point, it is noted that according to the Memorandum agreed with Troika, in the short-run, Cyprus has to further reduce the amount of total expenditure on student grants, by reducing the number of beneficiaries.

The student grant is given based on income and assets criteria. The family income taken into account is the total annual gross income earned by the family during the calendar year preceding the relevant academic year. Since the family should have its permanent residence in Cyprus, that means that most of the family income would have been gained in Cyprus. Therefore, the information provided by applicants concerning the family income is cross-checked with the information available to the relevant government authorities in Cyprus, e.g. Social Welfare Services and Social Insurance Services. In the case that a minimum period of residence in Cyprus is not required, it is practically difficult to verify the family income reported by applicants from EU or nationals of non EU State Parties with the infor-

mation available to their countries' authorities. Hence, there would be practical difficulties and/ or impossibility to verify the family assets of those students.

Fees

According to the University of Cyprus Laws and the Cyprus University of Technology Laws, students have to pay fees. However, the fees of undergraduate, European students who attend public universities are sponsored by the Ministry of Education and Culture of the Republic of Cyprus.

For Undergraduate studies in Public Universities (University of Cyprus and Cyprus University of Technology), the fees for European students are €3.417 and are fully covered by the State. For non-European students, fees are approximately €6.830 per year. In private universities tuition fees are on average €9.000 per academic year.

For Post-Graduate studies in Public Universities, tuition fees are approximately €5.130 (except for the MBA which has fees of approximately €10.250 and the degree of Cyprus University of Technology offered in cooperation with the Harvard University, which has fees of €6.000). In private universities tuition fees vary from €9.000 to €10.500.

Private universities' fee policy is determined by the Private Universities (Establishment, Operation and Control) Law, according to which fees are applied under the same conditions for all students. Private Institutions of Higher Education fee policy is determined by the Institutions of Tertiary Education Laws, according to which fees are applied under the same conditions for all students.

Based on the above information, it is noted that private universities' and private institutions' of higher education laws do not modify fees on the basis of student's nationality. However, the Private Universities and the Private Institutions are allowed to determine the fees based on the EU or Non EU-nationality.

The current financial state of Cyprus and the strict financial constraints which are imposed on public expenses, do not allow for the time being the expansion of the policy for undergraduate students in Public Universities whose fees are sponsored by the Republic of Cyprus, as it will significantly increase public expenses.

GENERAL COMMENT

In-view of the financial state of Cyprus and the strict austerity measures currently imposed through the Memorandum with Troika, the Cyprus Government is in the process of reforming the social benefits system, a cumbersome reform which will encompass reexamination of all benefits and grants in order to be consistent with the fiscal targets defined in the Memorandum of Understanding. Therefore it is expected that the matter of non-conformity with art. 10 para 5 will be resolved within this context.

RESC 10§5 FINLAND

The Committee concludes that the situation in Finland is not in conformity with Article 10§5 of the Charter on the ground that nationals of other States Parties lawfully resident in Finland are not treated equally with respect to financial assistance.

265. The representative of Finland provided the following information in writing:

The Government of Finland would like to clarify the statement given in its previous report. Unfortunately it seems that the reported information is somewhat misleading. According to Finnish legislation, all foreign persons, irrespective of their country of origin, are treated equally with respect to student financial aid. Neither does the length of residence define a person's right to student financial aid.

Student financial aid is granted on terms that are more precisely regulated in the act hereafter, to a Finnish citizen for full-time post-compulsory studies that last at least two months. Regulations that apply to a Finnish citizen also apply to a person, who according to EC legislation or a bi-lateral agreement between EC or its Member States and another contracting party, is entitled to student financial aid; or has the right to a permanent residency according to the chapter 10 in the Aliens Act. Chapter 10 in the Aliens Act applies to citizens of the European Union and comparable person.

According to Finnish legislation (Act on Student Financial Aid), student financial aid can be allowed to a foreigner who resides permanently in Finland for other than study purposes. Moreover, three alternative conditions must be met:

- he/she has been granted a continuous {A} or permanent (P) residence permit regulated in the Aliens Act or a long-term resident's EC resident permit (P-EC);
- he/she is an EC citizen regulated in the Aliens Act or a family member whose residence permit has been registered according to the Aliens Act, or who has been granted a residence card; or
- he/she is a Nordic country citizen who has registered his/her residence according to the Aliens Act in a manner agreed between the Nordic countries.

For studies outside Finland student financial aid can be allowed to Finnish citizens and to those persons to whom the regulations of Finnish citizens apply, if conditions regulated in the Act on Student Financial Aid are fulfilled.

In general, the Government of Finland is of the opinion that the content and structure of the student financial aid system should be regulated nationally. The Government considers that the practice according to which, student financial aid is allowed to persons permanently residing in the country, and which is followed in Finland as well as many other countries, is justified. Therefore, student financial aid should not be allowed to persons entering the territory with the sole purpose of studying. On the contrary, it is well-grounded that a student receives financial assistance for training from the country he/she is permanently residing in.

RESC 10§5 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 10§5 of the Charter on the ground that equal treatment of nationals of other States Parties lawfully resident or regularly working in France is not guaranteed as regards access to scholarships granted on the basis of social criteria for higher education.

266. The representative of France pointed out that a condition of residence and attachment to a fiscal household for at least two years applied to all nationals of the states which had ratified the Charter. The government was studying the possibility of changing the position, but no deadline had been set.

267. In addition to the scholarships granted on the basis of social criteria for higher education, however, the French government also granted a substantial number of other types of scholarship every year. The beneficiaries were determined by the culture departments of French embassies. Selection was based on specific planned studies which fitted in with co-operation programmes drawn up in accordance with government priorities. Approximately 10% of students in France were foreigners. They had received approximately 20 000 scholarships, 20% of which had gone to non-European nationals. In spite of that assistance for foreign students, the situation was not in conformity with the Charter.

268. On a proposal by the representative of Turkey and in accordance with the rules of procedure, the GC held a vote on a recommendation, which was not carried (0 votes in favour, 24 against). It then held a vote on a warning, which was also not carried (1 vote in favour, 25 against).

269. The GC took note of the situation and asked the Government of France to bring the situation into conformity with the European Social Charter.

RESC 10§5 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 10§5 of the Charter on the ground that nationals of other States Parties lawfully resident or working in Ireland are not treated equally with respect to fees (non-EU nationals) and financial assistance (EU and non-EU nationals).

270. The representative of Ireland stated that with regard to fees and financial assistance for vocational training, the majority of courses run by FÁS, the Training and Employment Authority, and by the Vocational Educational Committees are provided free of charge. Fees apply to university courses, courses run by similar third-level institutions and a small number of courses run by FÁS and the Vocational Educational Committees.

280. The main conditions of the free fees element of the student grants scheme are that students must be first-time undergraduates, meet the nationality clause of the scheme in their own right and, for study at level 6, 7 and 8 in universities and level 8 in Institutes of Technology, have been ordinarily resident in an EU/EEA/Swiss state for at least three of the five years preceding their entry to an approved third level course.

281. The representative of Ireland further gave details regarding nationality clause. In summary, in order to meet the nationality criteria of the schemes students must meet the terms of one of the following categories:

- Be a national of an EU Member State, a state which is a contracting state to the EEA Agreement, the Swiss Confederation;
- Persons who have official refugee status in this State. Time spent from date of official lodgement of application papers for refugee status will be included for the purpose of meeting the three year residency requirement;
- Family members of a refugee who are granted permission by the Minister for Justice and Law Reform to enter and reside in the State;
- Persons who have permission to remain in the State as a family member of a European Union citizen;
- Persons who have been granted Humanitarian Leave to Remain in the State (prior to the Immigration Act 1999); or
- Be a person in respect of whom the Minister for Justice and Law Reform has granted permission to remain following a determination not to make a deportation order.

Accordingly, fees would apply to foreign nationals who do not meet the above nationality requirements.

281. With regard to access to maintenance grants, the requirements are in line with Emigration policy. Access to maintenance grants is available to those who meet the nationality requirement and have demonstrated the required degree of integration into the State by meeting the residency requirement.

282. The GC took note of the information provided and invited the Government of Ireland to make efforts in order to bring the situation into conformity with the European Social Charter. It decided to await the next assessment by the ECSR.

RESC 10§5 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 10§5 of the Charter on the ground that a length of residence and employment requirement is imposed on nationals of certain other States Parties lawfully resident or regularly working in Norway as a condition for entitlement to financial assistance for education.

283. The representative of Norway recalled that the ECSR considered that the requirement of two years' residence and employment prior to any form of education, to be eligible for student support by the State Educational Loan Fund, does not comply with the European Social Charter.

284. She said that the Government of Norway upholds the view that the situation is in conformity with the Charter. Due to the rights to equal treatment for EEA-workers under the EEA-agreement, the requirement in question is in practice applied to EEA-citizens who are not workers or family members of workers, and to nationals of Treaty Parties who are not EEA-nationals. Article 10§5 states that the parties to the Charter agree to encourage the full utilisation of the facilities provided by appropriate measures. One of these measures may be the granting of financial assistance in appropriate cases. The opinion of the Government is that the Article 10§5 provides the Parties with a certain latitude to establish certain conditions under which economic support is provided and the principle of equal treatment does not remove this latitude.

285. In this context, the representative of Norway indicated that the central aim of the student support scheme is to provide the society and the labour market with workers of competence, as expressed in the objects clause of the Act on student support. In order to obtain this aim, the Norwegian government has to ensure that the student in question has a real link to the society. The existence of such a link will secure that the recipient of economic support will make use of his or her education in Norway, and thereby provide the employment market with necessary competence. A requirement of a certain period of residence and employment is an appropriate measure to establish such a link, where the applicant has no other connections to the society through, for example family relations.

286. Furthermore, the representative of Norway stated that the Norwegian student support scheme is general and the aid is provided on the same conditions to students in all types of education, with the exception of students who have a statutory right to upper secondary education. The scheme does not differ between young students who follow an ordinary educational pathway and persons who, after a period of work or other activities, undertake continuing education. The level of support is also high, compared to most other countries than the Nordic. An obligation to extend this student support in the way that the ECSR requests, would constitute an unreasonable economic burden for the countries which have well developed student support schemes.

287. In reply to the question by the representative of Turkey, the representative of Norway informed that the requirement of two years' residence does not apply to EU citizens.

288. The representative of Denmark observed that States enjoy discretion as to the form and methods of implementation of this provision of the Charter and proposed that Norway consults this question with the ECSR.

289. The GC took note of the information provided and invited the Government of Norway to approach the ECSR in order to check whether all parameters were taken into account during the assessment of the situation. It decided to await the next assessment by the ECSR.

RESC 10§5 SWEDEN

The Committee concludes that the situation in Sweden is not in conformity with Article 10§5 of the Charter on the ground that nationals of other States Parties to the Charter and the 1961 Charter not members of the EU must have a permanent residence permit in order to be entitled to study support for education and vocational training.

290. The representative of Sweden stated that under the Study Support Act (1999:1395), study support can be granted to both Swedish and foreign students. It can be granted to foreign students covered by EU law who are to be treated in the same way as Swedish citizens. Furthermore, study support can be granted to foreign citizens who hold a permanent residence permit in Sweden and moved there for reasons other than to study. Study support can also be granted to those who have the right of residence and lasting ties with Sweden. In accordance with the Study Support Act, study support may also be provided even if the permanent residence permit requirement is not fulfilled, if there are special grounds for an exception.

291. In reply to the question asked by the ECSR on these special grounds, the representative of Sweden gave the following information:

292. The Swedish Board for Study Support (CSN) is the central government agency responsible for approving and paying study support. Under the Study Support Ordinance (2000:655), the authority may issue detailed regulations on the provision to the effect that study support may be provided to individuals without a permanent residence permit if there are special grounds. According to the authority there are special grounds if the foreign citizen:

- is a refugee or a person in need of protection or a person has been granted a residence permit on the grounds of particularly distressing circumstances, or is a close relative of such a person;
- has children and is the cohabiting partner of a Swedish citizen, and holds a valid residence permit based on family ties to that partner;
- is under 20 years of age and, along with a parent, holds a residence permit based on family ties to a person who is resident in Sweden; or
- is under 20 years of age and has a parent who is a Swedish citizen, and holds a residence permit or has right of residence based on family ties.

293. The assessment of whether there are special grounds or not is done on a case-by-case basis. The authority makes an assessment based on all grounds (EU-law, permanent residence permit etc.). For these reasons, it is not possible to answer how many applicants that were denied study support on the specific ground of 'special grounds'.

294. In 2012, almost 11 700 foreign citizens were granted the right to study support. Of these, about 8 400 held permanent residence permits and about 2 160 had the right of residence and enduring ties. About 300 foreign citizens were granted the right to study support on special grounds. The rest were foreign citizens who are to be treated in the same way as Swedish citizens under EU law. About 73 per cent of all foreign citizens who applied for the right to study support in 2012 were granted support.

295. The system of requiring a permanent residence permit for some foreign citizens to receive study support, in combination with the legal possibilities to make exceptions to the requirement where there are special grounds to do so, is transparent, practical applicable and well balanced. It is therefore a suitable way to define the 'appropriate cases' in which Sweden should grant financial assistance to students in vocational training, in accordance with article 10§5 of the Charter. The article itself provides a scope to grant financial assistance only in 'appropriate cases' and it is the Government's opinion that the Swedish system uses this scope in a proportionate and legal way.

296. In reply to the Chair, the representative of Sweden informed that workers can obtain a permanent residence permit after four years in Sweden.

297. The GC took note of the information provided and invited the Government of Sweden to make efforts in order to bring the situation into conformity with the European Social Charter. It decided to await the next assessment by the ECSR.

ARTICLE 15 – THE RIGHT OF PERSONS WITH DISABILITIES TO INDEPENDENCE, SOCIAL INTEGRATION AND PARTICIPATION IN THE LIFE OF THE COMMUNITY

Article 15§1 - Vocational training for persons with disabilities

RESC 15§1 ANDORRA

The Committee concludes that the situation in Andorra is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream education and training is effectively guaranteed.

298. The representative of Andorra said that there existed two forms of schooling in the country: mainstream and special education, as indicated in the second report. Special education only applied in cases of seriously disabled children. During the reference period, only 10 children were enrolled in special education while the remaining 114 children with special educational needs were in mainstream education. The integration of disabled persons was the rule and all the necessary human and material resources were in place through an inclusive education approach.

299. The representative of Andorra explained that the Decree of 2008, under which education at home or in hospital was considered as part of mainstream education, was drafted to take into account the situation of disabled children in mainstream schooling, who, for health reasons, could not attend school for a period of three months or more. It concerned exceptional situations involving children who had fallen ill and did not, in any way, concern hospitalization on a long term basis due to disability. For the school year 2012-2013, there was only one disabled child concerned and an official request had been addressed to the Ministry of Education. The appropriate support facilities, adapted to the needs of the child, had been put in place. Such individualized attention in hospital or at home should, therefore, be seen as support for disabled children, enrolled in mainstream education, who were sick. As the text of the Decree could give rise to confusion, the Minister of Education was in the process of revising it and the current wording would no longer appear in the new version. Written information

concerning other questions raised by the ECSR had been given to the Secretariat and all the relevant information would be included in the next report.

300. The Chair underlined the importance for the next report to also contain statistics on persons with disabilities in vocational training.

301. The GC took note of the information provided and decided to await the next assessment by the ECSR.

RESC 15§1 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that people with disabilities are guaranteed an effective right to mainstream education and training.

302. The representative of Belgium had provided written information to the Secretariat and he presented a number of important aspects concerning the situation in Belgium. For over forty years, it had been generally accepted that specialized education and training for persons with disabilities was the best approach. However, there was a change in approach under the influence of the Charter and the UN Convention on the Rights of Persons with Disabilities, which Belgium had ratified. Measures were being taken to facilitate the access of persons with disabilities to mainstream education and training, taking into account the wishes of persons concerned.

303. The representative of Belgium said that consultation and redress procedures had been put in place to improve the integration of persons with disabilities into mainstream education and training, with visible progress in all communities of Belgium. An example of such progress was an adjustment to the calculation of running costs in the budget for higher education, which included higher resources necessary for the integration of persons with disabilities. Moreover, a fund had been allocated to encourage all sectors of higher education to adopt a policy of diversity and equality. The aim was to encourage the participation of under-represented groups in higher education, which included persons with disabilities. Furthermore, discussions were underway in the Flemish Parliament concerning a Decree which would provide for the right to reasonable accommodation of students with special needs, in line with anti-discrimination obligations. The provision of reasonable accommodation for persons with disabilities was encouraged in all the communities of Belgium, as well as financial means available for implementation.

304. The representative of Belgium underlined that the developments reflected a change in approach through a global policy which was based on anti-discrimination measures and the respect of freedom of choice. He was aware that the ECSR required statistics which showed the progress achieved concerning the integration of persons with disabilities into mainstream education and training. Data for Wallonia-Brussels had been given to the Secretariat and statistics for all communities would be included in the next report.

305. The Chair stressed that it was important to answer all the questions raised by the ECSR.

306. The GC took note of developments and encouraged the Government of Belgium to provide all the necessary information in its next report.

RESC 15§1 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that people with autism are guaranteed effective equal access to education (mainstream and special).

307. The representative of France stated that it was possible to appraise the Government's mobilisation and efforts on behalf of persons suffering from autism under the successive Autism Plans. For instance, a major effort had been made under the 2008-2010 Plan for the promotion and dissemination of good professional practices, particularly those relating to support for youngsters with autism, which were included in the measures for the new 2013-2017 Autism Plan: in the fields of early detection and provision, support in changing medico-social establishments and services, and training.

308. The representative of France also specified that currently available data highlighted the efforts being made to provide equipment for medico-social assistance. For instance, the FINESS register (at the end of 2011) comprised 6 135 approved and established places for children with autism, and programmes for new places to be provided by 2016 by the Regional Health Agencies mentioned a planned increase of 30%, corresponding to almost 2 000 extra places. The 2013-2017 Autism Plan also provided for implementing a long-term plan to provide new places, totalling some 2 900 places for children and young people with disabilities.

309. The representative of France stressed that policies in the autism field took time to produce results, but that France was constantly endeavouring to bring the situation into line with Article 15§1 of the Charter. She also recalled that the attention of the European Committee on Social Rights had been drawn to the situation of persons with autism by the collective complaints in this field. The complaints drew media attention to this issue.

310. The representative of Romania pointed out that the Autism Plans bore witness to the French authorities' determination to improve the situation and that the aim of the NGOs' activities was to draw governments' attention to the requisite improvements.

311. In reply to questions from the representative of Turkey, the representative of France explained that further to the ECSR decision concerning persons with autism (Complaint No. 13/2002), a Law on disability had been adopted in 2005, followed by the successive Autism Plans. The goals had not always been attained, but undeniable progress had been achieved. She added that youngsters with autism were in the majority in medico-educational institutions as compared with disabled persons suffering from other impairments (over 18%).

312. The GC took note of this information, welcomed the positive developments and invited the French Government to provide all the necessary information for the next ECSR assessment.

RESC 15§1 HUNGARY

The Committee concludes that the situation in Hungary is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream vocational training is effectively guaranteed.

313. The representative of Hungary provided information concerning the right of persons with disabilities to education and training, provided for in the Constitution, in particular under Articles XI, XII and XIX. Official decrees, in particular, Decree N° 10/2006 and Decree No. 1056/2012, dealt with issues of disability as well as a number of Acts, including Act IV of 1991 and Act CXCI of 2011. The law supported inclusive education of children with disabilities and pupils with special educational needs were

only directed to a specialized educational institution if it was recommended by the competent expert committee.

314. The representative of Hungary presented the Public Education Bridge Programmes, which were new developments to provide social and cultural competence-based pedagogical activities for personal development in view of helping pupils enter secondary level education, vocational training or employment. Classes were also provided for all students, including those not enrolled in the Bridge Programmes, to start vocational school studies. The right of persons with disabilities to vocational education and training was also upheld through a number of measures and exemptions which were granted, when justified, under Article 11 of Act CLXXXVII of 2011, for students with special education needs who were taking examinations. Moreover, policy guidelines were issued by the government in the framework of the adaptation of vocational education and training curricula concerning four groups of persons who had mobility, visual, hearing and learning disabilities.

315. The representative of Hungary underlined that discrimination on the grounds of disability was prohibited in Hungary and all citizens had the right to education. All students had the right to receive full information for studies, to define their study schedule, and use opportunities available in higher education institutions, through services which were provided according to their personal situation or disability. In addition, the project 4.1.1/C entitled "Supporting regional and sectorial cooperation", in the context of the Social Renewal Operational Programme, was aimed at supporting students from disadvantaged backgrounds as well as those with disabilities and special needs.

316. The Chair observed that much of the information referred to recent developments which did not appear in the last report.

317. The GC took note of the information and asked the Government of Hungary to provide all the relevant information in its next report.

RESC 15§1 REPUBLIC OF MOLDOVA

The Committee concludes that the situation of the Republic of Moldova is not in conformity with Article 15§1 of the Charter on the grounds that:

- *there is no legislation explicitly protecting persons with disabilities from discrimination in education and training.*
- *the right of persons with disabilities to mainstream education and training is not effectively guaranteed.*

First ground of non-conformity

318. The representative of the Republic of Moldova pointed out that following the 2010 ratification of the UN Convention on the Rights of Persons with Disabilities, the relevant legislation had been amended. In particular, Parliament had in July 2010 adopted the Law approving the Social Integration Strategy for persons with disabilities (2010-2013), Chapter IV of which concerned education, and in May 2012 had enacted the Law on ensuring equality, which was geared to preventing and combating discrimination against people with disabilities. Furthermore, in 2011 the Government had launched a programme for inclusive education, and in 2013 had adopted a strategy to promote education for persons with disabilities at any age.

319. In reply to a question from the representative of Poland, the representative of the Republic of Moldova said that the practical results of the programmes to improve the protection of persons with disabilities against discrimination in education and training would be presented in the next report.

320. The GC took note of the information provided, welcomed the positive developments and invited the Government of the Republic of Moldova to supply all the requisite information, including statistics, for the next ECSR assessment.

Second ground of non-conformity

322. The representative of the Republic of Moldova said that there was a new approach towards issues concerning persons with disabilities, which took into account human rights, social inclusion and medical-social aspects. Such developments were in conformity with the European Social Charter and the UN Convention on the Rights of Persons with Disabilities, which had been ratified by the Republic of Moldova. A strategy for social inclusion was approved in 2010 and a new law on the social inclusion of persons with disabilities, drawn up in consultation with civil society representatives, was adopted in 2012. The new law provided for the rights of persons with disabilities on an equal basis as other citizens, to education and vocational training as well as access of children with disabilities to education, as far as possible, in mainstream schooling. Special education institutions or education in the home were only relevant when it is not possible for integration into mainstream education.

323. The representative of the Republic of Moldova added that, in 2011, the government approved a programme for the development of inclusive education for the period 2011-2020. The programme was a priority and it ensured conditions for the inclusive education of all children, including those with special needs, in mainstream education. The law also provided an obligation for the state to employ teachers qualified in sign language and brail. Another obligation under the law was to provide reasonable accommodation, support services and equipment for persons with disabilities to carry out their studies. The competent Ministries in the fields of health, education and work were working towards the introduction of new legislation and all relevant information would be provided in the next report.

323. The Chair observed that the information contained a number of new developments since the last report.

324. The representative of Poland said that it would be important for the government to show in its next report the progress achieved, in practice, for the inclusion of persons with disabilities in mainstream education.

325. The GC took note of the positive developments and decided to await the next assessment of the ECSR.

RESC 15§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream education and training is effectively guaranteed.

326. The representative from the Slovak Republic provided statistical data that was missing in the national report. This data reflects situation in the school year 2012/2013:

– 26 024 students and pupils were integrated in the mainstream education in state schools, 967 were integrated in private schools and 1 465 were integrated in religious schools;

- 34 304 students and pupils were attending special education in state schools, 1 073 were attending special education in private schools and 540 were attending special education in religious schools;

- 5 545 disabled students attending vocational education in special state facilities, 82 disabled students attending vocational education in special private facilities and 72 disabled students attending vocational education in special religious facilities.

327. The representative from the Slovak Republic added that further to the adoption of the latest amendment to the Act 184/2009 Coll on Vocational Education and Training in September 2012 and its entry into force in January 2013, the Ministry of Education, Science, Research and Sport together with the Ministry of Labour, Social Affairs and Family of the Slovak Republic will be preparing statistical data on the level of employability of graduates in each self-governing region, study specialisation, etc. from this year onward. Furthermore, he informed that the Act No. 5/2004 Coll. on Employment Services guarantees to adults living in institutions access to training or retraining.

328. The GC regretted that the statistical data, although available, did not appear in the report and invited the Government of the Slovak Republic to provide all the necessary information in the next report so that the ECSR can assess the situation.

RESC 15§1 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of persons with disabilities, in particular with intellectual disabilities, to mainstream education and training is effectively guaranteed.

329. The representative of Slovenia said that the government was striving for the implementation of the principle of equal treatment of persons with disabilities in all areas of life. Legal provisions for special needs education in Slovenia followed a multi-track approach towards inclusion, which meant that a variety of services between mainstream education and special needs institutions were offered. Education of children with special needs was regulated by the Placement of Children with Special Needs Act (N°s 54/2000, 118/2006 and 58/2011) and the National Education Institute was responsible for the administration of placement procedures. Professional and administrative activities were coordinated by the Guidance Commission, which followed the principle of “placement in the most enabling environment” in the child’s best interests. She stressed that the principle of integration prevailed.

330. The representative of Slovenia provided data which showed that in 2012 more than 80 per cent of pupils and students were integrated into mainstream settings and the number had been increasing since 2007. The number of pupils and students in residential settings and children’s homes had been decreasing during the same period, whilst data for pupils in schools with adapted programmes had shown a slight increase. The data on vocational training of persons with disabilities integrated into mainstream settings had been presented in the report. There had been an increase since 2007 of the number of persons with special needs passing the mainstream vocational exam. The data for students in residential settings where vocational training was also provided showed a decrease for the same period. The Government of the Republic of Slovenia believed that the right of persons with disabilities to mainstream education and training was effectively guaranteed.

331. The GC took note of the positive developments in Slovenia and decided to await the next assessment of the ECSR.

Article 15§2 - Employment of persons with disabilities

RESC 15§2 ANDORRA

The Committee concludes that the situation in Andorra is not in conformity with Article 15§2 of the Charter on the following grounds:

- *it has not been established that there are effective anti-discrimination legislation and remedies;*
- *it has not been established that the legal obligation to provide reasonable accommodation is respected;*
- *persons with disabilities are not guaranteed an effective access to the open labour market.*

First and third grounds of non-conformity

332. The representative of Andorra provided information concerning the employment of persons with disabilities. In 2010, there were 331 persons with disabilities of working age, of whom 139 were exercising an activity through sheltered contracts and 100 were working in normal conditions in the ordinary working environment. In addition, 38 persons with disabilities who were receiving a partial disability pension were carrying out certain types of work in the ordinary working environment with ordinary contracts. Another 22 persons with disabilities of working age, who were receiving no invalidity pension, were working in the open labour market with ordinary contracts. This latter group had not been registered as they were neither receiving a pension nor working in sheltered employment. There were also 20 persons with disabilities who were working in public administration. There existed a special regulation concerning access for persons with disabilities to work in the public environment under special conditions. This concerned ordinary places which were not reserved but were subject to special access conditions. There were also 112 persons who were receiving a full invalidity pension, contributory or non-contributory, who were unable to work. Persons with disabilities who were of working age and seeking a job were in contact with the appropriate labour and social services, who dealt with finding employment for them in the ordinary working environment or in sheltered employment. He added that there were very few cases of unemployment of persons with disabilities.

333. The Chair suggested that the government may wish to contact the ECSR to clarify the situation of non-conformity concerning grounds 1 and 3.

334. The GC took note of the information provided, encouraged the Government of Andorra to clarify the situation with the ECSR and decided to await the next assessment.

Second ground of non-conformity

335. The representative of Andorra said that there was no legal obligation to provide reasonable accommodation concerning the employment of persons with disabilities in the private sector. He acknowledged that such legislation should be introduced in the private sector even if access to the open labour market existed in practice.

336. In reply to a question by the Chair, the representative of Andorra said that no changes had taken place but there were plans to modify the legislation.

337. The GC took note of the information provided and decided to await the next assessment.

RESC 15§2 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed effective protection against discrimination in employment.

338. The representative of Armenia stated that two new laws were drafted in 2013:

- Law on the protection of rights and social inclusion of persons with disabilities, which prohibits discrimination based on the fact of disability (already submitted to the Parliament for adoption)
- Law on employment which defines certain measures to be taken in order to facilitate the integration of persons with disabilities in the labour market (to be submitted to the Parliament for adoption).

339. The results of the implementation of these laws will be presented in the next report.

340. In a reply to a question from the representative of Poland, The representative of Armenia confirmed that concrete measures and projects in favour of the persons with disabilities appear in the laws and they will be implemented after the adoption of these laws.

341. The GC welcomed these positive developments, invited the Government of Armenia to include all the relevant information in its next report and decided to await the next assessment by the ECSR.

RESC 15§2 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed effective equal access to employment.

342. In reply to a comment from the ECSR on the lack of statistical data in the report, the representative of Belgium pointed out that each Region kept detailed statistics but that the data came from different sources such as activity reports by public employment departments or bodies responsible for the integration of persons with disabilities, or Belgian reports submitted to other governmental organisations (eg under the Council of Europe's Disability Action Plan 2006-2015). He then mentioned comparative data on the different Regions, apart from the Brussels-Capital Region, concerning persons with disabilities on the labour market. The representative of Belgium declared that the Belgian authorities would be in a position to update these statistics in the next report.

343. In connection with reasonable accommodation, the representative of Belgium provided some information on the three Regions:

- in Flanders, data on reasonable accommodation was included in the "Samoy Report";
- in Wallonia, the Audit and Supervision Department of the AWIPH (a regional body responsible for the integration of persons with disabilities) carried out inspections in AWIPH-approved institutions in order to check on efforts at accommodation; it could provide statistics on annual developments in workstation accommodation and compensatory premiums;
- in the Brussels-Capital Region, two regional government departments were the only administrative bodies empowered to deal with "reasonable accommodation" in the private-sector employment field;
- in the German-speaking Community, the "Start-Service" of the DPB (Dienststelle für Personen mit Behinderung) provided awareness-raising measures, workplace support and financial assistance for adapting workstations to the needs of persons with disabilities; nevertheless, this service was not empowered to impose reasonable accommodation.

344. The representative of Belgium added that according to the regional employment departments of the Belgian federate entities, data on reasonable accommodation could not be legally included in the annual activity reports of private employment services. He explained that all precedents by ground of discrimination could be consulted on the website of the Centre for Equal Opportunities and Action against Racism, which was an independent public service mandated to ensure the application of the UN Convention on the Rights of Persons with Disabilities (www.diversite.be).

345. Lastly, the representative of Belgium said that arrangements would be made to ensure that fuller statistical data was included in the next report.

346. The GC took note of this information; it invited the Belgian Government to include all relevant information in its next report, and decided to await the ECSR's next assessment.

RESC 15§2 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed effective protection against discrimination in employment.

347. The representative of Cyprus provided information concerning the Department for Social Inclusion of Persons with Disabilities, which operated a Scheme for the Supported Employment of Persons with Disabilities. The scheme encouraged employment in the open labour market through grants to organizations employing persons with disabilities. The amount of the grant was €13,500 per year. In 2012, 22 projects were implemented, through which 236 persons benefited at a total cost of €297,000. There was also a scheme for the creation of small units for self-employment of persons with disabilities who had difficulties in finding a job, which offered financing, training and the acquisition of professional experience (in accordance with Article 5(2)(c) and (d) of the Special Fund of the Vocational Rehabilitation Centre for Persons with Disabilities Law of 2000). The scheme provided financing up to €8,543. In 2012, 8 applications were approved and a total amount of €43,569 was granted.

348. The representative of Cyprus added that the Department for Social Inclusion was responsible for monitoring the implementation of the Law for the Recruitment of persons with disabilities in the Wider Public Sector. According to data, by the end of 2011, 310 persons were evaluated, 150 were deemed eligible and 58 persons were recruited. In 2012, the implementation of the law dropped significantly due to a hiring freeze as a result of the economic recession. During 2012, the Centre for the Vocational Rehabilitation of Persons with Disabilities was modernized, offering new vocational programmes for persons with disabilities moving from sheltered workshops to the open labour market. An agreement was signed between the Government and the Christou Steliou Ioannou Foundation, which enabled a new organization of the Centre, expanded programmes and a new employment scheme for persons with disabilities as well as vocational training and rehabilitation of persons with more severe disabilities.

349. The Chair referred to specific questions raised by the ECSR which had not been answered, including those requesting data and information on implementation of reasonable accommodation.

350. The representative of Cyprus said that not all the questions had been answered as the competent department in Cyprus had only very recently been established.

351. The GC took note of the information provided and encouraged the Government of Cyprus to provide all the relevant information in its next report.

RESC 15§2 HUNGARY

The Committee concludes that the situation in Hungary is not in conformity with Article 15§2 of the Charter on the grounds that

- *it has not been established that the legal obligation to provide reasonable accommodation was respected during the reference period;*
- *it has not been established that persons with disabilities are guaranteed an effective equal access to employment.*

First ground of non-conformity

352. The representative of Hungary said that the principle of accessibility had been accepted in Hungary, including the concept and requirements of reasonable accommodation. The concept covered modifications, which did not impose a disproportionate burden, necessary to ensure the respect of fundamental human rights and freedoms of persons with disabilities. With the ratification of the relevant UN Convention, Hungary had declared its commitment to this principle.

353. The representative of Hungary added that a call for tender had been published in 2013 for the transformation of workplaces and the creation of jobs for rehabilitation purposes. The total financial resources available amounted to 620 million HUF. Potential applicants were accredited employers who employed persons with changed working capacity, and they could apply for subsidies regulated by Government Decree n° 327/2012. An applicant could apply for a maximum of 2 240 000 HUF per project of transformed workplaces or newly created jobs.

354. In reply to a question by the Chair concerning the situation in practice, the representative of Hungary said that data was not available on the number of persons affected by the measures taken but the government would endeavor to provide all the detailed information.

356. The GC encouraged the Government of Hungary to provide all the necessary information and decided to await the next assessment of the ECSR.

Second ground of non-conformity

357. The representative of Hungary said that important measures had taken place over the last three years in the field of vocational rehabilitation. In 2011, the concept underlying the new benefit and vocational rehabilitation system was adopted (Act CXCI). The aim was to improve efficiency and transparency in the system to encourage the integration of persons concerned into the labour market as early as possible. In 2012, administrative bodies for rehabilitation (RSZSZ) were established with simplified procedures, to carry out medical assessment of persons, award benefits and promote access to employment. In addition, the Rehabilitation Card was introduced as a new element of subsidization, issued to persons with health impairment by the national tax authority. Government Decree 327/2012 on the accreditation of employers employing persons with changed working capacity entered into force, which provided for financial subsidies. Two new forms of support were put in place, namely 'Transit employment' to prepare persons working in sheltered work for the open labour market and 'permanent supported employment', to develop the skills and improve conditions of persons in sheltered work. The new integrated support system meant less bureaucracy and higher quality, effectiveness and efficiency. In 2013, an agreement was concluded with 324 employers for the employment of 28,000 persons in permanent supported employment and 2,410 persons in transit employment.

358. The representative of Hungary added that financial resources had been allocated to the vocational support system, set out in the New Széchenyi Plan. This included a number of specific projects aimed at the integration of disadvantaged groups of persons into the labour market, the rehabilitation and employment of persons with changed working capacity and the renovation of buildings to improve accessibility. Other developments included the Disability-friendly workplace programme and an 'Assisting Shopping' logo for products made by persons with altered working capacity or disabilities. The

measures implemented over the past three years clearly had a positive impact on access to employment of persons with disabilities.

359. The representative of Turkey pointed out that the ECSR's requests for information were very specific concerning the impact of measures on access to employment.

360. The representative of Hungary said that she did not have precise statistics. The projects were underway and the number of persons with disabilities in employment was increasing each year.

361. The GC took note of the developments and encouraged the Government of Hungary to provide detailed information in its next report.

RESC 15§2 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that people with disabilities are guaranteed effective protection against discrimination in employment.

362. The representative of the Republic of Moldova recalled the information provided above with regard to Article 15§1 on two relevant new laws: Law No. 169 of 9 July 2010 approving the Strategy for the social integration of persons with disabilities (2010-2013), and the Law of 25 May 2012 on ensuring equality and prohibiting all forms of discrimination. The latter law, which applied to all natural and legal persons in the public and private fields, was geared to ensuring access to the labour market for persons with disabilities. It provided for the setting up of the Council for Preventing and Combating Discrimination and Guaranteeing Equality. This Council, which was responsible for ensuring equality and preventing discrimination against anyone who considered that they had suffered discrimination, could consider complaints lodged by such persons. Complaints could also be lodged by trade unions and NGOs working in the human rights field. The Council could also conduct investigations ex officio. Appeals could also be submitted to the courts. Moreover, the National Employment Agency had recruited staff responsible for unemployed persons with disabilities, and in 2013 the Government had set up the National Disability Council.

363. In reply to questions from the Chairperson of the GC, the representative of the Republic of Moldova informed the Committee that no statistical data were available on employment of persons with disabilities. In 2012, 102 persons with disabilities were registered with the National Employment Agency. The country had 15 disability-friendly enterprises with 519 employees, including 315 persons with disabilities. These are specialised enterprises, which employ, for instance, persons with visual impairment and persons without disabilities.

364. The representative of Romania stressed the importance of the reforms launched in the Republic of Moldova in the field of effective protection of persons with disabilities against discrimination in employment.

365. The GC took note of the positive developments, invited the Government of the Republic of Moldova to include all the relevant information in its next report and decided to await the ECSR's next assessment.

RESC 15§2 NETHERLANDS

The Committee concludes that the situation in the Netherlands is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed an effective equal access to employment.

366. The representative of the Netherlands said that persons with disabilities had, as much as possible, equal access to employment and the government was convinced that the situation was in conformity with the Charter. He pointed out that not all persons with disabilities, especially those with more severe disabilities, had equal opportunities in the open labour market, compared to persons without disabilities. For this reason, a number of extra policy instruments were aimed at maximizing opportunities. Sheltered employment, for persons with disabilities who had a limited chance of finding a job in the open labour market, was never a first option but had proven to be a good humanitarian alternative to lifetime unemployment.

367. The representative of the Netherlands provided figures which showed that, in 2011, out of 762,000 recipients of disability benefits, 172,000 (23%) were in employment, of whom 146,000 (85%) worked in the open labour market. A main policy goal was to have as many persons with disabilities as possible in paid employment in the open labour market. An agreement had been reached with social partners in 2013 to increase the number of normal jobs in companies (in the private and public sectors) for persons with disabilities, which involved responsibilities and an active role for employers. Results would be measured in 2016 and, if necessary, the government would introduce legislation under which employers would be obliged to reserve a certain percentage of jobs for persons with disabilities. In the coming years, all parties concerned would take the necessary steps to significantly increase the number of persons with disabilities employed in the open labour market.

368. The representative of the Netherlands added that legislation was in place to support the reintegration of persons with disabilities in the open labour market, through a number of measures. These included support in finding a job, fiscal adjustments, coaches, etc. Sheltered employment, as a last resort, was organized by municipalities. In 2011, 102,000 persons worked in sheltered employment, of whom 6% received job coaching in the open labour market and 94% had contracts with municipalities. Of this latter group, 70% were assigned, by the municipality, to posts in ordinary companies. The remaining 24% worked in special sheltered jobs within the municipality, with a salary. The policy was to have a maximal flow of persons out of sheltered employment to jobs in the open labour market although an obstacle, in this respect, was the relative high wage in sheltered employment.

369. The representative of Turkey asked whether the ECSR had fixed a specific percentage of persons with disabilities working in the open labour market, to be in conformity with the Charter.

370. The Secretariat replied that the ECSR had not fixed a specific percentage but national reports should demonstrate progress towards the employment of a maximum number of persons with disabilities in the open labour market. In reply to a question by the Chair, the Secretariat said the open labour market included jobs in companies which had undertaken reasonable accommodation measures.

371. The Romanian and Lithuanian representatives said that they found the information provided was encouraging.

372. The GC took note of the new developments and encouraged the Government of the Netherlands to provide all relevant information in its next report.

RESC 15§2 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 15§2 of the Charter on the following grounds:

- *it has not been established that there is effective anti-discrimination legislation;*
- *it has been established that persons with disabilities are guaranteed an effective equal access to employment..*

First ground of non-conformity

373. The representative of the Slovak Republic said that, under the Anti-discrimination Act 365/2004, discrimination on the basis of disability was strictly prohibited. The right of persons with disabilities to employment and to independent choice of occupation was also guaranteed by the Labour Code. Moreover, the legislation guaranteed favourable work conditions and provided protection, eg. against dismissal. Under Section 63 of Act N° 5/2004 on Employment Services, the duties of an employer who employed citizens with disabilities were regulated. Some of the obligations of the employer included providing favourable work conditions, training, adequate technical equipment and undertaking negotiations with the employees' representatives concerning issues of care. In the case of dismissal of an employee with a disability, the employer was obliged to acquire consent of the respective institution, otherwise the dismissal was invalid. An employer could establish a sheltered workshop or a sheltered workplace for employees with disabilities who could not be employed under the usual work conditions. Article 159 of the Labour Code also provided for employers to negotiate with employees' representatives concerning conditions for employing persons with health disabilities. The representative of the Slovak Republic said that a large number of new jobs for persons with disabilities had been created compared to previous years.

374. The Chair pointed out that there seemed to be a lack of information and data in the report, in particular, with respect to the anti-discrimination law.

375. The GC took note of the information provided and encouraged the Government of the Slovak Republic to provide all the relevant information in its next report.

Second ground of non-conformity

376. In response to questions asked by the ECSR, the representative from the Slovak Republic explained the difference between sheltered workshops and sheltered workplaces: a sheltered workshop is a special type of workplace established by the employer for employing more than one disabled citizen and the total number of disabled citizens working in the given premises must be higher than 50% of all employees. A sheltered workplace is a workplace specifically established for one disabled citizen outside a sheltered workshop, e. g. one disabled citizen working in a sheltered workplace among non-disabled co-workers (Article 55 of the Act 5/2004 Coll. on Employment Services). He said that regulations regarding pay are governed by the Labour Code, without any discrimination.

377. As regards involvement of trade unions in sheltered employment, the representative from the Slovak Republic specified that in conformity with Article 159 of the Labour Code, an employer shall negotiate measures with employees' representatives to create conditions for employing employees with health disability and also fundamental questions over the care of such employees.

378. Concerning measures introduced that permits the integration of persons with disabilities into the ordinary labour market, the Act 5/2004 Coll. on Employment Services (last amendments in 2013) indicates the types of financial benefits to support and assist these persons:

- Preparation for employment of the disabled persons and eligible costs;

- Contribution for the establishment of a sheltered workshop or sheltered workplace;
- Contribution for keeping a disabled citizen in employment;
- Contribution for a disabled citizen to operate or perform business activities on a self-employed basis;
- Contribution to the renovation or technical improvement of the tangible assets of a sheltered workshop or sheltered workplace;
- Contribution for the activities of a work assistant;
- Contribution towards the operating costs of a sheltered workshop or sheltered workplace and towards the cost of employee transport.

379. In addition, the representative from the Slovak Republic informed that in 2012, the State contribution for the establishment of a sheltered workshop or sheltered workplace amounted to 14 720 450, 59 EUR, the contribution for a disabled citizen to operate or perform business activities on a self-employed basis amounted to 4 676 904, 57 EUR and the contribution towards the operating costs of a sheltered workshop or sheltered workplace and towards the cost of employee transport amounted 16 221 310, 86 EUR. That means in 2012, 35 618 666, 02 EUR were spent on establishing or sustaining sheltered workshops or sheltered workplace, while at the same time 26 877 jobs for the disabled were created or sustained.

380. In reply to a question from the representative of Turkey, the representative of the Slovak Republic underlined that the Code of Labour specified the working conditions for all workers, including those with disabilities.

381. The GC noted these positive developments, invited the Government of the Slovak Republic to include all the relevant information in its next report and decided to await the next assessment by the ECSR.

RESC 15§2 SLOVENIA

382. The representative of the Republic of Slovenia explained that access to the labour market for persons with special needs was not regulated by the Social Care Act. The Act concerning Social Care of Mentally and Physically Handicapped Persons, adopted in 1983, regulated such issues, and this was discriminatory in the area of equal access to employment for persons with disabilities.

383. The representative of the Republic of Slovenia said that in 2010, the Ministry of Labour, Family and Social Affairs began drawing up a law proposal that would modernize the regulatory framework provided by the 1983 Act. The proposed law also provided for the employment in the open labour market of persons with moderate, severe or profound intellectual disabilities and severely physically impaired persons whose disability arose before 18 years of age (or 26 years if they were in education), which was not possible under the current law. The proposed law needed to be harmonized with other social legislation (namely, the Long-term Care Act) and was expected to be adopted in 2014.

384. In reply to a question by the representative of Turkey, The representative of Slovenia said that the law envisaged enabling the access of persons with disabilities to the open labour market.

385. The GC took note of the positive developments and decided to await the next assessment of the ECSR.

Article 15§3 - Integration and participation of persons with disabilities in the life of the community

RESC 15§3 ANDORRA

The Committee concludes that the situation in Andorra is not in conformity with Article 15§3 of the Charter on the following grounds:

- *it has not been established that housing, transport and telecommunications are covered by the anti-discrimination legislation;*
- *it has not been established that there are effective remedies available to disabled people alleging discriminatory treatment;*
- *it has not been established that disabled people have effective access to technical aids;*
- *it has not been established that disabled people have effective access to housing.*

First and second grounds

386. The representative of Andorra said that the 2002 law on the rights of persons with disabilities guaranteed access on an equal basis to culture, leisure and sport. There was no other anti-discrimination legislation other than the Penal Code. He explained that Andorra would shortly be ratifying the United Nations Convention on the Rights of Persons with Disabilities. It was foreseen that in 2014, the Parliament would study an anti-discrimination law for persons with functional diversity.

387. The GC took note of the information and decided to await the next assessment of the ECSR.

Third ground

388. The representative of Andorra explained that the Regulation on Social Security Benefits, approved by the Government on 23 June 2010, regulated access to technical aids, of which 75% was financed by Social Security and the remaining 25% by the individual. The new law relative to Social Services and Social-Health Services which was currently being debated by the Parliament, would provide for the creation of a National Service of Functional Resources and Techniques for persons with functional diversity in Andorra.

389. The GC took note of the information and decided to await the next assessment of the ECSR.

Fourth ground

390. The representative of Andorra said that there were more than 1,200 apartments for rent in Andorra, nearly half of which were accessible to persons with disabilities. There also existed a Government programme of housing assistance for 1,100 families who were lacking financial resources and he underlined that no-one in Andorra was homeless. In addition, some public apartments were available for rent to persons with disabilities and places were also available in hotels. A Government programme was in place to provide accommodation assistance for approximately 300 persons who were lacking adequate resources. For these reasons, a special programme for persons with disabilities in Andorra was not necessary.

391. In reply to a question from the Chair concerning specific accommodation for persons with disabilities, The representative of Andorra said there was a transversal programme for accommodation in place which applied to all of the population.

392. The GC took note of the information and decided to await the next assessment of the ECSR.

RESC 15§3 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that there is legislation ensuring people with disabilities effective protection against discrimination in the fields of housing, transport, telecommunications, culture and leisure activities.

393. The representative of Armenia provided information on a new law on the protection of rights and social inclusion of persons with disabilities that had been approved by the government in July 2013. The law had been put before the national parliament for adoption and public discussions had been held with relevant stakeholders, so it was hoped that the law would be finally adopted in the near future. Under Article 9 of the law, any discrimination based on disability was prohibited and specific articles were devoted to issues of accessibility to housing, social infrastructure and public transport. Under Article 10 of the law, unified design requirements as defined by the government had to be taken into account for new buildings and infrastructure. Old buildings were to be equipped with additional facilities for persons with disabilities and the government would be drawing up a timeframe for implementation.

394. The representative of Armenia said that under Article 23, all organizations which dealt with transport, regardless of ownership, were obliged to ensure accessibility for disabled persons. Article 24 stipulated the provisions of accessibility to culture, sport and leisure for persons with disabilities. Further legislation would be adopted by the government after final adoption of the new law, to ensure the effective implementation of its provisions.

395. The GC took note of the draft law and encouraged the government to provide all relevant information in its next report.

RESC 15§3 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that disabled people are effectively protected against discrimination in the fields of housing, transport and cultural and leisure activities.

396. The representative of Cyprus said that all employment schemes and laws in Cyprus ensured that specific measures for accommodation were provided in the workplace, when required, for persons with disabilities. The Thematic Technical Committee of Employment (under the National Action Plan on Disability) was responsible for promoting supervision in the work environment in order to ensure that work places were adjusted to offer accessibility to employees with disabilities. There were also a number of financial schemes in place that provided for allowances and financial support to disabled individuals. During 2012, the completion of a new computerized programme ensured more efficient management of financial schemes for disabled beneficiaries. Electronic systems had also been introduced to modernize the archives of benefit folders. The Social Welfare Services, in accordance with the Public Assistance and Services Laws of 2006 and 2012, provided financial assistance to children with disabilities and to adults with disabilities who lacked the means for an adequate standard of living, depending of their financial and employment situation. The Social Insurance Services provided invalidity pensions and disability pensions after injury to disabled persons who were employed and paid social insurance. The Department for Social Inclusion also operated a scheme for financial assistance to organizations of persons with disabilities for hiring social assistants. The scheme concerned adults with severe disabilities to ensure respect of their right to mobility and promote empowerment, autonomy and social integration.

397. The representative of Cyprus provided information on a disability car scheme and changes to public transportation to assist persons with disabilities. A guideline booklet had been produced for bus

drivers and a new law was being drafted with regard to disability parking spaces. Concerning air travel, the Department of Civil Aviation was responsible for implementing EU regulation 1107/2006 in respect of persons with disabilities. With regard to marine transport, the Cyprus Ports Authority had implemented its obligations under EU regulation 1177/2010 and the 2012 coastal and passenger boat regulations (R.278/2012) which also make provision for persons with disabilities. There was public financial assistance for housing and the Department of Social Welfare Services provided a range of support services for disabled persons. With regard to cultural and leisure activities, many organizations for the disabled were subsidized through the State Grants Scheme. A project implemented by the Cyprus Paraplegic Association for accessibility to beaches was partly financed by the Department of Social Inclusion.

398. The Chair thanked the representative of Cyprus for having presented a briefer statement than the version originally prepared and underlined the importance for all delegations to provide information in a clear way.

399. The GC took note of the developments and decided to await the next assessment of the ECSR.

RESC 15§3 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 15§3 of the Charter on the ground that there is no anti-discrimination legislation for persons with disabilities which specifically covers the fields of housing, transport, telecommunications and cultural and leisure activities.

340. The representative of Estonia informed the Committee that on 30 May 2012 Estonia had ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, thus confirming its recognition of the rights of such persons. She specified that Article 123 of the Constitution confirmed that international treaties took precedence over domestic law.

In connection with anti-discrimination legislation, the representative of Estonia stressed that Article 12 of the Constitution guaranteed the equality of everyone before the law and that Article 28 stipulated that persons with disabilities were entitled to special assistance from the state and the local authorities. On 24 September 2009 Law No. 532 amending the Law on Equality between women and men and the Law on equal treatment had come into force, extending their scope to new categories of persons. However, further additions were still required to legislation.

341. The representative of Estonia explained that the ECSR's conclusions had been discussed by the Estonian authorities and that in May 2013 it had been decided that an analysis was needed of national legislation before moving on to any further amendments. She confirmed that the authorities were aware of the omissions and had undertaken to take all the necessary steps to bring the situation into conformity with the requirements of the Charter.

342. The GC noted the Estonian Government's wish to amend legislation in order to ensure conformity with the Charter, and decided to await the ECSR's next assessment.

RESC 15§3 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that persons with disabilities enjoy effective protection against discrimination in the fields of housing, transport, telecommunications and culture and leisure activities.

342. The representative of Georgia said that changes were taking place concerning some problems which needed to be addressed through new policy measures, in order to bring the situation into conformity with the Charter. Recent developments included the drafting of an anti-discrimination law with regard to persons with disabilities, with the participation of the Ministry of Justice. Public discussions were being held and it was hoped that the draft law would soon be adopted, possibly in 2014.

343. The representative of Georgia added that, following discussions, it had been decided that the Parliament would ratify the United Nations Convention on the Rights of Persons with Disabilities. Several amendments to the existing law were necessary, which concerned the definition of persons with disabilities and some changes concerning infrastructure. Moreover, an Action Plan for the following three years had been drafted to address a range of provisions of the UN Convention, including communication, transport, sport and leisure issues for disabled persons. Some positive changes were already underway such as the introduction, in one region, of buses adapted to persons with disabilities.

344. The GC took note of positive developments and encouraged the Government of Georgia to provide all the relevant information in its next report.

ARTICLE 18 – THE RIGHT TO ENGAGE IN A GAINFUL OCCUPATION IN THE TERRITORY OF OTHER PARTIES

Article 18§1 - Applying existing regulations in a spirit of liberality

RESC 18§1 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 18§1 of the Charter on the ground that it has not been established that existing regulations are applied in a spirit of liberality.

345. The representative of France confirmed that a computer system called FRAMIDE (France Migration Détachement) was initially supposed to have been operational by the end of 2009. This system would have allowed establishing a ratio of the numbers of applications for work permits requested and the numbers of work permits refused.

346. However, due to technical reasons, that computer system could not be implemented back in 2009. The implementation of another computer system was now planned to be introduced in the second half of 2014. The new system should be able to provide the statistics required by the ECSR.

347. In reply to a number of questions raised by different Representatives, the representative of France stated that currently only the number of granted work permits would be available. Neither the number of all work requests nor the number of work permit refusals would be available.

348. A considerable number of country Representatives remained surprised that it took France such a long time to introduce an adequate computer system which would establish the figures requested by the ECSR.

349. In summary, the GC strongly urged the Government of France to introduce the new computer system in the second half of 2014, to provide all the necessary information in its next report and decided to await the next assessment of the ECSR.

RESC 18§1 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 18§1 of the Charter on the ground that it has not been established that the existing regulations are applied in a spirit of liberality.

350. The representative of Italy provided the relevant figures for the period 2005 to 2010.

351. In 2005 1 107 844 work permits had been requested and granted. In 2010, 967 867 work permits had been granted and 2565 work permits had been refused. These figures amounted to a refusal rate of 0.26 % in 2010.

352. The ensuing discussion focused on the reasons for work permit refusal which according to some country Representatives should be given. However, the ECSR required only the statistical data which had been provided by the Italian Representative.

353. In summary, the GC took note of the information provided by the Government of Italy and decided to await the next assessment of the ECSR.

RESC 18§1 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 18§1 of the Charter on the ground that it has not been established that the existing regulations are applied in a spirit of liberality.

354. The representative of Portugal provided the following information in writing:

In the past years, acknowledging the importance to promote a consistent policy for the integration of immigrants, several measures have been implemented by the Portuguese Government with the aim of increasing the integration of immigrants into the labour market.

Labour market integration is considered one of the central focuses of integration policy. Recognising that more still needs to be done in this area, in terms of labour market integration the Portuguese Government's included in its second action Plan for Immigrant Integration nine measures related to labour integration (but several other measures under other areas are also related to this aim).

The Plan was compiled on the basis of joint contributions from all ministries, as well as contributions and proposals from civil society, namely immigrant associations, Consultative Committee for Immigration Affairs (COCAI) members, the Commission for Equality and Against Racial Discrimination (CICDR), and researchers working with the Immigration Observatory. The Program is coordinated by the High Commission and it is based on a holistic approach and on the participation of the different entities that are responsible for the implementation of the corresponding policies.

The action plan is formed by 90 measures and the following 9 are directed towards labour integration:

1. Reinforcing immigrants' entrepreneurship incentives (measure 14);
2. Reinforcing inspections of employers using illegal immigrant labour (measure 15);
3. Reinforce the rendering of information/training for immigrant workers on their rights and duties regarding employment issues (measure 16);
4. Simplifying the qualifications recognition process (measure 17);
5. Incentives for the social responsibility of organisations, based on ethical principles and the promotion of diversity (measure 18);
6. Creating an information system on highly-qualified immigrants (measure 19);
7. Consolidation of the intervention Programme for Unemployed (measure 20);

8. Facilitation and promotion of access to professional training and employment (measure 21);
9. Guaranteeing the renewal of immigrant residence permits in the event of employers' non-compliance with Social Security obligations (measure 22).

Hence, despite the recession, the existence of this action plan is the given proof that the Portuguese government has continued, and will continue in the future, their policy measures towards the integration of immigrants. This substantial political investment, within the framework of political and social consensus, represents another structural step forward.

Inspired by the Common Agenda for Integration, several Member States have been defining concrete integration programmes for immigrants that mainly refer to the 'one-stop-shop' (OSS) model. In Portugal, the National Immigration Support Centres (Centros Nacionais de Apoio ao Imigrante - CNAI) were set up in 2004. Their establishment, in Lisbon and Porto, seeks to provide an integrated, efficient and humane response to the integration issues of immigrants who have chosen Portugal as their host country, congregating under the same roof public services of different ministries and support offices in partnership with immigrant associations. Within this innovative model, the participation of intercultural mediators is fundamental. Mediators guarantee not only a cultural and linguistic proximity to each immigrant who uses the services of these centres, but also a fundamental proximity between public administration and immigrant citizens. Furthermore, the participation of civil society institutions, as partners in the management of this project, can bring important outcomes. This results in the development of immigrant integration policy becoming a shared responsibility.

- The National Immigrant Support Centres (CNAI) in Lisbon under the specific framework of labour integration runs
- Employment Support Office
- a Qualification Support Office
- and an Entrepreneurship Support Office

With the increase of the unemployment rate among immigrants and the particular fragility that the Portuguese labour market is facing, it increased the demand to this office in the past years. Since 2012 this office not only continues to offer support in the process of active job search, matching demand and supply of labour, regarding the client profile in comparison to the job offer (preparing résumés, scheduling interviews with different companies and employers), but also became more and more oriented for the empowerment of skills that are essential for the job search, taking advantage of the possibilities of networking with the other offices of the National Immigrant Support Centre but also working in a straight relation with the network of local job centres for immigrants.

In addition, in 2007 the High Commission and the Institute for Employment and Professional Training (IEFP) established a network of 22 local job centres specifically oriented to immigrants, formed through partnerships with local organisations – principally immigrant associations. Many of these labour support offices are located in districts with high numbers of immigrants and intend to close the gap between public administration services and migrant communities.

And since 2007, the National Immigrant Support Centre created a Entrepreneurship Support Office aiming to support and guide entrepreneurial initiatives, providing information about the legal aspects of business creation, supporting in the definition of the business project, giving referrals to credit institutions, disseminating information on existing incentives and financial supports and articulating with the Promotion of Immigrant Entrepreneurship Project (PEI) in the organization of courses to support the creation of business.

This Project was launched in 2009 aiming to raise awareness on immigrant entrepreneurship and to support migrants in the creation of their own businesses. The target group have been mainly immigrant communities that reside in vulnerable and poor neighbourhoods. This project includes training and empowerment actions for business creation. These actions are developed in parallel with other activities, such as the empowerment of a training team specialized in entrepreneurship; the mobilization of local institutions to promote this project; mobilization of other key players (like local authorities, financial institutions, as well as public or private programmes related to business creation); creation and dissemination of information leaflets about the Project and consultants support after the course.

The High Commission is the coordinator of this project, working in partnership with the mentioned local institutions, such as immigrant associations or other non-profit organizations whose target audience are immigrants. This partnership also includes institutions responsible for the identification of the trainers and entrepreneurs consultants. This means that this project involves the persons and institutions who better know the problems and the needs of the migrants. In 2012 this project received an award under the national contest for the European Enterprise Promotion Awards in the category: responsible and inclusive entrepreneurship.

The recognition of qualifications and the certification of competences are also important aspects that can hamper or facilitate the integration of migrants in the labour market and the full use of their human capital. Under this framework **(1)** In 2007 the new immigrant act defined a special legal status for qualified immigrants that came to Portugal. This comprises a package of measures to attract highly qualified people to live in Portugal; **(2)** Aiming to make more flexible the access to the Portuguese labour market and the recognition of qualifications, Portugal approved further legal developments in this respect - new legal regime for the recognition of degrees, articulated with the characteristics of the degrees attributed by Portuguese Universities, and new rule to the process of registration of foreigner diplomas. This regulation applies to degrees at the levels of Bachelor (licenciado), Masters and Doctorate as defined in the Portuguese system. It is a long and time consuming process there each degree certified by a foreign university must be accessed by a Portuguese University, but it will give its fruits in the future, there each University's degree is accessed only once.

(3) Under this framework was further reinforced the special programme for the integration of immigrant doctors in the Portuguese National Health Service (Portaria n.o 925/2008, August 18), recognising their degrees and competences, and that results from a partnership of different institutions: Portuguese Ministry of Health, Universities, Calouste Gulbenkian Foundation and the Jesuit Refugee Service of Portugal.

Based in the National Immigrant Support Centre in Lisbon, the Qualification Support Office for Immigrants aims to advise and direct migrants towards the most appropriate qualification processes according to the profile of each candidate, providing information on equivalence and recognition of university degrees and professional certification.

Finally, Portugal has adopted amendments to the Portuguese immigration law no. 23/2007 of 04/07/2011, which took effect on the 9th October 2012. These amendments implemented the European Directives 2009/50/EC ("Highly Qualified" Directive) and 2009/52/EC ("Sanctions" Directive) by introducing the EU Blue Card, extending validity periods for temporary stay visas, imposing more stringent eligibility requirements on foreign local hires performing highly skilled activities, creating a new residence programme for foreign investors, and introducing criminal penalties for businesses that employ unauthorised foreign workers.

RESC 18§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 18§1 of the Charter on the ground that it has not been established that existing regulations are applied in a spirit of liberality.

346. The representative the Slovak Republic provided the following information in writing:

Due to the fact that a new information system is being implemented in the network of the offices of labour, social affairs and family, statistical data are currently unavailable. Once the system is fully operational, the Slovak Republic will submit the requested data to the ECSR.

Article 18§2 - Simplifying formalities and reducing dues and taxes

RESC 18§2 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 18§2 of the Charter on the ground that the level of fees for residence permits is excessive.

347. The representative of Armenia provided the following information in writing:

The fees for residence permit are the follows:

- Fee for temporary permit is 105 000AMD (191 Euro) for one year,
- Fee for permanent permit is 140 000 AMD (255 Euro) for five years.

RESC 18§2 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 18§2 of Charter on the ground that the fees for work permits are excessive.

348. The representative of Ireland provided the following information in writing:

Firstly, we would point out that Ireland has a long history of progressive economic migration policies. Ireland provided full access to its labour market for the EU 10 and due to economic circumstances reluctantly imposed restrictions on Bulgaria and Romania upon their accession to the EU. These restrictions ceased with effect from 1st January 2012.

Anyone looking at our Employment Permits system would be struck by the transparency and clarity of the regime and the clear intention of making it attractive to employers and employees. The objective of our regime is to encourage skilled migrants to Ireland.

There are four points we would like to raise in answer to the Committee's findings:

Point 1

The fees are **administrative fees** which cover staff, office, administration and IT costs.

When comparing Ireland's fees with other countries consideration must be given to the different processes used in administering permits in each country. Ireland's employment permit system requires a high level of **case-by-case consideration by officials**. This facilitates a relatively **straightforward regime** where the applicant need only concern themselves with completing a form, submitting a fee,

and detailing the job offer along with employer and employee details. The applicant **does not have to deal with other evaluation criteria** often used in other countries' systems e.g. quotas, points and so on. As such, there are **few hidden costs to applicants** in terms of requiring third party advice. Current applications are processed within a short period of time (currently three to four weeks) from start to finish underscoring the **customer service** on offer.

Nevertheless, the Department of Jobs, Enterprise and Innovation **is concerned that the level of fees could have the potential to deter applications** and is planning conduct a business process review of its operations with a view to designing and developing a fully **online applications facility** over the coming years.

Already the Department has made a number of significant changes to its policies in April of this year with a view to reducing or **eliminating hidden costs** for the applicant. For example, we no longer require certified or translated copies of prospective employees' qualifications and we have significantly reduced advertising requirements for employers.

It is anticipated that the streamlining of policies and rules, greater use of online technologies and enhanced business processes and workflows **will enable the Department to make efficiencies and re-evaluate fees in the future.**

Point 2

It should be also noted when comparing fees across countries that **Ireland operates a full refund policy to applicants** in order to attract applications. While this means that the administration is funded from successful applicants' fees, it ensures that unsuccessful applicants do not incur costs for no benefit. This is a policy choice which Ireland believes to be **equitable to all applicants. As the report notes, a number of Employment Permits do not incur any fees at all.**

Ireland processed 5,053 applications in 2012 and received a total of €2.631m in fees. This equates with an **average fee of just €521 per application and many of these applications related to Employment Permits of 2 to 3 years' duration.**

Point 3

Fees are paid for by the applicant who can either be **an employer or an employee.** There are options presented to applicants in terms of fees. Often, employers will pay the application fee even where the employee is the applicant.

The level of **fees has not featured in the feedback received by employers.** Indeed, many industry **groups in Ireland have publicly endorsed the current Employment Permits system** especially following the improvements made to it in April of this year.

Point 4

Ireland notes that the Committee observes that the amount of fees has gone up since its last examination of the situation, when they ranged between €65 and €500. However, a like for like comparison is not being made.

From 2003 to 2006 processing fees ranged from €65 to €500 **depending on the duration of a permit.** For example, it was possible at that time to obtain an employment permit for a duration of 1 month for a fee of €65, 2 months for a fee of €95 and so on - up to a maximum fee of €500 for an Employment Permit with a duration of 6 to 12 months.

There were a number of problems with this system. Firstly, **the fees did not cover the administration costs of the processing.** Secondly, the **duration of the employment permits were low** and

dis-incentivised applications by limiting permits to a maximum of one year and requiring permit holders to renew permits frequently. A permit holder who worked in Ireland at that time over a period of 5 years **would have had to renew their permits on at least 4 separate occasions** and would have incurred a cost of €2,500.

In 2007, a new system was introduced aimed at attracting skilled workers and at **reducing the ongoing administrative burden on applicants and ensuring that the fee covered the administration costs involved**. The new system included provision for a 2 year Employment Permit with one renewal stage to extend the permit by a further 3 years. Therefore, a permit holder who worked in Ireland over a period of 5 years under the new regime would have had to renew their permits **on just one occasion** and would have incurred the same total fees of €2,500. It was still possible to apply and receive employment permits of less than 6 months and therefore go through multiple renewals but generally Ireland found that applicants preferred the additional longevity of the permits.

Fees did increase for a period of time in June 2009 increasing the maximum fee to **€2,250 and this is the figure referred to by the Committee**. However, the increase was reversed in 2011 to the previous levels.

Therefore, the fees that currently apply are equivalent to those that pertained in 2003 on a like for like basis and are arguably less allowing for inflation.

RESC 18§2 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 18§2 of the Charter on the ground that the rules governing the issuance of work and residence permits have not been simplified.

349. The representative of the Slovak Republic said that in May 2013 the Slovak Republic had amended national legislation on employment services aiming at transposing the EU Directive 2011/98 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. The completion of this legislative process was expected by the end of the year 2013.

350. With these changes introduced into the national legislation the requirements of the ECSR for a simplification with respect to issuing work and residence permits would also be met.

351. The GC congratulated the Government of the Slovak Republic for the changes introduced and asked to include this information in the next report.

RESC 18§2 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 18§2 of the Charter on the ground that there is a dual procedure for obtaining work and residence permits.

352. The representative of Turkey said that his government had taken a number of simplifying measures with a view to shortening the period needed to treat requests for a work permit. In addition the number of documents requested for obtaining a work permit had also been reduced.

353. In addition, an important change in legislation had been introduced in April 2013. The new law stipulated in its Article 27, that work permits were considered as residence permits. Hence a foreigner having a work permit had no longer to apply for a residence permit.

354. The GC congratulated the Government of Turkey for these positive developments.

Article 18§3 - Liberalising Regulations

RESC 18§3 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 18§3 of the Charter on the ground that the foreign worker's residence permit may be revoked if he/she loses his/her job and he/she may be obliged to leave the country as soon as possible.

355. The representative of Belgium provided the following information in writing:

Le Comité européen des droits sociaux reproche à la Belgique et à d'autres pays que le titre de séjour d'un ressortissant étranger puisse être révoqué si ce travailleur venait à perdre son emploi et que l'intéressé serait alors contraint de quitter le pays dans les plus brefs délais.

Les autorités belges compétentes (Intérieur et Emploi) ont pris connaissance de cette conclusion. Elle semble être basée sur une compréhension insuffisante des attitudes des autorités belges compétentes.

Le permis de travail n'est normalement délivré que pour autant qu'il y ait un besoin du marché de l'emploi. Le but de la délivrance du permis de travail n'est pas d'abord de permettre à un étranger de travailler mais bien de permettre à un employeur qui ne trouve pas de travailleur sur le marché belge d'engager de la main d'œuvre étrangère. Il est donc logique de mettre fin au séjour si l'intéressé ne travaille plus.

Cependant il ne s'agit pas d'une décision systématique dans la mesure où l'autorité compétente (le SPF Intérieur) tient compte de la totalité de la situation de l'intéressé, notamment de la durée de l'occupation effective, et où, après deux ans de résidence, il n'est plus mis fin au séjour pour le seul motif de la fin de la relation de travail (à ce moment-là on laisse à l'étranger le temps de trouver autre chose).

Dans le contexte de l'application de la directive « blue card » de l'UE le renouvellement du titre de séjour est conditionné par la poursuite de l'activité.

La politique suivie en matière d'autorisation de séjour à l'issue de la relation de travail différencie la situation du travailleur dont le séjour se justifie par la migration économique de celle du travailleur qui peut travailler mais qui est venu en Belgique à d'autres fins comme l'asile ou la régularisation.

Dans le premier cas – la migration économique - est concerné l'étranger qui a obtenu l'autorisation de séjour sur base d'un permis de travail B, délivré en respect des règles prévues par la législation applicable, notamment l'Arrêté royal du 9/06/1999. (Le permis de travail B est délivré pour une période maximale de douze mois pour une occupation auprès d'un seul employeur).

Dans les autres cas, il s'agit du droit de séjour d'autres personnes qui ont obtenu une autorisation de séjour pour un motif qui n'a rien d'économique : le regroupement familial ou l'asile, par exemple. Ces personnes ont bien évidemment le droit d'exercer aussi une profession afin de subvenir à leurs besoins.

Le renouvellement de l'autorisation de séjour dépend du motif de l'octroi de cette autorisation. Dans le cas du travailleur migrant économique, l'autorisation de séjour est délivrée sur base du permis de travail et renouvelée sur base du renouvellement de ce dernier.

Or le permis de travail B n'est accordé et renouvelé qu'après examen du marché de l'emploi et en tenant compte de la préférence communautaire. Si donc le permis de travail n'est pas prorogé, parce que les conditions de sa délivrance ne sont plus remplies, il est cohérent que l'autorisation de séjour accordée pour ce motif ne soit pas prolongée non plus. Pour en décider, il est cependant tenu compte des liens de la personne avec le pays, liens qui vont en s'intensifiant au fil du temps. L'octroi d'un délai pour trouver un autre emploi et obtenir un nouveau permis de travail dépendront des motifs de la perte d'emploi et /ou du retrait du permis de travail (par exemple, une rupture du contrat par le travailleur après quelques jours de travail à peine ou une restructuration de la société après plus d'un an d'occupation, par exemple).

De la même manière, le travailleur qui est venu dans le cadre du regroupement familial verra le renouvellement de son séjour refusé s'il ne forme plus une vie commune avec le membre de la famille qu'il est venu rejoindre. Dans ce cas, l'exercice ou non d'une activité professionnelle n'a donc pas d'incidence. Toutefois, après un certain temps, le travailleur étranger qui a obtenu le séjour sur base du regroupement familial pourra obtenir un séjour à titre personnel qui ne dépendra plus des conditions de départ.

Le SPF Intérieur pense que la cohérence même du système est donc en cause ici.

RESC 18§3 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in Moldova is not in conformity with Article 18§3 of the Charter on the ground that termination of employment contract of the foreign worker leads to cancellation of the temporary residence permit thus obliging him/her to leave the country as soon as possible.

356. The representative of the Republic of Moldova provided the following information in writing:

A partir 01 janvier 2009, une fois avec l'entrée en vigueur de la Loi n180 du 10.07.2008 sur la migration du travail les travailleurs immigrés reçoivent un seul document – permis de séjour aux fins de travail. Le permis de séjour aux fins de travail est émis à la base de la Décision de l'Agence Nationale de l'Emploi sur l'octroi du droit au travail et à la base de la Décision du Bureau de Migration et d'Asile sur l'octroi du droit de séjour provisoire aux fins de travail. La demande de l'obtention du permis de séjour aux fins de travail doit être soumise au Guichet Unique de documentation des étrangers dans le cadre du BMA, ils reçoivent leur permis de séjour du même Guichet Unique.

Lorsque le contrat de travail du travailleur étranger est résilié à des raisons imputables à celui-ci avant l'expiration du terme de validité du permis de séjour, le travailleur migrant n'est pas obligé à <http://crochet-shawls.blogspot.com/2012/10/lace-shawl-crochet-shawl-pattern.html> quitter le territoire de la République de Moldova, ayant le droit d'engager chez un autre employeur. L'alinéa (7) Article 5 de la Loi n180 stipule ce qui suit "Avant l'expiration de la validité du permis de séjour aux fins de travail, le citoyen étranger et/ou l'apatride peut solliciter l'octroi du droit au travail et du droit de séjour provisoire aux fins de travail en vue d'être embauché chez un autre employeur, dans des conditions générales."

RESC 18§3 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 18§3 of the Charter on the grounds that:

- *the lack of simplification of formalities for obtaining work and residence permits still represents a serious obstacle for foreign workers to access national labour markets;*
- *the loss of employment leads to the cancellation of the residence permit thereby obliging foreign workers to leave the country.*

First ground of non-conformity

357. The representative of Romania said that a number of measures had been taken since the adoption of the ECSR conclusion. In particular a one-stop procedure had been introduced with a view to avoiding the dual procedure for obtaining work and residence permits.

358. In addition, the Government of Romania was about to transpose into national law EU Directive 2011/98 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in Member State.

359. The combination of these measures taken in law and practice should meet the ECSR requirements.

360. The GC took note of the positive developments, invited the Government of Romania to include all the relevant information in its next report and decided to await the next assessment of the ECSR.

Second ground of non-conformity

361. The representative of Romania provided the following information in writing:

II. As regards the second point, namely that **the loss of employment leads to the cancellation of the residence permit thereby obliging foreign workers to leave the country**, we would like to stress that the job loss is no reason for immediate cancellation of the permit and hence for ordering foreigners to leave Romania.

In fact, if the employment relationship is terminated before the expiry of the residence permit for work purpose, the foreigners also qualify for a grace period of 60 days before the permit is cancelled, a period of time in which they have the possibility to seek for another job. However, this does not exempt the new employer from obtaining a work permit in the terms set by law.

On this occasion we would like to inform you that the Ministry of the Interior initiated procedures for amending the national legislation on immigration, particularly on the employment and posting of foreign workers in Romania, with a view to transposing **Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State**. Thus, the *draft bill on employment and posting of foreign workers in Romania and amending and supplementing certain acts on migration and asylum* has been already placed in approval procedure by the institutions involved.

RESC 18§3 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 18§3 of the Charter on the grounds that:

- *rules governing self employment of foreign workers have not been liberalized;*
- *it has not been established that a residence permit of a foreign work who loses his/her job is not automatically revoked.*

First ground of non-conformity

362. The representative of Turkey provided the following information in writing:

Article 7 of the Law on Work Permits of Foreigners No. 4817 requires minimum 5 year legal and uninterrupted residence in Turkey for the foreigners wishing to engage in a self-employed activity in Turkey.

However, Article 8 of the above-mentioned Law provides certain exceptions for certain groups of foreigners:

- To foreigners, who are married with a Turkish citizen and live in Turkey with their spouses with marriage bond, or to foreigners, who have settled in Turkey after their marriage bond has finished after at least three years, and to the children thereof from a Turkish citizen spouse,
- To foreigners that were born in Turkey or have come to Turkey before reaching their majority according to their national laws, if they don't have a nation, according to the Turkish legislation and that have graduated from vocational school, high school or university in Turkey,
- To foreigners that are accepted as an emigrant, refugee or nomad according to the Residence Law No. 2510,
- To citizens of the countries that are a member of the European Union and to the spouses and children thereof who are not citizens of the countries that are a member of the European Union,
- To those who are working at the service of the diplomats, administrative and technical personnel that are commissioned in the foreign governments' embassies and consulates in Turkey and in the representations of the international establishments, and to the spouses and children of the diplomats and administrative and technical personnel commissioned in the embassies, consulates and representations of the international establishments in Turkey, provided that they are within the framework of the principle of reciprocity and they are restricted with the duration of the commission,
- To foreigners who will temporarily come to Turkey for a period of over one month with the aim of scientific and cultural activities, and for a period of over four months with the aim of sports activities,
- To foreigners at the position of key personnel to be employed in the works of goods and services purchase, having a work made or operating a facility, with contract or tendering procedures by the Ministries and public institutions and establishments authorized by law.

Furthermore, in Turkish legislation there are some additional provisions which provide exceptions to the requirement of 5 year residence for engaging in a self-employed activity.

Article 3 (Definitions) of Law on Foreigners and International Protection No. 6458 and dated 04/04/2013 defines European countries as the "member states of the Council of Europe and other countries to be determined by the Council of Ministers" and Article 31 provides a short term residence permit for the foreigners wishing to set up a business or establish a commercial link.

Besides according to Foreign Direct Investment Law No. 4875 and dated 05/06/2003, requirement of 5 year residence for work permit is not stipulated for the foreigners who establish a company or a branch of company in Turkey and the foreigners who will be employed in those businesses. In this context, in accordance with the Article 5 of above-mentioned Law, the foreigners are given a one year permit for the first application, and then the period of the permit can be extended by 2 years and 3 years upon request.

On the other hand, new Turkish Commercial Code No. 6102 and dated 14/02/2011 and Law on the Enforcement and Implementation of the New Turkish Commercial Code No. 6103 are intended to

bring Turkish business setting into conformity with EU legislation. In this context, the persons enrolled in the Commercial Register will automatically gain the status of “legal entity” and the work permits of foreigners to be employed will be arranged in this framework.

When the above-summarized regulations are considered, our Government holds the idea that the requirement of 5 year legal and uninterrupted residence for engaging in a self-employed activity does not restrict access to labour market in manner contrary to the provisions of European Social Charter.

Second ground of non-conformity

363. The representative of Turkey provided the following information in writing:

En effet, l'article 7 de la loi no : 4817 sur les titres de permis de travail des étrangers dispose que les étrangers souhaitent travailler dans une activité indépendante doit avoir résidé au moins cinq ans dans le territoire de Turquie. Néanmoins, cette disposition n'interdit pas d'accorder le permis de travail aux étrangers qui créent une entreprise ou qui sont les associés d'une entreprise. Selon l'article 5 de loi no : 4817, on accorde a ces étrangers la première fois un an de permis de séjour, puis on le prolonge successivement deux et trois ans.

D'autre part, la loi no : 4875 sur les investissements directs prévoit dans son article 5, paragraphe (a) la liberté des investisseurs étrangers d'investir en Turquie et l'égalité de traitement des investisseurs étrangers avec les investisseurs nationaux.

À cet égard, la condition de durée de résidence 5 ans figurée dans l'article 7 de la loi susmentionnée pour pouvoir travailler dans une activité indépendante ne constitue pas une restriction devant l'accès au marché du travail.

Article 18§4 - Right of nationals to leave the country

RESC 18§4 RUSSIAN FEDERATION

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 18§4 of the Charter on the ground that the law provides for prohibition to leave the country which is not justified in the meaning of Article G of the Charter

364. The representative of the Russian Federation provided the following information in writing:

In accordance with Art. 55 (part 3) of the Constitution of the Russian Federation, the right of everyone to free passage from the Russian Federation may be restricted in order to protect the foundations of the constitutional system, morality, health, rights and legal interests of other persons, national defense and State security.

Restrictions of constitutional rights and freedoms, including the right to free passage from the Russian Federation, are acceptable only if they are proportionate to constitutionally significant goals and objectives. Such restrictions cannot be interpreted broadly and should not lead to denial of civil, political and other rights guaranteed to citizens by the Constitution of the Russian Federation and federal laws.

These provisions are fully consistent with the provision of paragraph 2 of Art. 29 of the Universal Declaration of Human Rights and Section 3, Art. 2 of the protocol 4 to the [Convention for the Protection of Human Rights and Fundamental freedoms](#), by virtue of which every person in the exercise of his rights and freedoms may be subject only to such restrictions that are prescribed by law and are necessary to

ensure due recognition and respect for the rights and freedoms of others, to meet just requirements of morality, public order and crime prevention, the general welfare in a democratic society.

Based on the legal nature of the Russian Federation as a state in which the branches of legislation form a system of correlated elements, and also under constitutional principles of proportionality, equality and justice, such measures must be adequate to the protected values and really necessary in terms of criminal, criminal procedure and criminal enforcement legislation.

Reasons to limit the right of a citizen of the Russian Federation to depart from the Russian Federation are the following.

The conclusion of a national labour agreement (contract), which involves a temporary restriction of the right to free passage from the Russian Federation while getting the admission to highly important or top secret information classified as state secrets in accordance with the Law of the Russian Federation «On the State Secret».

Articles 21 and 24 of the Federal Law dated by 21 July 1993 № 5485-1 «On the State Secret» stipulate that the admission to state secrets implies that a person agrees to a partial and temporary restriction of his rights, including the right to go abroad during the period set in the labour contract herewith receiving income and money compensation guaranteed by the labour contract.

Relations connected with considering information as a state secret and protecting its confidentiality are regulated by the Law « On the State Secret» and the Decree of the President of the Russian Federation dated by November 30, 1995 № 1203 «On Approval of the List of Information Classified as State Secrets».

This includes the information in the military field, in the fields of economy, science and technology, in the field of foreign policy and economy, in the field of intelligence, counterintelligence, operational investigation activities.

Admission of officials and citizens to state secrets is voluntary. Mutual obligations of the administration of an organization and an employee are reflected in the labour contract. In this case persons who admitted to state secrets are subject to familiarization with the legislation of the Russian Federation on state secrets, which provides liability for its violation.

Conclusion №193 (1996) on Russia's application to access the Council of Europe, adopted by the Parliamentary Assembly in January 25, 1996 (at the 7-th session), states: «... The Parliamentary Assembly notes that the Russian Federation fully shares its vision and the interpretation of commitments... and that Russia is going to ... cease immediately the practice of restrictions of the right to free passage from the country for people admitted to state secrets, keeping only those restrictions which are conventional in the Member States of the Council of Europe».

A term of restriction of the right to free passage from the country cannot exceed ten years in total, including the period of limitations set in the labour contract since the date of a person's last familiarization with the highly important or top secret information.

According to paragraph 2 of the Article 1 of the Federal Law dated by May 27, 1998 № 76- FZ « On the Status of Military Men», regular service men enjoy human and civil rights and freedoms with some restrictions prescribed by this federal law, federal constitutional and other federal laws. This includes the possibility of refusal to a regular service man to passage freely from the Russian Federation at any time.

Draft to regular service or alternative service is the reason for restricting the right to free passage from the Russian Federation. This restriction exists if the draft to regular service or alternative service has been carried out in accordance with the Federal Law dated by 28 March 1998 № 53-FZ «On Military Duty and Military Service» and the Federal Law dated by July 25, 2002 № 113-FZ «On Alternative Service».

This restriction is valid till the end of the term of military or alternative service.

The right of a citizen of the Russian Federation to depart from the Russian Federation may be temporarily restricted in case he has been detained on suspicion of committing a crime or sued. This restriction is valid till the judgment is awarded or the sentence comes into force.

If a citizen of the Russian Federation is convicted of a crime he can also be subject to the restriction of his right to free passage from the Russian Federation. This restriction is valid till the completion of the sentence or the remission. Restriction of probationers' right to go abroad is a temporary measure aimed at ensuring fulfillment of the conviction as constitutionally significant judicial act.

The right of a citizen of the Russian Federation to free passage from the Russian Federation may be temporarily restricted in case he evades the fulfillment of obligations imposed by the court. Such restriction is not absolute since it is valid only within the period, the maximum limit of which is set in the Federal Law «On the Procedure of Departure from the Russian Federation and Entry into the Russian Federation», the permission to leave the Russian Federation may be given regardless of the expiry date of such a period.

Constitutional Court of the Russian Federation determined that the possibility of temporary restriction of a citizen's right to departure from the Russian Federation, when he evades fulfilling the obligations imposed by the court, is aimed at protecting the constitutionally important goals and objectives and cannot be regarded as violating the constitutional rights of citizens.

The right of a citizen of the Russian Federation to depart from the Russian Federation may be temporarily restricted in case he has informed deliberately false information about himself while submitting documents for the departure from the Russian Federation. This restriction is valid till the problem is resolved by the body issuing such documents during the period not exceeding a month.

Prior to making the decision to issue a citizen passport, diplomatic passport, service passport of the Ministry of Foreign Affairs of the Russian Federation, territorial offices and missions of the Ministry of Foreign Affairs of the Russian Federation, which issue citizen passports, diplomatic passports, service passports, provide inspection whether there are any circumstances which may lead to a temporary restriction of the right of a citizen to free passage from the Russian Federation.

ARTICLE 20 – THE RIGHT TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT IN MATTERS OF EMPLOYMENT AND OCCUPATION WITHOUT DISCRIMINATION ON THE GROUNDS OF SEX

RESC 20 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 20 of the Charter on the grounds that:

- *Legislation prohibits the employment of women in underground mining;*
- *There is no shift in the burden of proof in gender discrimination cases*

First ground of non-conformity

365. The representative from Azerbaijan stated that amendments to the Labour Code were under-way, Article 241 will be amended and the prohibitions repealed.

366. The ETUC asked whether there was any timeframe for the amendments.

367. The representative from Azerbaijan stated that there was no such time frame

368. The GC took note of the political will to amend the situation and encouraged the authorities to continue to make the necessary changes. It expressed its hope that the amendments would enter into force as soon as possible. Meanwhile it decided to await the next assessment of the ECSR.

Second ground of non-conformity

369. See Article 1§2

RESC 20 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 20 of the Charter on the grounds that:

- *the right to equal opportunities and equal treatment in employment and occupation without discrimination on grounds of gender is not guaranteed in practice,*
- *women are prohibited from working in underground mining.*

First ground of non-conformity

370. The representative of Bosnia Herzegovina described some of the main features of the law on Gender Equality in Bosnia Herzegovina, he stated that the key laws in this area the Entities and cantons have been harmonized with the Law on Gender Equality BiH. He admitted that a study carried out in 2008 on the gender pay gap demonstrated that men dominate the labour market even if women tend to be better educated.

371. The representative stated that there were several avenues of redress for women who believed that they had been discriminated against; the Agency for Gender Equality, Ombudsman as well as the courts. Lawyers and judges regularly receive training on gender discrimination. A new data base would enable data on discrimination cases to be available.

372. As regards the employment rate of women the representative stated that due to the economic crisis the overall employment rate was down. However public institutions are undertaking activities to stimulate the employment of women. All employment strategies pay special attention to the situation of women.

373. The GC took note of the information provided and decided to await the next assessment of the ECSR.

Second ground of non-conformity

374. The representative of Bosnia Herzegovina stated that there had been no change to the situation. The reason for the prohibition was that in 1993 Bosnia Herzegovina ratified ILO Convention on the Employment of Women in Underground Mines No 45. However Bosnia Herzegovina would now proceed, in light of the Conclusion of the ECSR, to denouncing ILO Convention No 45 and then would amend the domestic legislation in order to bring it into conformity with the Charter.

375. The GC took note of the Government's intentions to ring the situation into conformity and encouraged it to do so as soon as possible.

RESC 20 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 20 of the Charter on the ground that there is a predetermined upper limit on compensation for employees who are dismissed as a result of sex discrimination which may preclude damages from making good the loss suffered and from being sufficiently dissuasive.

376. See Article 1§2

RESC 20 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 20 of the Charter on the ground that the employment of women in underground mining is prohibited.

377. The representative of Cyprus stated the prohibition of women working in underground mining, is due to the Cyprus's ratification of ILO Convention on the Employment of Women in Underground Mines No 45 which is still in effect. According to the European Court of Justice Decision (ECJ) in the case of Austria, (C-203/03), such a prohibition was considered unequal treatment on the grounds of sex, however, the ECJ did not rule against Austria because, as in the case of Cyprus, it was bound by its obligations as a party to the ILO Convention. Before there is an amendment to the national legislation concerning this matter, Cyprus must first denounce the Convention according to the ILO's given procedure and will do so. However under the ILO Convention the Convention can only be denounced every ten years.

378. The Cypriot representative pointed out that in the meantime that it is highly unlikely that there will be, in practice, discrimination against women in underground work in mines, since such work no longer takes place in Cyprus.

379. The GC took note of the information provided and requested Cyprus to bring the situation into conformity as soon as possible.

RESC 20 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 20 of the Charter on the ground that legislation only permits equal pay comparisons between employees working for the same company or undertaking.

380. The representative of France provided the following information in writing:

La Charte sociale européenne, dans son article 20, demande aux Etats membres de reconnaître le droit à l'égalité de chances et de traitement en matière d'emploi et de profession sans discrimination fondée sur le sexe et de prendre les mesures appropriées pour en assurer ou promouvoir l'application dont la rémunération.

Les dispositions de la Charte sociale n'impliquent nullement que le principe d'une rémunération égale pour un même travail ou pour un travail de valeur égale s'applique entre les femmes et les hommes d'entreprises différentes au motif que ces entreprises relèvent dans du champ d'application d'une même convention collective.

La règle posée par la Charte s'impose à l'employeur qui doit assurer, pour un même travail ou pour un travail de valeur égale dans son entreprise, l'égalité de rémunération entre les femmes et les hommes. Si l'application de ce principe dans une entreprise emporte le respect par l'employeur de l'ensemble des dispositions conventionnelles existantes pour tous les salariés, femmes ou hommes, il n'existe, pour autant, aucune justification à ce qu'au sein d'une même branche professionnelle, les salariés d'entreprises différentes –hommes ou femmes- perçoivent des salaires identiques pour des activités identiques. Une telle exigence méconnaîtrait le principe de faveur qui permet à l'employeur de verser des salaires supérieurs aux minima fixés par la négociation collective de branche (ou d'entreprise).

Le principe d'une rémunération égale pour un même travail ou pour un travail de valeur égale tel que posé par la Charte sociale ne s'applique donc pas à des salariés appartenant à des entreprises différentes, qui sont placés, au regard de ce principe, dans des situations différentes, peu important que certains des éléments de rémunération soient communs entre tout ou partie des entreprises (qu'il s'agisse de dispositions législatives, réglementaires ou conventionnelles).

C'est dans cette logique que s'inscrit la législation française qui est ainsi conforme à la juste application du principe ainsi posé par la Charte sociale qu'elle reprend pleinement.

Fondements juridique et jurisprudentiel du principe « à travail égal, salaire égal »

Le code du travail – article L. 3221-2 – prévoit que tout employeur assure, pour un même travail ou pour un travail de valeur égale, l'égalité de rémunération entre les femmes et les hommes.

Pour la Cour de cassation, le principe d'égalité de traitement entre les hommes et les femmes produisant un travail égal ou de valeur égale est une application du principe plus général « à travail égal, salaire égal ». « L'employeur est tenu d'assurer l'égalité de rémunération entre tous les salariés de l'un ou l'autre sexe, pour autant que les salariés en cause soient placés dans une situation identique » (Cass. soc, 29 octobre 1996).

De cette construction jurisprudentielle, il ressort que la différence de traitement entre les salariés placés dans la même situation doit reposer sur des raisons objectives dont le juge doit contrôler concrètement la réalité et la pertinence (Cass. soc, 15 mai 1997 ; Cass. soc, 15 mai 2007).

Pour apprécier si les salariés se trouvent dans une situation de travail de valeur égale, la jurisprudence se réfère tout d'abord au poste de travail et prend en compte le coefficient, la qualification et

l'ancienneté (*Cass. soc, 15 décembre 1998 ; Cass. soc, 23 octobre 2001*). La jurisprudence exigeait, pour que la comparaison puisse s'effectuer, que les salariés exercent les mêmes fonctions : « n'effectuent pas un travail de valeur égale des salariés qui exercent des fonctions différentes » (*Cass. Soc, 26 juin 2008*). Cette approche restrictive a été remise en cause. La Cour de cassation admet que des fonctions différentes peuvent comporter des travaux de valeur égale (*Cass. soc, 6 juillet 2010*).

Cette approche de la notion de travail égal ou de valeur égale par la jurisprudence nécessite de la part du juge de se livrer à une analyse comparative des fonctions, des tâches et des responsabilités des salariés concernés (*Cass. soc, 1^{er} juillet 2009 ; Cass. soc, 28 septembre 2010*).

Cadre d'appréciation

Même entreprise

En s'inspirant de la jurisprudence communautaire, la Cour de cassation a écarté l'application du principe « à travail égal, salaire égal » s'agissant d'entités juridiquement distinctes.

Pour les juges européens, l'égalité de rémunération suppose une « entité responsable de l'irrégularité, qui pourrait rétablir l'égalité de traitement » (*CJCE, 17 septembre 2002*). La Cour de cassation estime donc que le principe « à travail égal, salaire égal » n'a vocation à s'appliquer qu'à l'égard des salariés d'une même entreprise (*Cass. soc, 12 juillet 2006*).

Ainsi, des salariés mis à disposition au sein d'une entreprise ne peuvent comparer leur situation avec celle des salariés de l'entreprise utilisatrice. Ces derniers ne sont pas fondés à se prévaloir des avantages – en l'espèce, un jour de repos compensateur – des salariés d'une autre entreprise (*Cass. soc, 6 juillet 2005*).

Ce principe ne s'applique pas aux salariés appartenant à des entreprises différentes, même soumises à la même convention collective (*Cass. soc, 22 février 2006 ; Cass. soc, 24 septembre 2008*).

Enfin, le principe « ne s'applique pas lorsque les salariés qui revendiquent le bénéfice d'un droit ou d'un avantage n'appartiennent pas à l'entreprise au sein de laquelle ce droit ou cet avantage est reconnu en vertu d'un accord collectif, d'un usage ou d'un engagement unilatéral de l'employeur » (*Cass. soc, 2 juin 2010, au sujet d'une prime d'ancienneté et d'un treizième mois*).

Unité économique et sociale (UES) ou groupe

Dans le cadre d'une UES, la Cour de cassation a également écarté le principe d'égalité de rémunération en indiquant « qu'au sein d'une unité économique et sociale qui est composée de personnes juridiquement distinctes pour la détermination des droits à rémunération d'un salarié, il ne peut y avoir de comparaison entre les conditions de rémunération de ce salarié et celles d'autres salariés compris dans l'unité économique et sociale, que si ces conditions sont fixées par la loi, une convention ou un accord collectif commun, ainsi que dans le cas où un travail de ces salariés est accompli dans le même établissement » (*Cass. soc, 1^{er} juin 2005 ; Cass. soc, 2 juin 2010*).

La Cour de cassation privilégie donc le cadre de l'entité juridique en admettant toutefois, et par exception, que si la rémunération est fixée par un accord collectif applicable à l'ensemble des entités de l'UES, le principe d'égalité s'applique. La Cour de cassation semble aussi suggérer que pour des salariés travaillant dans un même établissement de l'UES, le principe d'égalité de rémunération joue même si ces salariés appartiennent à des entités juridiquement distinctes de l'UES.

Cette jurisprudence concerne également les entreprises d'un même groupe. Il n'existe aucun principe juridique imposant à une entreprise d'accorder des avantages identiques à ceux des salariés des autres entreprises du groupe (Cass. soc, 14 septembre 2010).

Entreprise et établissement

La jurisprudence a tout d'abord accordé une certaine autonomie à l'établissement dans la différenciation des rémunérations. Ainsi :

- « la négociation collective au sein d'un établissement distinct permet d'établir par voie d'accord collectif des différences de traitement entre les salariés de la même entreprise » (Cass. soc, 27 octobre 1999) ;
- « un accord d'établissement peut prévoir, au sein de l'établissement, compte tenu de ses caractéristiques, des modalités de rémunération spécifiques » (Cass. soc, 7 avril 2004) ;
- « un accord d'entreprise peut prévoir qu'au sein de certains de ses établissements, compte tenu de leurs caractéristiques, des modalités de rémunération spécifiques seront déterminées par voie d'accords d'établissement » (Cass. soc, 18 janvier 2006).

Toutefois, les différences entre salariés d'établissements distincts d'une même entreprise ne peuvent donc résulter que de raisons objectives dont le juge doit contrôler concrètement la réalité et la pertinence.

RESC 20 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 20 of the Charter on the ground that it has not been established that there is adequate protection against gender discrimination in employment.

381. No information provided.

RESC 20 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 20 of the Charter on the ground that the legislation prohibits the employment of women in heavy work and in underground work.

382. The representative of the Republic of Moldova stated that to the extent possible the Authorities of Moldova made always efforts to ensure a decent level of security and health at work. The law on security and health at work of 2008 recognizes as a priority the preventive measures and the identification of the occupational hazards. The law includes a series of rights and of obligations for all the participants in the business environment.

383. At the same time there exist many workplaces where the occupational hazards cannot be completely eliminated for the moment. This is why the prohibition of the employment of women to heavy and underground work seeks to protect the reproductive health of the women at work places where the risks cannot be eliminated for the time being due to the low grade of the current technical development and other factors.

384. Consequently, Article 248 of the Labour Code should not be regarded as discriminatory, be-

cause it is related to Article 8 of the Code which stipulates that one does not consider discriminatory the establishment of the differentiations, the exceptions, the preferences determined by special of the State provisions for the people who require a social protection and legal support. The protection of the reproductive function is part of the subjects for which the international instruments on the women's rights require to undertake concrete measures.

385. The representatives from France and the Netherlands pointed out that the situation was very old fashioned and discriminatory and pointed out there was no willingness to change.

386. The representative from Iceland agreed and proposed voting on a warning.

387. The representative from Lithuania supported by Romania, Estonia, the Russian Federation, Portugal and Ukraine stated that as this was an A case (first time non-conformity), more time was need to change attitudes and therefore a strong message would suffice.

388. The representatives from Poland and Turkey also suggested the sending of a strong message

389. The GC urged the Republic of Moldova to modify the legislation and to bring the situation into conformity as soon as possible.

RESC 20 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 20 of the Charter on the ground that, in equal pay cases, legislation only permits comparisons of pay between employees working for the same company.

390. The representative from Portugal stated a resolution by the Council of Ministers of 8 March 2013 (13/2013) requires the Government to elaborate and disseminate a report on the gender wage gap by economic sector and branch before the end of the year. Equality between men and women including equal pay remains a priority for the Government. According to the latest data from Eurostat the gender wage gap is 12.5% in Portugal lower than the EU average.

391. The representative from Portugal further requested clarification from the ECSR on the issue of pay comparisons as it was unclear what in reality this meant.

392. Several representatives (France, Romania, and Turkey) stated that they found the case law of the ECSR difficult to understand and therefore were unable to implement it.

393. The GC decided to take note of the information provided by Portugal and await the next assessment of the ECSR. However the GC expressed its desire to seek further clarification from the ECSR on its case law on equal pay comparisons.

RESC 20 SLOVENIA

The Committee concludes that the situation in Slovenia was not in conformity with Article 20 of the Charter on the ground that during the reference period women were prohibited from working in underground mines, and were prohibited from night work in industry and in the construction sector.

394. The representative of Slovenia stated that International Labour Organization Convention No. 89 on the night work of women in industry (amended in 1948) ceased to apply to the Republic of Slo-

venia on 16 November 2012..

395. The new Employment Relationships Act which entered into force on 12 April 2013 does not impose on employers the obligation to obtain the approval of the minister competent for labour before the introduction of night work of women in industry.

396. The GC congratulated Slovenia on bringing the situation into conformity with the Charter.

RESC 20 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 20 of the Charter on the ground that it has not been established that equal opportunities and equal treatment in matters of employment without discrimination on grounds of sex are guaranteed.

397. The representative of the Slovak Republic provided the following information in writing:

As far as equal treatment and equal remuneration is concerned, the Slovak Republic has standard legal regulations in the Labour Code and other legal instruments in accordance with the EU regulations.

In order to align labour law relations and the Antidiscrimination Act, two recent amendments of the Labour Code were adopted. These amendments, among other aspects, specified the definition of the application of the equal treatment principle in labour legislation. The most important changes are as follows:

Article 1 of the Fundamental Principles of the Labour Code states that natural persons shall have the right to work and to the free choice of employment, to fair and satisfying working conditions and to the protection against arbitrary dismissal from employment in accordance with the principle of equal treatment, stipulated for the area of labour-law relations under a special act on equal treatment in certain areas and on the protection against discrimination and on amending of certain acts (the Anti-discrimination Act). These rights belong to them without any restriction and discrimination on the grounds of sex, marital status and family status, sexual orientation, race, colour of skin, language, age, unfavourable health state or health disability, genetic traits, belief and religion, political or other conviction, trade union activity, national or social origin, national or ethnic group affiliation, property, lineage, or other status, with the exception of a case where different treatment is justified by the nature of the activities to be performed in employment, or by the circumstances under which these activities are to be performed, if this reason consists in the actual and decisive requirement for the job, provided the objective is legitimate and the requirement adequate.

Article 6 of the Fundamental principles of the Labour Code guarantees that women and men shall have the right to equal treatment with regard to access to employment, remuneration and promotion, vocational training, and also with regard to working conditions. For pregnant women, mothers until the completion of the ninth months of confinement, and for breastfeeding women working conditions shall be secured that will protect their biological state with respect to pregnancy, childbirth, care for the child after birth, and their special relationship with the child after birth. For women and men, working conditions shall be secured that will enable them to perform their social function in upbringing of children and child care.

Article 13, paragraph 1 of the Labour Code states that employer shall be obliged to treat with employees in labour-law relations in accordance with principle of equal treatment stipulated for the area of

labour-law relations by separate Act on Equal Treatment in Certain Areas and on the Protection against Discrimination and on Amending and Supplementing Certain Acts (Antidiscrimination Act).

Article 13, paragraph 2 of the Labour Code states that in labour-law relations, discrimination shall be prohibited on the grounds of sex, marital and family status, sexual orientation, race, colour of skin, language, age, unfavourable health state or health disability, genetic traits, belief or religion, political or other conviction, trade union activity, national or social origin, national or ethnic group affiliation, property, lineage or other status.

An employee shall have the right, according to the Article 13, paragraph 5 of the Labour Code, to submit a complaint to the employer in connection with the infringement of rights and obligations; the employer shall be obliged to respond to such a complaint without undue delay, perform retrieval, abstain from such conduct and eliminate the consequences thereof.

An employee, who assumes that their rights or interests protected by law were aggrieved by failure to comply with the principle of equal treatment may have under the Article 13, paragraph 6 of the Labour Code recourse to a court and claim of legal protection stipulated by separate Act on Equal Treatment in Certain Areas and on the Protection against Discrimination and on Amending and Supplementing Certain Acts (Antidiscrimination Act).

Furthermore, according to the Article 41, paragraph 8 of the Labour Code, upon engaging a natural person, an employer may not violate the principle of equal treatment where concerning access to employment. Where an employer upon establishing an employment relationship shall breach the obligation, the natural person shall be entitled to appropriate financial compensation.

The right of an employee to wage for equal work and for work for equal value is guaranteed by the Article 119a of the Labour Code which in paragraph 1 states that wage conditions must be agreed without any form of sex discrimination. Paragraph 2 sets that women and men have the right to equal wage for equal work and for work of equal value. Equal work or work of equal value is considered to be work of the same or comparable complexity, responsibility and urgency, which is carried out in the same or comparable working conditions and at producing the same or comparable capacity and results of work in employment relationship for the same employer. If the employer implements a system of job evaluation, the evaluation must be based on the same criteria for men and women without any sexual discrimination.

Employees who suffer damages in consequence of violations of obligations resulting from labour-law relations may lodge a complaint at the competent labour inspection body in accordance with Article 150, paragraph 2 of the Labour Code. The Labour Inspectorate is obliged to thoroughly examine each complaint. According to the data of the National Labour Inspectorate Report on Remuneration for 2012, 103 complaints in which employees highlighted discrimination were lodged. 34 complaints highlighting the violation of the Article 119a of the Labour Code – violation of equal wage conditions – were lodged in 2012.

Also in 2012, the Antidiscrimination Act was amended to also cover the definition of indirect discrimination and contains introduction of temporary balancing measures aimed at improving the situation of the disadvantaged sex for all public institutions.

Other activities in this field include:

- Summary Report on the State of Gender Equality in Slovakia 2012 – a monitoring report which is annually submitted to the highest social dialogue body in the Slovak Republic –

Economic and Social Council of the Slovak Republic, to the Government and the National Council. This report also contains evaluation of the wage gaps.

- Activities aimed at fulfilling individual tasks listed in the National Action Plan for Gender Equality 2010-2013.
- Fulfilling the Memorandum on Cooperation Between the Government of the Slovak Republic and the Confederation of Trade Unions of the Slovak Republic in the Field of Gender Equality – activities aimed at equal pay. The social partners and the Government carry out training activities aimed at the role of trade unions in wage collective bargaining.

RESC 20 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 20 of the Charter on the grounds that:

- *the employment of all women in certain underground or underwater occupations is prohibited;*
- *Women who do not have an indefinite labour contract with at least six months service and who are not employed at a business employing thirty or more workers are not protected by the prohibition of dismissal on grounds of sex.*

First Ground of non-conformity

398. The representative of Turkey said that the prohibition of the employment of women in certain work is provided for by Article 72 of the Labour Code. Under this Article, the employment of women is prohibited in work carried out underground such as the mines, the installation of the cables, drains and the construction of tunnels.

399. This provision was adopted in order to protect women in working life, considering that they are more fragile because as of their biological specificity. In addition, this provision is in conformity with the ILO Convention n° 45 of 1935. Article 2 of the said Convention lays out that no female person, whatever her age, can be employed in underground work in mines.

400. The representative of Turkey added that the Government will consider amending the legislation in consultation with the social partners.

401. The GC took note of the intention to modify the situation, and encourage the authorities to do so as soon as possible.

Second ground of non-conformity

402. The representative of Turkey said that the legislation which provides protection against discrimination based on sex does not contain any conditions concerning the nature of the work contract, the work period, the number of workers employed by the company.

403. Article 5 of the law No 4857 prohibits both direct and indirect discriminations on grounds of sex or pregnancy. It also provides for equal pay for work of equal value.

404. When these provisions are violated, the workers are entitled to ask not only for a suitable compensation up to 4 months of their wage, but still the rights of which they have been deprived.

405. Independently of the nature of the work contract, of the work period and the number of workers employed by the company, all the workers are entitled to ask for compensation envisaged by Article 5, when the rights with regard to equal treatment are not respected.

406. The situation mentioned by the ESCR appears in Article 18 of the Labour Code entitled “the justification of the rupture of the work contract for a valid reason”. This Article stipulates that when an employer terminates the workers’ contract who has a work contract of unlimited duration, has been working since at least six months and working in a company which employs at least 30 employees, that employer must give a valid reason.

407. However, this Article is not relevant in discrimination cases.

408. The GC took note of the information provided, requested the authorities to provide all relevant information in their next report and decided to await the next assessment of the ECSR.

ARTICLE 24 – RIGHT TO PROTECTION IN CASES OF TERMINATION OF EMPLOYMENT

RESC 24 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 24 of the Charter on the following grounds:

- *it has not been established that the grounds for dismissal with notice that are considered as valid by legislation or domestic case law do not go beyond what is permitted by Article 24 of the Charter;*
- *the maximum compensation for unlawful termination of employment is inadequate and the legislation does not provide for the possibility of reinstatement in the private sector*

409. No information was provided.

RESC 24 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 24 of the Charter on the grounds that:

- *the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified;*
- *the maximum compensation for unlawful termination of employment is inadequate.*

410. The representative of Armenia provided the following information in writing:

The 2 grounds of non-conformity will be taken into account in the process of amendments in the Labour Code of RA.

RESC 24 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 24 of the Charter on the grounds that:

the maximum amount of compensation for unlawful dismissal is not adequate.

- *employees undergoing a probationary period of 6 months are not protected against dismissal;*
- *the termination of employment at the initiative of the employer for some categories of employees, on the sole ground that they have the pensionable age, which is permitted by law, is not justified.*

First ground of non-conformity

411. The representative of Bulgaria stated that Article 225, paragraph 1 of the Labour Code provides for compensation in cases of unlawful dismissal of an amount equal to the worker's pay for the period of unemployment caused by reason of the said dismissal, but not more than six months.

412. Taking into account the conclusions of the European Committee of Social Rights, in 2009 the Ministry of Labour and Social Policy initiated legislative amendments and prepared a draft Law amending and supplementing the Labour Code to repeal the 6 month restriction regulated by Article 22.

413. However objections were received by the Ministry of Finance and the Ministry of Defense therefore the proposal was not accepted. The arguments of the two ministries were that this provision aims to motivate employees to seek employment on the labor market.

414. The representative of Bulgaria then pointed out that according current judicial procedure a labour dispute may be definitively settled within a period of six months, as long as the plaintiff is acting in good faith and keeps the deadlines. Further Article 242 of the Code of Civil Procedure provides for the anticipatory enforcement of the first-instance judgments where the court awards compensation for unlawful dismissal. More significantly she stated that in 2013 the Supreme Court of Cassation adopted an interpretative judgment where it held that in cases of non-performance of an obligation resulting of a contract, the Court may award compensation for non-material damages which are a direct and immediate consequence of the tort. This type of compensation has no upper limit (Obligations and Contracts Act, Code of Civil Procedure). As labour relationships are also contractual relationships it means that in cases of unlawful dismissal the employee disposes of another essential tool for civil protection - claim under the Obligations and Contracts Act.

415. The new Government of Bulgaria, will be presented with an expert report on the ECSR's conclusion. The issue could also be put for discussion with the National Coordination Mechanism of Human Rights which is to be formed under the Ministry of Foreign Affairs.

416. The representative from Turkey stated that in his view there was new information.

417. The representative from the Russian Federation, Lithuania, and Romania pointed out that there were in fact positive developments and there was a willingness to change.

418. However the representative from the ETUC stated in his view there was no change and a strong message should be send.

419. The representative from Poland stated there was no draft on the table and she was not convinced by the civil procedure avenue for redress.

420. The GC decided to take note of the information provided, urged the authorities to bring the situation into conformity and decided to await the next assessment of the ECSR.

Second and third grounds of non-conformity

421. The representative of Bulgaria provided the following information in writing:

Selon l'Annexe à la Charte sociale européenne révisée - Portée de la Charte sociale européenne révisée en ce qui concerne les personnes protégées – par rapport à l'article 24 :

Il est entendu que cet article couvre tous les travailleurs mais qu'une Partie peut soustraire entièrement ou partiellement de sa protection les catégories suivantes de travailleurs salariés:

- a les travailleurs engagés aux termes d'un contrat de travail portant sur une période déterminée ou une tâche déterminée;
- b les travailleurs effectuant une période d'essai ou n'ayant pas la période d'ancienneté requise, à condition que la durée de celle-ci soit fixée d'avance et qu'elle soit raisonnable;
- c les travailleurs engagés à titre occasionnel pour une courte période.

Comme mentionné précédemment, le contrat en vertu de l'art. 70, par. 1 du Code du travail est conclu pour une période d'essai de 6 mois, pour évaluer si l'employé/e est capable d'effectuer le travail ou si le travail est approprié pour lui/elle. Ce contrat n'est pas une base autonome pour conclure un contrat de travail. Par conséquent, nous considérons que cette situation (art. 70, par. 1 du Code du travail) tombe dans les catégories de salariés visés à l'annexe de l'art. 24, para 2, b), qui peuvent être exclus du domaine de la protection totale ou partielle en vertu de l'art. 24 ESCh (r).

- **la cessation d'emploi pour certaines catégories de salariés reposant sur le fait qu'ils ont atteint l'âge d'admission à pension, comme le permet la loi, n'est pas justifiée.**

Par l'amendement du Code du travail (promulgué en SG. N 7 de 2012) on a supprimé la possibilité de l'employeur de résilier le contrat de travail à cause que le travailleur ait acquis le droit à la retraite/pension de vieillesse. La possibilité de l'employeur de mettre fin à l'emploi de professeurs et des docteurs en sciences à l'âge de 65 ans n'est pas liée à l'acquisition de droits à la retraite/pension. Cette disposition existait dans le Code du travail avant l'année 2012. Elle ne s'applique que par rapport à un groupe limité de personnes travaillant dans le domaine de l'éducation supérieure.

RESC 24 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 24 of the Charter on the grounds that:

- *the employees who have not been employed with their employer for a continuous period of 26 weeks are not entitled to protection against dismissal.*
- *the categories of persons excluded from protection go beyond what is allowed under the Appendix to the Charter*

First ground of non-conformity

422. The representative from Cyprus stated that as regards the termination of employment during the period of probation, the Government of Cyprus acknowledges that the current status remains as described in the ESCR conclusions. The Cyprus Government retains its position that the Termination of Employment Law (Law 24 of 1967-2003 and Regulations issued thereafter) is in compliance with item 2 of Appendix to Article 24 of the Revised Social Charter for the reasons explained in its previous responses to the ESCR conclusions. Nevertheless, the Cyprus Government has indicated its willing-

ness to discuss with the Social Partners the possibility of amending the legislation in order to bring the national legislation in line with the ECSR conclusions.

423. However, the national efforts stumble upon the fact that neither the European Social Charter nor the ECSR provides a definition of what constitutes a reasonable duration of a probationary period in relation to item 2 of Appendix to Article 24.

424. As a result, the Cyprus Government is not in a position to propose to the Social Partners specific amendments of the legislation, especially since to this date no partner has raised any issue of alterations regarding the duration of probationary period. Furthermore, an amendment based only on speculation of what would be accepted as a reasonable duration of probationary period does not necessarily guarantee that the amendment will bring the situation in conformity with the Article 24 of the Charter.

425. In view of the above, the Cyprus Government proposes that the Secretariat of the ECSR carries out a mapping exercise of the respective legislations of all contracting parties of the European Social Charter, as it was decided during the 120th meeting of the Governmental Committee. The results of this exercise could be discussed at a future meeting of the Governmental Committee of the European Social Charter and European Code of Social Security with the aim of establishing what the ECSR would accept as reasonable probationary period in respect of item 2 of Appendix to Article 24 of the Charter.

426. Several representatives pointed out that at present there was no clear intention to amend the situation (the Netherlands, Turkey and the ETUC).

427. The representative from Cyprus stated that the Government intends to consult the social partners about changing the situation however it had no idea of what the ECSR would consider a reasonable period.

428. The IOE stated that it was difficult to state what period was unreasonable.

429. On a proposal by the representative of the Netherlands and in accordance with its rules of procedure the GC held a vote on a recommendation which was not carried (0 votes in favour, 33 against). It then held a vote on a warning which was also not carried (8 in favour 24 against).

430. The GC took note of the information provided and asked the Cypriot authorities to bring the situation into conformity with the Charter. Meanwhile it decided to await the next assessment of the ECSR.

Second ground of non-conformity

431. The representative of Cyprus provided the following information in writing:

The Termination of Employment Legislation was adopted in order to protect employees from unfair dismissals as well as cover them for the risk of redundancy which would affect the income and the career prospects of the employee.

Furthermore, the Social Insurance legislation allows for a person who receives a pension to continue working beyond the pensionable age of 65 without a reduction to the pension. In addition, an employee who continues to work beyond the pensionable age may have also received his pension rights from a supplementary pension scheme without any reduction.

In view of the above, the Social Partners have agreed that since the worker who is over 65 receives an income in the form of a pension and perhaps a supplementary pension and, since the termination of employment does not constitute any loss of career prospects, the termination of employment legislation should not apply to persons who have reached statutory pensionable age. It is noted that most collective agreements which include a retirement age set it at 65 or below, while in cases where the collective agreement does not include such a clause or when there is no collective agreement, the practice is to retire when the worker reaches the pensionable age. To this extent, most employees over the age of 65 in practice are employed on a casual basis.

Regarding the termination of employment during the period of probation, the Government of Cyprus acknowledges that the current status remains as described in the ESCR conclusions. The Cyprus Government retains its position that the Termination of Employment Law (Law 24 of 1967-2003 and Regulations issued thereafter) is in compliance with item 2 of Appendix to Article 24 of the Revised Social Charter for the reasons explained in its previous responses to the ESCR conclusions. Nevertheless, the Cyprus Government has indicated its willingness to discuss with the Social Partners the possibility of amending the legislation in order to bring the national legislation in line with the ESCR conclusions.

However, our efforts stumble upon the fact that neither the European Social Charter nor the ECSR provide a definition of what constitutes a reasonable duration of a probationary period in relation to item 2 of Appendix to Article 24.

As a result, the Cyprus Government is not in a position to propose to the Social Partners specific amendments of the legislation, especially since to this date no partner has raised any issue of alterations regarding the duration of probationary period. Furthermore, an amendment based only on speculation of what would be accepted as a reasonable duration of probationary period does not necessarily guarantee that the amendment will bring the situation in conformity with the Article 24 of the Charter.

In view of the above, the Cyprus Government proposes that the Secretariat of the ECSR carries out a mapping exercise of the respective legislations of all contracting parties of the European Social Charter, as it was decided during the 120th meeting of the Governmental Committee. The results of this exercise could be discussed at a future meeting of the Governmental Committee of the European Social Charter and European Code of Social Security with the aim of establishing what the ESCR would accept as reasonable probationary period in respect of item 2 of Appendix to Article 24 of the Charter.

RESC 24 FINLAND

The Committee concludes that the situation in Finland is not in conformity with Article 24 of the Charter on the ground that the legislation does not provide for the possibility of reinstatement in case of unlawful dismissal.

432. The representative of Finland provided the following information in writing:

Legislation on termination of employment

Grounds for termination and cancellation of the employment contract are regulated in the Employment Contracts Act. The Act also includes general provisions on e.g. notice periods, re-employment and compensation for groundless termination of an employment contract.

According to the Employment Contracts Act, the employer shall not terminate an indefinitely valid employment contract without proper and weighty reasons. Proper and weighty reasons may be related to the employee's person or to financial and production-related grounds. Whether grounds are proper

and weighty enough is determined upon a case-by-case consideration taking into account all circumstances of the case.

The employer may not terminate an employment contract on the basis of the employee's pregnancy or because the employee is exercising his/her right to the family leave.

The employer is only upon an extremely weighty cause entitled to cancel an employment contract with an immediate effect regardless of the applicable period of notice or the duration of the employment contract.

If the employer has terminated or cancelled an employment contract contrary to the grounds laid down in the Employment Contracts Act, the employer must be ordered to pay compensation for unjustified termination or cancellation of the employment contract. The exclusive compensation must be equivalent to the pay due for a minimum of three months or a maximum of 24 months.

Furthermore, if the employer has terminated the employment contract contrary to the Act on Equality between Women and Men, the Non-Discrimination Act or the Act on Co-operation within Undertakings, the employee is entitled to compensation set in the relevant legislation. Compensation is paid in addition to the compensation regulated in the Employment Contracts Act.

Reinstatement of an employment relationship

According to the previous Employment Contracts Act (in force until 2001), when considering a case on termination of an employment contract, the court had to - upon a request of a party- to determine whether there were conditions to reinstatement of the employment contract. Special attention had to be paid to the grounds for dismissal, the extent of the employer's operations, number of employees, as well as to the employee's actual willingness and ability to return to work and also to the employee's other circumstances. When considering the conditions to reinstatement, the court could order a so called alternative compensation the employer had to pay in case of reinstatement of the employment contract.

In the preparatory works for the new Employment Contracts Act (in force from 2001), the preparatory committee was unanimous on that there was no need to include a provision on an alternative compensation in the new Act. One of the reasons for that was that the provision on an alternative compensation was in practice applied very rarely. Even in cases the employee requested the court to examine the conditions for reinstatement and an alternative compensation was ordered, the employment contract was not usually re-instated.

In case of illegal termination of employment contract, the employee's financial status is secured by a compensation set in the law. In addition the obligation of re-employment supplements the job security of those employees whose employment contract has been terminated on financial or production-related grounds.

Furthermore, the Government considers that the employment contract is a contractual relationship between employer and employee. Thus, a legal obligation of reinstatement in case of unlawful dismissal would suit poorly into the Finnish legal system. If the employer was not willing to reinstate the employee, ultimately execution remedies would have to be used in order to guarantee the right to reinstatement of illegally dismissed employees. It is clear that in circumstances like that working would be impossible and impractical for both the employee and the employer.

Reinstatement of a service relationship

In Finland, termination of service relationships is regulated in the Civil Service Act. The grounds for dismissal are identical to the grounds set in the Employment Contracts Act. Legislation on Equality, Non-Discrimination and Co-operation are also applied in the civil service relationships. Furthermore, in the Civil Service Act, there are provisions on e.g. notice periods, re-employment and compensation for groundless termination of a service relationship.

The civil service is not a contractual relationship, but based on an administrative decision of a state or municipal authority. Also termination of a service relationship is based on an administrative decision. An authority's decision on terminating a service relationship can be appealed against in administrative proceedings. If termination is found groundless, the service relationship continues uninterrupted. In addition, the authority that has terminated the service relationship may, before the end of the notice period and upon the civil servant's acceptance, cancel the termination. Respectively, a civil servant may not cancel his/her resignation without the authority's acceptance.

RESC 24 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 24 of the Charter on the grounds that:

- *legislation permits the exclusion of employees from protection against dismissal for one year during the probationary period;*
- *employees having reached the normal retiring age are excluded from the protection of the Unfair Dismissals legislation which goes beyond what is permitted by the Appendix to the Charter.*

433. The representative of Ireland provided the following information in writing:

The Unfair Dismissals Acts 1977-2007 do not apply to a person who has been in the continuous service of the same employer for less than one year, with some exceptions. The legislation also does not cover employees on probation or undergoing training of up to one year. In order for the exclusion in relation to probation and training to apply, a written employment contract must be in place and the duration of the probation or training must be one year or less and be specified in the employment contract.

The requirement of one year's continuous service does not apply where the dismissal results from the following:

- An employee's pregnancy, giving birth or breastfeeding or any matters connected therewith;
- The exercise or proposed exercise by an employee of a right under the Maternity Protection Acts 1994 and 2004;
- The exercise or contemplated exercise by an employee of the right to adoptive leave, or additional adoptive leave under the Adoptive Leave Acts 1995 and 2005 ;
- The exercise or proposed exercise by the employee of the right to Parental Leave or Force Majeure Leave under and in accordance with the Parental Leave Acts 1998 and 2006;
- An employee's entitlements, future entitlements, exercise or proposed exercise of rights under the National Minimum Wage Act 2000;

- An employee's trade union membership or activities;
- The exercise or proposed exercise by the employee of the right to carer's leave under and in accordance with the Carer's Leave Act 2001.

In the case of statutory apprentices, the Unfair Dismissals Acts do not apply if the dismissal takes place within 6 months after the commencement of the apprenticeship or within 1 month after the completion of the apprenticeship. Therefore, there is, in effect, only a minimum service requirement of 6 months in the case of a statutory apprentice.

When determining if an employee has the necessary service to qualify under the Acts, a Rights Commissioner, the Employment Appeals Tribunal or the Circuit Court, as the case may be, may consider whether the employment of a person on a series of two or more contracts of employment, between which there were no more than 26 weeks of a break, was wholly or partly for or connected with the avoidance of liability by the employer under the Acts. Where it is so found, the length of the various contracts may be added together to assess the length of service of an employee for eligibility under the Acts.

In addition, where an employee has been dismissed on any of the nine grounds of discrimination under the Employment Equality Acts 1998 and 2004, it is open to the employee to take a case of Discriminatory Unfair Dismissal under those Acts. It should be noted that there is no minimum service requirement under the Employment Equality Acts. The Acts prohibit discrimination against those in employment, seeking access to employment or participating in vocational training on nine grounds. These nine grounds are gender, civil status, family status, sexual orientation, religious belief, age, disability, race and membership of the Traveller community. The Employment Equality Acts also outlaw victimisation, that is, discrimination against an individual because he or she has taken a case or is giving evidence under the equality legislation, or has opposed by lawful means discrimination which is prohibited under this legislation.

An employee would also have the option of taking a case in the civil courts for breach of contract.

Alternatively, an employee with less than one year's service could take a "trade dispute" case under the Industrial Relations Acts to a Rights Commissioner or the Labour Court. While compliance with the Decisions in these types of cases is not legally binding, it provides a forum for the hearing of dismissal cases for those employees with less than one year's service.

Second ground of non-conformity

As regards exclusion of employees having having reached the normal retiring age from the protection of the Unfair Dismissals legislation, the Committee holds that such exclusion is contrary to the Charter as it goes beyond what is permitted by the Appendix to the Charter. Therefore, the situation is not in conformity on this ground.

Material for reply

There is no statutory retirement age for employees in private-sector employment in Ireland. A contract of employment will generally contain a retirement age but this is a matter of contract between the relevant parties. The Unfair Dismissals Acts currently exclude those employees who have reached the "normal retiring age" in a particular workplace. The "normal retiring age" referred to in the Unfair Dismissals Act may have been included specifically in a contract of employment or may have come about by custom and practice in the workplace. Of course, if there is no "normal retiring age" in an employment, then the Unfair Dismissals Act do apply. Also, this exclusion from the Acts does not apply where a dismissal results from an employee's trade union membership or activity.

The provisions in the Unfair Dismissals on “normal retiring age” are aligned with provisions on retirement age in the Employment Equality Acts 1998 to 2011, which come within the remit of the Department of Justice and Equality. Section 34(4) of the Employment Equality Act 1998 (as amended) permits an employer to include a compulsory retirement age in a contract of employment. The Employment Equality Acts transposed EU Directive 2000/78/EC of 27 November 2000. That Directive established a general framework for equal treatment in employment and occupation and prohibits discrimination in employment and occupation on various grounds, including age.

While the Employment Equality Acts currently permit an employer to set a specific retirement age in a contract of employment, developments have occurred under EU case law which impact on this provision. The Court of Justice of the European Union (CJEU), in a series of age-discrimination cases concerning Directive 2000/78/EC, has clarified that Member States may provide that differences of treatment on grounds of age (including the setting of mandatory retirement ages) shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

These CJEU rulings have resulted in a number of cases being taken to the Equality Tribunal (which adjudicates on the Employment Equality Acts) where employees have successfully challenged the retirement age set by their employer. The Equality Tribunal in its recent decisions has interpreted the Employment Equality Acts in the light of the CJEU rulings, and sought objective justification of mandatory retirement ages set by employers. The Tribunal to date has been in a position to interpret the equality legislation in compliance with EU law.

However, the Department of Jobs, Enterprise and Innovation will liaise with the Department of Justice and Equality to examine what amendments may be necessary to both the Unfair Dismissals legislation and the Employment Equality legislation in order to provide that national legislation is in line with the rulings of the CJEU with regard to the objective justification of retirement ages.

In a separate development, the Department of Social Protection, by way of the Social Welfare and Pensions Act 2011, has provided for the discontinuation of the State Pension (Transition) from January 2014. This is a transitional State pension which individuals with sufficient social insurance contributions currently receive for a maximum of one year between ages 65 and 66. This means that there will be a standard State Pension age of 66 years for everyone from 1 January 2014. In the context of the discontinuation of the transitional State pension, the Department of Social Protection, which has lead responsibility for the State pension and pension age policy, is chairing an inter-Departmental Group on Working and Retirement issues, on which various Departments are represented. That Department organised and chaired a Working and Retirement Forum in December 2012, at which a range of stakeholder groups discussed, amongst other matters, issues related to the alignment of mandatory retirement age practices with the new State pension age. The Group is currently considering the issues highlighted at the December Forum and is preparing preliminary proposals in this regard.

RESC 24 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 24 of the Charter on the ground that employees undergoing the probationary period of 6 months are not adequately protected against dismissal.

434. The representative of Italy stated that although the regulations remain unchanged, it should be

highlighted that the courts have established limits, in particular, to the power of dismissal for the employer.

435. He stressed that the probationary clause is an additional element of the working relationship and not an essential part of it and therefore exists only for the specific will of both parties involved.

436. The probation clause must be in writing, unless otherwise specified in the collective agreement, which also fixes its duration: as a rule, this varies according to skill level/grade and does not exceed six months, after which the system of free withdrawal lapses and the normal regulations of Law No. 604 of July 15, 1966 come into effect (individual dismissal)

437. The principle that the employee can be dismissed only for a justified cause or justifiable reason does not apply to an employee during the probationary period. In fact, during the probationary period, either party can freely withdraw, as stated in art.2096 of Civil Code*.

438. However, the ability to freely withdraw from the working relationship from the employer side is more apparent than real, since the case law has developed some rules, which have been acquired that limit this possibility. The most recent case law of the Supreme Court has confirmed the non-existence of the probationary clause if it's missing in it the indication of the specific tasks that, the worker was supposed to perform.

439. It should also be noted that the decision no. 402 of 17.01.98, of the Supreme Court has further extended the scope of control by the judge on the dismissal ordered by the employer during the trial period. In fact, recalling some of the previous Constitutional Court judgments (including the judgment no. 189 dated 22.12.80), the Supreme Court rejected the legitimacy of the dismissal imposed for a reason unrelated to the employment relationship. In other words, the employee is not requested to prove that the dismissal is based on an illegal reason, but is however sufficient to prove that the reason for the dismissal, while not illegal, is unrelated to the working relationship, to the extent that the judge, if he considers unjustified the reason for dismissal, must declare the illegitimacy of it.

440. Several representatives pointed out that while there may have been certain changes there has been no change in the legislation (ETUC, Poland).

441. The representative from Cyprus stated that the situation was similar to that in Cyprus and therefore in the interests of fairness a vote on a warning should be held.

442. In accordance with its rules of procedure the GC held a vote on a recommendation which was not carried (0 votes in favour, 33 against). It then held a vote on a warning which was also not carried (4 in favour 28 against).

443. The GC took note of the information provided and asked the Italian authorities to bring the situation into conformity with the Charter

RESC 24 MALTA

The Committee concludes that the situation in Malta is not in conformity with Article 24 of the Charter on the grounds that:

- *Employees are excluded from protection against dismissal during a six month probationary period that might be extended until up to one year in certain categories of employees;*

- *the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified.*

First ground of non-conformity

444. The representative from Malta confirmed that although several amendments to the Employment Relations Act were carried out after various discussions between concerned stakeholders, i.e. representatives of employers, of employees and Government, no legal amendments have been carried out or are envisaged with regards to the issue of dismissal during probation.

445. However, he pointed out that during the probation period, both the employer and the employee have the option to terminate the employment contract without giving any justifiable reason and this works against and in favour of both parties to an employment contract.

446. Moreover, apart from the fact that an employee who claims unfair dismissal on grounds of discrimination may refer his or her case to the Industrial Tribunal, which is the Maltese Labour Court, the employee who is dismissed during probation would be able to register for work and enjoy the usual related benefits for unemployment. Hence, in such situations, an employee who is dismissed during probation still has a right of redress if he or she claims unfair dismissal and, will not lose the right to register for work for such a dismissal.

447. The representative from Belgium stated that the situation was similar to that in Cyprus and Italy and therefore the GC must vote on a warning.

448. In accordance with its rules of procedure the GC held a vote on a recommendation which was not carried (0 votes in favour, 33 against). It then held a vote on a warning which was also not carried (4 in favour 28 against).

449. The GC took note of the information provided and asked the Maltese authorities to bring the situation into conformity with the Charter.

Second ground of non-conformity

450. The representative of Malta provided the following information in writing:

The information forwarded by the Department of Employment and Industrial Relations confirms that although several amendments to the Employment Relations Act were carried out after various discussions between concerned stakeholders, ie representatives of employers, of employees and Government, no legal amendments have been carried out or are envisaged with regards to the issue of dismissal during probation.

However, it is pertinent to point out that during the probation period, both the employer and the employee have the option to terminate the employment contract without giving any justifiable reason and this works against and in favour of both parties to an employment contract.

Moreover, apart from the fact that an employee who claims unfair dismissal on grounds of discrimination may refer his or her case to the Industrial Tribunal, which is the Maltese Labour Court, the employee who is dismissed during probation would be able to register for work and enjoy the usual related benefits for unemployment. Hence, in such situations, an employee who is dismissed during probation still has a right of redress if he or she claims unfair dismissal and, will not lose the right to register for work for such a dismissal.

Therefore we feel that employees during the probation period are indeed given the necessary protection during probation.

RESC 24 NETHERLANDS

The Committee concludes that the situation in the Netherlands is not in conformity with Article 24 of the Charter on the ground that the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified.

451. The representative of the Netherlands provided the following information in writing:

The Netherlands are of the opinion that Article 24 should be read in combination with Article E of the European Social Charter that stipulates that:

Article E

Non-discrimination¹

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.

Where Article E should be understood that a differential treatment based on an objective and reasonable justification shall not be deemed discriminatory.

The Netherlands are of the opinion that there is an objective and reasonable justification to allow an employer to terminate the employment contract of its employee who has reached the age at which one is entitled to a retirement or pension benefit. All residing legally in the Netherlands are entitled to an AOW-benefit at the age of 65 and 1 month (age that will be progressively raised till the age of 67 (at present) and possibly further depending on the ageing of the population) or a guaranteed income for elderly people if their entitlement to the AOW-benefit isn't sufficient.

This is acceptable to the general public, because this implies that there is no obligation anymore to work to procure one's income. Furthermore it is believed that this is justified related to employment and labour-market policy.

Finally there is no prohibition to work beyond the retirement age. In the Netherlands currently 100.000 employees work as an employee combining their retirement benefit with their wages.

Furthermore the Equal Treatment in Employment Act implements Directive 2000/78/EC.

And a possibility for an employer to terminate the employment contract because of the entitlement of the employee to a retirement is justified according to the jurisprudence of the Court of Justice of the European Union:

The second subparagraph of Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as not precluding a national measure, such as that at issue in the main proceedings, which allows an employer to terminate an employee's employment contract on the sole ground that the employee has reached the age of 67 (it is a Swedish case and this is the retirement age in Sweden) and which does not take account of the level of the retirement pension which the person concerned will receive, as that measure is objectively and reasonably justified by a legitimate aim relating to employment policy and

labour-market policy and constitutes an appropriate and necessary means by which to achieve that aim. (C141-11 Hörnfeldt)

RESC 24 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 24 of the Charter on the ground that it has not been established that there is an appropriate adjustment of the burden of proof between employee and employer in dismissal cases.

452. The representative of Norway provided the following information in writing:

In Norway's 2nd report on the implementation of the revised European Social Charter the following was written as an answer to question B to article 24:

"Where discrimination is claimed to be the reason for dismissals, the employer has the burden of proof as to whether the dismissal is justified. In other dismissal cases, the ordinary burden of proof system applies, i.e. the part that brings the dismissal before court has the burden of proof"

In its conclusions in 2005 the Committee therefore noted that unless it is alleged that a dismissal is discriminatory, the burden of proof lies with the plaintiff. In its conclusions in 2008 the Committee referred to its conclusions from 2005 and wrote:

"The Committee holds that in proceeding regarding unfair dismissals, the burden of proof should not rest entirely on the complainant, but should be subject of an appropriate adjustment between employee and employer. It asks the next report to specify whether Norwegian law provides for such an adjustment. "

Due to an inadvertence, Norway did not answer this question in its next report, the consequence being that the Committee in its conclusions of 2012 wrote:

"In its previous conclusion the Committee noted that unless it was alleged that a dismissal was discriminatory, the burden of proof lay with the plaintiff. The Committee asked whether Norwegian law provided for an appropriate adjustment of the burden of proof between employee and employer. In the absence of a reply, the Committee holds that it has not been established that there is an appropriate adjustment of the burden of proof between employee and employer in dismissal cases.

The Committee concludes that the situation in Norway is not in conformity with Article 24 of the Charter on the ground that it has not been established that there is an appropriate adjustment of the burden of proof between employee and employer in dismissal cases. Ground of non-conformity."

Norway regrets that the question regarding burden of proof in proceedings regarding unfair dismissals was not addressed in the 9th National Report on the implementation of the European Social Charter. We further regret that our report from 2004 was inaccurate. Hence, Norway upholds that Norwegian law is in conformity with Article 24 of the Revised Charter.

Procedural law concerning civil law in Norway is based on the principles of the court's free evaluation of evidence and preponderance of the evidence.

There is no general statutory rule with regard to burden of proof. Burden of proof is however especially regulated in certain fields (for instance in discrimination cases). In other fields the burden of proof is dependent on several different considerations. In cases concerning unfair dismissals, inter alia protection of the employee and which party is most competent and likely to secure the evidence are relevant considerations.

According to Norwegian Law (Working Environment Act section 17-7 (1)), employees may not be dismissed unless this is objectively justified on the basis of circumstances relating to the undertaking, the employer or the employee. Thus, the responsibility to prove that the dismissal is objectively justified is put on the employer. This is established in case-law as the Supreme Court has underlined that the employer has the burden of proof concerning the actual circumstances which the dismissal is based on. The Supreme Court has inter alia emphasized whether the employer's treatment of the case has been correct and if there has been consultations with the employee's elected representatives, cf. Norwegian Supreme Courts Reports (NSCR) 1959 page 900, NSCR 1987 page 117 and NSCR 1992 page 776. In the case published in NSCR 1996 page 1401 the Supreme Court established that the employer has a relatively strict burden of proof when claiming that a new fact had been used as a motive for the dismissal.

In line with this the Norwegian Government upholds that Norwegian law is in conformity with Article 24 of the Revised Charter.

RESC 24 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 24 of the Charter on the ground that the maximum compensatory payment in case of unlawful termination of employment is inadequate.

453. The representative of the Slovak Republic provided the following information in writing:

All workers are protected against dismissal; there is no category of workers that is excluded from protection against dismissal (this is guaranteed by the Labour Code; or in the case of public servants, by the Act on Public Service, Act on State Service).

The last amendment of the Labour Code (2012) changed the amount of wage compensation the employee may get in the case of invalid termination of employment. The maximum wage compensation the employee may get has been increased from 12 months to 36 months. This is to ensure the employee is properly reimbursed of financial losses incurred between the date of dismissal and the decision of the court.

As far as termination of employment on "economic grounds" is concerned, the court may examine all facts, data and documentation in such a situation. The court is able to use the services of a court expert on the given subject who thoroughly examines all the steps taken in case of such a dismissal. This is to ensure a proper verdict by the court.

Protection from dismissal in case of an illness is granted to every person in case of illness. There is no upper limit on the length of time during which a person is considered ill, however after one year of sick

leave an examination of the health condition of the person involved takes place in the premises of the local Social Insurance Company (which provides the worker with sickness benefit).

Safeguarding persons who resort to the courts or other competent authorities to enforce their rights against reprisals is secured by the Article 9 of the Fundamental Principles of the Labour Code. Employees and employers who sustain damage due to breach of obligations arising from labour-law relations may exercise their rights in court. Employers may neither disadvantage nor damage employees for reason of employees exercising their rights resulting from labour-law relations.

On top of this, an employee may submit a complaint to the Labour Inspectorate in accordance with Act 125/2006 Coll. on labour inspection.

RESC 24 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 24 of the Charter on the ground that the maximum amount of compensation in case of unlawful dismissal is inadequate.

454. The representative of Turkey provided the following information in writing:

As it is well-known, the right of workers to protection in cases of termination of employment is arranged by the Article 21 of Labour Law No. 4857

The drafting process of this law not only included a survey on national requirements and needs, but also a careful examination and review of related international legislation. In this context, EU norms and ILO Conventions were given particular importance. For instance, Article 10 of “Termination of Employment Convention” (No. 158) of ILO, to which Turkey is a party, reads as follows:

“Article 10

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.”

In this respect, in order to concretize the amount for such compensation decisions, a minimum amount of four months of wage and a maximum amount of eight months wage have been fixed in accordance with the national socio-economic conditions.

However the conclusions of European Committee of Social Rights on this issue and the ground of non-conformity are submitted for information of the institution responsible for the application of this legislation and these will be taken into consideration should a possible revision of the related legislation comes into agenda.

ARTICLE 25 – THE RIGHT OF WORKERS TO THE PROTECTION OF THEIR CLAIMS IN THE EVENT OF THE INSOLVENCY OF THEIR EMPLOYER

RESC 25 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 25 of the Charter on the ground that workers claims are not effectively protected in case of insolvency of their employer under the privilege system alone.

455. No information was provided.

RESC 25 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 25 of the Charter on the ground that the average time to satisfy workers' claim in case of insolvency of their employer is excessive.

456. The representative of Belgium provided the following information in writing:

La conclusion de non-conformité reproche la période « excessive » de onze mois qui s'écoulerait en moyenne entre la présentation des créances et le versement des sommes dues par le Fonds de fermeture des entreprises, chargé par la loi du paiement de ces créances.

Le SPF Emploi voudrait attirer l'attention sur le fait que la gestion de créances impayées repose sur de nombreux préalables (enquêtes,...) qui sont souvent nécessaires afin notamment de vérifier le caractère certain des créances des travailleurs. Ces procédures peuvent prendre du temps, surtout dans un contexte de faillite.

La durée moyenne d'intervention de 11 mois doit être lue en parallèle avec les dispositions de la loi du 26 juin 2002 relative aux fermetures d'entreprises concernant l' « indemnité de transition » (art. 7, 12, 41 à 46). Cette indemnité peut être versée au travailleur qui a été licencié par son employeur en faillite et qui est ensuite repris par un nouvel employeur. Son octroi est soumis à certaines conditions, dont celle qui exige que la reprise de l'entreprise en faillite ait lieu dans les 6 mois qui suivent la faillite.

Pratiquement, le Fonds de fermeture des entreprises vérifie toujours si le travailleur qui lui adresse une créance suite à l'insolvabilité de son employeur a ou non droit à l'indemnité de transition. Il attend donc l'écoulement de ce délai de 6 mois avant de présenter le dossier du travailleur à ses organes de décision. S'il s'avère que la condition précitée n'est pas remplie (absence de reprise ou reprise en dehors des délais légaux), ces organes décident de l'indemnisation du travailleur en ce qui concerne ses rémunérations, indemnités et avantages non payés par l'employeur en carence.

Le fait que les conditions d'octroi de l'indemnité de transition soient systématiquement vérifiées explique le délai d'intervention, relevé par le CEDS, du Fonds de fermeture des entreprises.

RESC 25 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 25 of the Charter on the ground that the average time to satisfy workers' claim in case of insolvency of their employer is excessive.

457. The representative of Lithuania provided the following information in writing:

In Lithuania the average time to satisfy workers' claim in case of insolvency of their employer has decreased: in 2011 it was 6,9 month, in 2012 – 1,5 month and in 2013 – 0,9 month. Therefore we believe that this period is not excessive any more and Lithuania is in conformity with Article 25 “Right of workers to protection of their claims in the event of the insolvency of their employer”.

Please note, that during the reference period in 2010 the average time to satisfy workers' claim in case of insolvency of their employer was excessive due to the consequences of had financial crisis in Lithuania when bankruptcy proceedings increased significantly.

RESC 25 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 25 of the Charter on the ground that it has not been established that workers' claims in case of insolvency of the employer are adequately protected in practice.

458. The representative of Romania provided the following information in writing:

Under article 1 para. (1) of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, as amended by the European Parliament and Council Directive 2002/74/EC, this Directive shall apply to employees' claims arising from employment contracts or employment relationships concluded with employers who are in a state of insolvency within the meaning of Article 2 para. (1) of the Directive.

According to article 2 para. (1) of the afore mentioned Directive, an employer is deemed to be insolvent if (i) an application has been made for opening a collective proceeding based on the employer's insolvency, as provided by the legislative acts, regulations and administrative provisions of a Member State, involving the employer's deprivation, in whole or in part, of his assets and the appointment of a liquidator or a person performing a similar function, and (ii) the authority which is competent under that provision:

- (a) decided to open the proceedings or
- (b) found that the employer's undertaking or unit has been definitively closed down and that the available assets are insufficient to warrant the procedure.

In accordance with the provisions of Article 1 para. (2) letter c) of Act no.85/2006 on insolvency, as amended and supplemented, the simplified procedure stipulated by this law applies to debtors provided in par. (1) of Article 1, i.e. companies, cooperative societies, cooperative organizations, agricultural companies, economic interest groups, as well as to any other private legal entity which carries out economic activities, and meets one of the following conditions:

1. does not have any assets in their patrimony;
2. the constitutive acts or the accounting documents cannot be found;
3. the administrator cannot be found;
4. the office/headquarters no longer exists or does not match the address mentioned at the Trade Register.

The simplified procedure shall apply, according to para. (2) letters d) and e) of Article 1, to debtors belonging to the categories mentioned in para. (1) thereof, which have not submitted the documents referred to in Article 28 para. (1) letters a) to f) and h) of the same law, within the period provided by law, as well as to the companies dissolved prior to the proceeding.

According to Article 3 of Law no.85/2006 point 25, as amended and supplemented, the simplified procedure is the procedure by which the debtor who meets the requirements of Article 1 para. (2) of the law enters directly the bankruptcy procedure, either once the insolvency procedure is opened or after an observation period of up to 50 days, during which there will be analyzed the elements provided by Article 1 para. (2) letters c) and d).

As stated in Article 107 para. (2) letter a) of the Act, by the decision of declaring the state of bankruptcy, the judge will pronounce the dissolution of the debt company and will waive the debtor's administration rights.

Under the express provisions of Article 131 para. (1) of the Act, at any stage of the procedure stipulated by this law, if it deems that there are no assets in the debtor's property or that they are insufficient to cover administrative expenses and no creditor shall offer to pay the amounts, the syndical judge will give a closing sentence for the proceedings, that will entail the cancellation of the debtor from the records where he is registered.

In Romania, the legal framework for the setting up, management, use and control of the Guarantee Fund for Wage Payment was established by the Law no. 200/2006 on the establishment and use of the Guarantee Fund for Wage Payment, a legal act which transposes Council Directive 80/987/CEE, as amended by the European Parliament and Council Directive 2002/74/CE.

Under Article 2 of Law no. 200/2006, as amended, the Guarantee Fund for Wage Payment shall ensure the wage payment arising from individual employment contracts and collective agreements concluded by employees with employers against whom there were pronounced final decisions on opening insolvency proceedings, and in relation with whom it was ordered a total or partial lifting of the right of administration, hereinafter named insolvent employers.

According to Article 20 para. (2) of the aforementioned Act, when establishing the insolvency of a transnational employer, according to Article 4 letter b) of the Act, of an employer legal entity or individual person that carries out activities in Romania and at least in another Member State of the European Union or the European Economic Area, there shall be considered the decision issued by the competent authority of a Member State of the European Union or the European Economic Area which opens the proceedings or, where appropriate, which finds no property or insufficient assets in the debtor's patrimony to justify the opening of insolvency proceedings and pronounce the cancellation from the records of registration.

According to article 10 and article 11 of the law, the management of the Guarantee Fund for Wage Payment is made by the National Agency for Employment, through the county employment agencies, which for this purpose have the following responsibilities:

- a) receive, review and process applications for wage payment arising from individual employment contracts and/or collective bargaining agreements;
- b) determine the amount of wage claims and make payments to the employees thereof;
- c) recover debts created in the terms of this Act, other than those arising from contributions to the Guarantee Fund for Wage Payment;
- d) represent the interests of the Guarantee Fund for Wage Payment in relation with the central and local public administration institutions, courts, companies or organizations;
- e) exchange information with competent authorities of the Member States of the European Union or the European Economic Area.

As stated in Article 13 para (1) of the same law, the following types of wage claims are borne from the resources of the Guarantee Fund for Wage Payment:

- a) outstanding wages;
- b) outstanding monetary compensations owed by employers to their employees for the annual leave that was not taken, but only for a maximum of one year of work;
- c) outstanding severance payments in the amount specified in the collective agreement and/ or individual employment contract, in case of termination of employment;

- d) outstanding compensations that employers are obliged to pay, according to the collective agreement and/ or the individual employment contract, in case of work accidents or occupational diseases;
- e) outstanding allowances that employers are obliged by law to pay during the temporary cessation of work.

According to Article 15 para. (1) of the Act no.200/2006, as amended and supplemented, wage claims referred to in Article 13 para (1) letters a), c), d) and e) shall be borne for a period of 3 months.

Para. (2) of the same article provides that the period referred to in para. (1) is the period prior to the date of requesting the granting of rights and precedes or succeeds the date of opening the insolvency procedure.

According to para. (3) of the same article, a new request for wage payments can be made only if the period provided in para. (2) is less than 3 months.

Under Article 5 para. (1) of the Methodological Norms for the Implementation of Law no. 200/2006, approved by Government Decision nr.1850/2006, as amended, the wage claims referred to in Article 13 paragraph. (1) letters a), c), d) and e) are due for a period of 3 calendar months as provided in Article 15 para. (1) of the act, a period that is prior to the month in which there is an application for wage claims.

As stated in para. (2) thereof, wage claims referred to in Article 13 para. (1) letter b) start at the date the employment contract terminates and are due for the last 12 months worked prior to this date.

According to Article 7 para. (1) of the above-mentioned Methodological Norms, in case the employees' claims towards the insolvent employer are previous to the month in which insolvency proceedings were opened, the period of 3 calendar months provided in Article 15 para. (1) precedes the date of opening the proceedings.

Under Article 7 para. (2) of the same Methodological Norms, in case the employees' claims towards the insolvent employer are subsequent to the month in which the insolvency proceedings were opened, the period referred to in Article 15 para. (1) of the law succeeds the date of opening the proceedings.

As Article 8 of the Methodological Norms for the implementation of Law no.200/2006 provides, the wage claims required as provided by Article 15 para. (3) of the Act shall be borne for the remaining period until the expiry of the period stipulated in Article 15 para. (1) of the law.

Under article 14 of Law no.200/2006, as amended and supplemented, the total amount of wage debts paid from the Guarantee Fund for Wage Payment cannot exceed the amount of three gross average wage in economy for each employee, the gross average wage in economy being the one communicated by the National Institute of Statistics, in the month when the insolvency proceedings were opened.

In accordance with Article 19 para. (1) and (2) of the aforementioned law, the amount of wage claims submitted by employees and their payment are established and paid by the local or county employment agencies, at the written request of the administrator or liquidator of the insolvent employer or, if necessary, at the request of the employees of the employer insolvent or of the legally constituted organizations that represent their interests.

The express provisions of para. (3) of article 19 provide that the requests stipulated at para. (1) and (2) shall be accompanied by documents certifying that against the employer it was pronounced a final

court decision for opening the insolvency proceedings and it was disposed the measure of total or partial lifting of the right of administration.

As para. (4) of the same article provides for, before addressing the local or county employment agencies, the employees or the legally constituted organizations representing their interests must notify in writing the administrator or the liquidator of the insolvent employer, in order to perform the necessary steps for the wage payment, as stipulated in para. (1). A copy of the notification shall be attached to the request addresses to the local agency, in the terms set by para. (2).

According to article 9 para. (1) of the Methodological Norms for the Implementation of Law no. 200/2006, approved by Government Decision nr.1850/2006, with subsequent amendments, the requests stipulated in Article 19 of the Act shall be drafted according to the model provided in Annex 1 to the Methodological Norms and shall be submitted to the local or county employment agencies, in whose jurisdiction are the employer's headquarters, domicile or residence of the.

Under the express provisions of article 12 of the same methodological norms, the resolving of requests as provided by Article 19 of the Law shall be made within 45 days from the date of their registration at the County Agencies for Employment or Bucharest Agency, determined in accordance with Art. 9 of the Methodological Norms.

Pursuant to Article 21 para. (1) of Law nr.200/2006, as amended and supplemented, in the event that, after examining the documents stipulated in Article 19 para. (1) and (3), it is found that the conditions laid down in Article 2 of the law are fulfilled, the county employment agencies or Bucharest Agency issue the order for determining the amount of the debts to be paid from the Guarantee Fund.

Article 21 para. (3) of the afore-mentioned Act provides that if it is found that the employer does not meet the requirements of Article 2 of the law, the request referred to in Article 19 para. (1) of the same law shall be rejected by motivated notification of the county or Bucharest employment agency, which shall be communicated to persons provided by Article 19.

Related to the above information, we mention that in Romania, the resolving of a request on opening a collective proceeding based on the employer's insolvency, such as that envisaged by Article 2 para. (1) of Council Directive 80/987/CEE, as amended by the European Parliament and Council Directive 2002/74/CE, is made in accordance with Law No.85/2006, as amended and supplemented.

As provided by Law no. 200/2006, the finding of a situation when the debtor has no assets or they are insufficient to cover the administrative costs, and no creditor offers to pay the respective amounts, takes place together with the opening of the insolvency proceeding governed by the same law or after a period of observation of maximum 50 days. In such a case, the bankruptcy judge will issue a ruling on the debtor's bankruptcy that will dispose, inter alia, the cessation of the debtor's administration right.

Also, in accordance with Law No.85/2006, as amended and supplemented, the finding of such a situation can be made at any stage of the proceedings governed by this law, in which case the bankruptcy judge will give a sentence on closing the procedure, ordering the debtor's removal from the register of registration.

In view of the above aspects, we consider that the employees of the debtors found in the aforementioned situations can benefit from the payment from the Guarantee Fund for the Payment of Claims of the claims arising from individual employment contracts and the collective agreements

signed by those employees with the employers concerned, to the extent that the conditions stipulated in Article 2 of Law No.200/2006, as well as the other legal requirements, are fulfilled.

The percentage of workers' requests satisfied so far from the Guarantee Fund is 100%. The normal duration between the submission of an application and the payment time is of maximum 45 days.

RESC 25 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 25 of the Charter on the ground that employees having worked for less than one year for the same employer are excluded from protection against insolvency.

459. The representative of Turkey provided the following information in writing:

Article 9 of the Regulation, entitled "Procedures and Principles Regarding the Payment" states that the "Worker Claim Record" must cover the period prior to the employer's becoming insolvent and the employee must have worked in the same workplace for at least one year immediately preceding the employer's becoming insolvent.

The Committee holds that exclusion of employees having worked less than one year for the same employer from protection against insolvency of their employer to the Charter. Therefore, it holds that the situation is not conformity with Article 25.

There has not been any revision or amendment took place in terms of the related articles of Regulation on Wage Guarantee Fund. However the conclusions of European Committee of Social Rights on this issue and the ground of non-conformity are submitted for information of the institution responsible for the application of this legislation and these will be taken into consideration should a possible revision of the related legislation comes into agenda.

The details related with the mentioned legislation and statistical data on this issue can be found below:

- **Legal basis of wage guarantee fund services**

Additional Article 1 of Law on Unemployment Insurance No. 4447 and Regulation on Wage Guarantee Fund

- **Purpose of wage guarantee fund services**

To guarantee three months of unpaid wages deriving from employment relationship of workers in cases of insolvency of their employers.

- **Scope of wage guarantee fund services**

Payment of unpaid wages in cases of the employer's being adjudged unable to satisfy any just claims or being adjudged bankrupt or having a concordat with the creditors or the postponement of the employer's bankruptcy.

- **Application for benefitting from wage guarantee fund services**

The workers, who have unpaid wages from their employers in insolvency situation, shall apply to one of the units of Turkish Employment Agency (İŞKUR) with necessary documents below in person or via their official representative.

- **Payment of wage guarantee fund**

The payment takes place until the end of the month following the application to İŞKUR at the latest.

APPENDIX I

LIST OF PARTICIPANTS

- (1) 127th meeting, Strasbourg, 27-31 May 2013
(2) 128th meeting, Strasbourg, 30 September-4 October 2013

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APPENDIX II

TABLE OF SIGNATURES AND RATIFICATIONS

Situation at 1st December 2013

| MEMBER STATES | SIGNATURES | RATIFICATIONS | Acceptance of the collective complaints procedure |
|---|------------|-------------------|---|
| Albania | 21/09/98 | 14/11/02 | |
| Andorra | 04/11/00 | 12/11/04 | |
| Armenia | 18/10/01 | 21/01/04 | |
| Austria | 07/05/99 | 20/05/11 | |
| Azerbaijan | 18/10/01 | 02/09/04 | |
| Belgium | 03/05/96 | 02/03/04 | 23/06/03 |
| Bosnia and Herzegovina | 11/05/04 | 07/10/08 | |
| Bulgaria | 21/09/98 | 07/06/00 | 07/06/00 |
| Croatia | 06/11/09 | 26/02/03 | 26/02/03 |
| Cyprus | 03/05/96 | 27/09/00 | 06/08/96 |
| Czech Republic | 04/11/00 | 03/11/99 | 04/04/12 |
| Denmark | * | 03/05/96 | 03/03/65 |
| Estonia | 04/05/98 | 11/09/00 | |
| Finland | 03/05/96 | 21/06/02 | 17/07/98 X |
| France | 03/05/96 | 07/05/99 | 07/05/99 |
| Georgia | 30/06/00 | 22/08/05 | |
| Germany | * | 29/06/07 | 27/01/65 |
| Greece | 03/05/96 | 06/06/84 | 18/06/98 |
| Hungary | 07/10/04 | 20/04/09 | |
| Iceland | 04/11/98 | 15/01/76 | |
| Ireland | 04/11/00 | 04/11/00 | 04/11/00 |
| Italy | 03/05/96 | 05/07/99 | 03/11/97 |
| Latvia | 29/05/07 | 26/03/13 | |
| Liechtenstein | | 09/10/91 | |
| Lithuania | 08/09/97 | 29/06/01 | |
| Luxembourg | * | 11/02/98 | 10/10/91 |
| Malta | 27/07/05 | 27/07/05 | |
| Republic of Moldova | 03/11/98 | 08/11/01 | |
| Monaco | 05/10/04 | | |
| Montenegro | 22/03/05 | 03/03/10 | |
| Netherlands | 23/01/04 | 03/05/06 | 03/05/06 |
| Norway | 07/05/01 | 07/05/01 | 20/03/97 |
| Poland | 25/10/05 | 25/06/97 | |
| Portugal | 03/05/96 | 30/05/02 | 20/03/98 |
| Romania | 14/05/97 | 07/05/99 | |
| Russian Federation | 14/09/00 | 16/10/09 | |
| San Marino | 18/10/01 | | |
| Serbia | 22/03/05 | 14/09/09 | |
| Slovak Republic | 18/11/99 | 23/04/09 | |
| Slovenia | 11/10/97 | 07/05/99 | 07/05/99 |
| Spain | 23/10/00 | 06/05/80 | |
| Sweden | 03/05/96 | 29/05/98 | 29/05/98 |
| Switzerland | | 06/05/76 | |
| «the former Yugoslav Republic of Macedonia» | 27/05/09 | 06/01/12 | |
| Turkey | 06/10/04 | 27/06/07 | |
| Ukraine | 07/05/99 | 21/12/06 | |
| United Kingdom | * | 07/11/97 | 11/07/62 |
| Number of States | 47 | 2+ 45 = 47 | 10 + 33 = 43 |

The dates in bold on a grey background correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 revised Charter.

* States whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a decision taken by the Committee of Ministers, this Protocol is already applied.

X State having recognised the right of national NGOs to lodge collective complaints against it.

APPENDIX III

LIST OF CONCLUSIONS OF NON-CONFORMITY

List of Conclusions of non-conformity

A. Conclusions of non-conformity for the first time

i) Written examination

RESC 1§1 ALBANIA
RESC 1§2 ALBANIA
RESC 1§3 ALBANIA
RESC 24 ALBANIA
RESC 25 ALBANIA

RESC 1§4 ANDORRA

RESC 1§1 ARMENIA
RESC 1§2 ARMENIA
RESC 18§2 ARMENIA
RESC 24 ARMENIA

RESC 1§4 AZERBAIJAN
RESC 9 AZERBAIJAN

RESC 1§2 BELGIUM
RESC 1§4 BELGIUM
RESC 10§4 BELGIUM
RESC 18§3 BELGIUM
RESC 25 BELGIUM

RESC 1§1 BOSNIA AND HERZEGOVINA
RESC 20 BOSNIA AND HERZEGOVINA

RESC 1§1 BULGARIA
RESC 24 BULGARIA

RESC 10§5 CYPRUS
RESC 20 CYPRUS
RESC 24 CYPRUS

RESC 10§5 FINLAND
RESC 24 FINLAND

RESC 20 FRANCE

RESC 1§1 GEORGIA
RESC 1§2 GEORGIA
RESC 1§4 GEORGIA
RESC 10§4 GEORGIA
RESC 20 GEORGIA

RESC 1§4 HUNGARY

RESC 18§2 IRELAND
RESC 24 IRELAND

RESC 1§1 ITALY

RESC 25 LITHUANIA

RESC 24 MALTA

RESC 1§1 REPUBLIC OF MOLDOVA
RESC 1§4 REPUBLIC OF MOLDOVA
RESC 9 REPUBLIC OF MOLDOVA
RESC 18§3 REPUBLIC OF MOLDOVA

RESC 24 NETHERLANDS

RESC 24 NORWAY

RESC 1§3 PORTUGAL
RESC 10§4 PORTUGAL
RESC 18§1 PORTUGAL

RESC 18§3 ROMANIA
RESC 25 ROMANIA

RESC 18§4 RUSSIAN FEDERATION

RESC 1§4 SLOVAK REPUBLIC
RESC 9 SLOVAK REPUBLIC
RESC 10§3 SLOVAK REPUBLIC
RESC 18§1 SLOVAK REPUBLIC
RESC 20 SLOVAK REPUBLIC
RESC 24 SLOVAK REPUBLIC

RESC 1§4 SLOVENIA

RESC 1§1 TURKEY
RESC 18§3 TURKEY
RESC 24 TURKEY
RESC 25 TURKEY

ii) Oral examination (decision of the Bureau)

RESC 15§1 ANDORRA
RESC 15§2 ANDORRA
RESC 15§3 ANDORRA

RESC 15§3 ARMENIA

RESC 1§2 AZERBAIJAN
RESC 20 AZERBAIJAN

RESC 15§1 BELGIUM

RESC 1§2 BULGARIA
RESC 20 BULGARIA

RESC 15§2 CYPRUS
RESC 15§3 CYPRUS

RESC 15§3 GEORGIA

RESC 15§1 HUNGARY
RESC 15§2 HUNGARY

RESC 1§2 REPUBLIC OF MOLDOVA
RESC 15§1 REPUBLIC OF MOLDOVA
RESC 20 REPUBLIC OF MOLDOVA

RESC 15§2 NETHERLANDS

RESC 15§2 SLOVAK REPUBLIC

RESC 15§1 SLOVENIA
RESC 15§2 SLOVENIA

RESC 1§2 TURKEY
RESC 20 TURKEY

B. Renewed Conclusions of non-conformity

RESC 24 ALBANIA

RESC 15§2 ARMENIA

RESC 10§3 BELGIUM
RESC 10§5 BELGIUM
RESC 15§2 BELGIUM

RESC 1§4 BULGARIA
RESC 24 BULGARIA

RESC 1§2 CYPRUS
RESC 24 CYPRUS

RESC 1§4 ESTONIA
RESC 9 ESTONIA
RESC 15§3 ESTONIA

RESC 10§5 FRANCE
RESC 15§1 FRANCE
RESC 18§1 FRANCE

RESC 1§2 IRELAND
RESC 1§4 IRELAND
RESC 9 IRELAND
RESC 10§1 IRELAND
RESC 10§3 IRELAND

RESC 1§2 ITALY
RESC 18§1 ITALY

RESC 24 ITALY

RESC 24 MALTA

RESC 1§4 REPUBLIC OF MOLDOVA
RESC 15§1 REPUBLIC OF MOLDOVA
RESC 15§2 REPUBLIC OF MOLDOVA

RESC 10§5 NORWAY

RESC 1§2 PORTUGAL
RESC 20 PORTUGAL

RESC 18§3 ROMANIA

RESC 1§1 SLOVAK REPUBLIC
RESC 1§2 SLOVAK REPUBLIC
RESC 1§3 SLOVAK REPUBLIC
RESC 1§4 SLOVAK REPUBLIC
RESC 10§1 SLOVAK REPUBLIC
RESC 10§2 SLOVAK REPUBLIC
RESC 15§1 SLOVAK REPUBLIC
RESC 15§2 SLOVAK REPUBLIC
RESC 18§2 SLOVAK REPUBLIC

RESC 20 SLOVENIA

RESC 10§5 SWEDEN

RESC 1§2 TURKEY
RESC 18§2 TURKEY

APPENDIX IV

LIST OF DEFERRED CONCLUSIONS

List of deferred Conclusions

| | |
|------------------------|--|
| ALBANIA | RESC 24 |
| ANDORRA | RESC 1§2; 20 |
| ARMENIA | RESC 1§3; 20 |
| AZERBAIJAN | RESC 1§3 |
| BELGIUM | RESC 15§3 |
| BULGARIA | RESC 25 |
| BOSNIA AND HERZEGOVINA | RESC 1§2, 1§3, 1§4, 9 |
| CYPRUS | RESC 1§3, 1§4, 10§1, 10§3, 15§1 |
| ESTONIA | RESC 1§1, 1§2, 24 |
| FINLAND | RESC 1§4, 10§3 |
| FRANCE | RESC 1§2, 10§1, 10§4, 15§2, 15§3, 18§2, 24 |
| GEORGIA | RESC 1§3, 10§2 |
| IRELAND | RESC 1§1, 1§3, 15§3, 18§1, 18§3, 25 |
| ITALY | RESC 15§2, 18§2 |
| LITHUANIA | RESC 1§1 |
| REPUBLIC OF MOLDOVA | RESC 24 |
| MALTA | RESC 1§1, 1§2, 1§4, 9, 10§2, 10§3, 15§2, 20, 25 |
| MONTENEGRO | RESC 1, 9, 10§1, 10§2, 10§3, 10§4, 15, 20, 25 |
| NETHERLANDS | RESC 18§3 |
| PORTUGAL | RESC 1§1, 10§5, 25 |
| ROMANIA | RESC 1§1, 1§2, 1§3, 1§4, 15§1, 20, 24 |
| RUSSIAN FEDERATION | RESC 1§1, 1§2, 1§3, 1§4, 9, 10§2, 10§4, 10§5, 15§1, 15§2, 20, 24 |
| SERBIA | RESC 1, 9, 10§1, 10§2, 10§3, 10§4, 15, 18, 20, 24, 25 |
| SLOVAK REPUBLIC | RESC 10§4, 10§5 |
| SLOVENIA | RESC 10§1, 10§2, 10§3, 10§5, 15§1, 15§2, 24 |

TURKEY

RESC 1§4, 10§4, 10§5, 15§1, 15§2, 15§3

UKRAINE

RESC 1§1, 1§2, 1§3, 1§4, 9, 10§1, 10§2, 10§3, 10§4, 10§5, 15§1,
15§2, 15§3, 18§1, 18§2, 18§3, 18§4, 20, 24

APPENDIX V

WARNING(S) AND RECOMMENDATION(S)

NONE