Strasbourg, 23 December 2015

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EUROPEAN SOCIAL CHARTER

GOVERNMENTAL COMMITTEE

REPORT CONCERNING CONCLUSIONS 2014 OF THE EUROPEAN SOCIAL CHARTER (revised)

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

Detailed report of the Governmental Committee established by Article 27, paragraph 3, of the European Social Charter[1]

[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) and the International Organisation of Employers (IOE) attended the meetings of the Governmental Committee in a consultative capacity.

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

3. 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.

4. 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).

5. 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, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Russian Federation, Finland, France, Georgia, Hungary, Ireland, Italy, Lithuania, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Portugal, Romania, Serbia, Slovenia, Slovak Republic, Sweden, Turkey, Ukraine and "the former Yugoslav republic of Macedonia". Reports were due by 31 October 2013.

[2] List of the States Parties on 1 December 2015: 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.

6. Conclusions 2014 of the European Committee of Social Rights were adopted in December 2014 (Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Lithuania, Malta, the Republic of Moldova, Montenegro, the Netherlands, Norway, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Sweden, Turkey, Ukraine and "the former Yugoslav republic of Macedonia"). In the absence of a report in due time, no conclusions were adopted in respect of Albania.

7. The Governmental Committee took note that no further ratification has been done in the last reporting cycle. It congratulated Belgium for the acceptance of additional provisions with respect to Articles 26, 27 and 28 of the Charter.

8. On 2 April 2014, the Committee of Ministers adopted at its 1196th meeting a new procedure of the reporting system on the European Social Charter entitled 'Ways of streamlining and improving the reporting and monitoring system of the European Social Charter'.

9. The Governmental Committee held two meetings in 2015 (18-22 May 2015, 5-9 October 2015) with Mme Jacqueline MARECHAL (France) in the Chair. In accordance with its Rules of Procedure, the Governmental Committee at its autumn meeting elected Ms Kristina VYSNIAUSKAITE-RADINSKIENE (Lithuania) as its Chair. It also elected a new Bureau, which is now composed of Mr Joseph FABER (Luxembourg. 1st Vice-Chair), Ms Lis WITSØ-LUND (Denmark, 2nd Vice-Chair), Ms Odete SEVERINO (Portugal) and Ms Natalia POPOVA (Ukraine).The Chair and the Bureau were elected for a two year period starting on 1 January 2016.

10. The Governmental Committee took note of the initiatives undertaken in 2015 with respect to the Turin Process. This Process started in 2014 following an initiative of the Secretary General by the organisation of a High-Level Conference on the European Social Charter held in Turin from 17 – 18 October 2014. This Conference was followed up by an event held on 12 – 13 February 2015 in Brussels on 'The future of protection of social rights in Europe'. This event was organised by the Belgian Authorities under their Chairmanship of the Committee of Ministers.

The Governmental Committee aligned to the following thematic objectives of the Turin Process:

- The promotion of further ratifications of the Revised European Social Charter as well as the further acceptance of the collective complaints procedure;
- The strive for more synergies between European Union law and the case-law of the European Social Charter.

The Governmental Committee took note of the on-going preparations concerning the organisation of a Conference called 'TURIN 2' scheduled for 17 – 18 March 2016 having as main events an Interparliamentary Conference of the Council of Europe member States dedicated to the European Social Charter as well as a Forum on social rights in Europe.

11. The state of signatures and ratifications on 1 December 2015 appears in Appendix 1 to the present report.

II. Examination of Conclusions 2014 of the European Committee of Social Rights

12. 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 supervisory cycle. The detailed report is available on www.coe.int/socialcharter.

13. 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 decision taken by the Committee of Ministers at its 1196th meeting on 2 April 2014, the Governmental Committee debated orally only the Conclusions of non-conformity as selected by the European Committee of Social Rights.

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

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

16. During its examination, the Governmental Committee took note of important positive developments in several State Parties.

17. The Governmental Committee asked Governments to continue their efforts with a view to ensuring compliance with the European Social Charter and urged them to take into consideration any previous Recommendations adopted by the Committee of Ministers.

18. 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 2009-2012 (Conclusions 2014), provisions related to the thematic group "Labour rights")

(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 Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Lithuania, Malta, the Republic of Moldova, Montenegro, the Netherlands, Norway, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Sweden, Turkey, Ukraine and "the former Yugoslav republic of Macedonia";

Having regard to the failure to submit a report in due time by Albania;

Considering Conclusions 2014 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 2014 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 2015):
Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-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 ARTICLE[4]

Conclusions 2014 – Revised European Social Charter (RESC)

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

Article 2 - The right to just conditions of work

Article 2§1 – Reasonable working hours

RESC 2§1 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 2§1 of the Charter on the ground that the daily working time of some categories of workers can be extended to 24 hours.

19. The situation has not been in conformity with the Charter since Conclusions 2010.

20. The representative of Armenia said that in 2015, the Armenian Ministry of Labour and Social Affairs had begun the process of amending the Labour Code. A bill stating that working time should not exceed 16 hours a day for certain categories of worker had been drawn up and presented to the government for approval. However, following a debate within the government, it had been decided to begin further discussion on the matter with the relevant state bodies, trade unions and employers' organisations and to conduct a proper survey to assess the impact of the legislative amendment from an economic viewpoint. It was planned to draw up a transition timetable to allow establishments which applied 24-hour working days to take the necessary measures to avoid the procedural, financial and other problems which could arise following the change. The bill would be tabled again when the preparatory work was finished.

21. In reply to a question from the Vice-Chair, the representative of Armenia confirmed that a tripartite committee existed and held monthly meetings during which the bill was debated. The Government was encouraging continued dialogue and assessment.

[4] State Parties in English alphabetic order.

22. In reply to a question from the ETUC representative, the representative of Armenia confirmed that at present the list of jobs approved by the government comprised 36 different occupations for which 24-hour working days were authorised. This list would be amended by a new law.

23. The Chair noted that the bill was a step forward for the particular categories of employee who were authorised to work up to 24 hours a day but did not change the situation of those who worked standard working hours, which should not exceed 12 hours per day, overtime included.

24. The GC took note of the bill intended to improve the situation of the 36 categories of employee for whom daily working hours could be extended to 24 hours and decided to wait for the ECSR's next assessment.

RESC 2§1 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 2§1 of the Charter on the ground that for some categories of workers a working day of up to 24 hours can be allowed.

25. The situation has not been in conformity with the Charter since Conclusions 2007.

26. The representative of Lithuania said that in 2013, bearing in mind the ECSR's conclusions, the Ministry of Social Security and Labour had drawn up a bill to reduce daily working hours to 16 hours. This bill had been submitted to the Tripartite Commission for approval but had been rejected by the social partners and the employers' organisations, which were against this reduction in working hours as workers who were subject to the 24-hour working day system were entitled to long rest periods which enabled them to have a second job. As a result the bill to reduce working hours for the categories of worker concerned had provoked protests from the employees. Lithuanian legislation on working hours was in compliance with the relevant EU law (Directive 2003/88/EC of the European Parliament and the Council of 4 November 2003 concerning certain aspects of the organisation of working time).

27. In response to the comment by the Chair to the effect that the issue of 24-hour on-call periods was a public health matter, the representative of Lithuania said that the worker's presence in the workplace for 24 hours was required for up to no more than 48 hours per week, followed by a 3-day rest period. She said that a group of research workers had prepared a social model for working hours and this had been the subject of a consultation, the result of which was still not known.

28. In response to the ETUC representative's argument that nothing had been done to rectify the situation of non-conformity, the representative of Lithuania pointed out that a bill had been prepared but had been rejected by the social partners.

29. With regard to comments by the representatives of Romania and Norway, the representative of Lithuania pointed out that the excessive daily working hours in the eyes of the Charter were only authorised in Lithuania for certain categories of work (such as healthcare, public care, childcare and specialised communications services) and this list had been decided on by the government long ago. Neither the trade unions nor the employers' organisations wished to add to this list.

30. In reply to the representative of the Netherlands, the representative of Lithuania said that the Tripartite Commission merely made recommendations in relation to bills. Although the government took the final decision, it took account of the social partners' views if they were opposed to a bill.

31. The representative of Russia asked for the next report to include details of the reasoning of the social partners which had led them to this position.

32. On a proposal by the representative of the Netherlands, the GC voted on a recommendation, which was unanimously rejected, and a warning, which was not carried (4 votes in favour, 25 against).

33. In a discussion on the EU rules on authorised daily working hours, the representative of Sweden pointed out that the European Working Hours Directive was more flexible and this allowed the social partners to reach agreements. The representatives of the ETUC and Slovenia added that the EU's approach differed from that of the Charter in that the directive set standards in terms of the required daily rest period which was 11 hours, while setting a limit on total weekly working hours of 48 hours. The reference period over which calculations of weekly working hours were made was seven days or, for states which so wished, four months. The representative of Italy said that the directive allowed states to derogate from this rule. It was possible that the directive would be amended next year.

34. The GC sent the government of Lithuania a strong message, demanding that the situation be brought into conformity with the Charter, and encouraged it to amend the relevant legislation despite the social partners' opposition.

RESC 2§1 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 2§1 of the Charter on the ground that the maximum allowed working hours for crew members on short sea shipping vessels is 72 hours per seven day period.

35. The situation has not been in conformity with the Charter since Conclusions 2007.

36. The representative of Estonia said that after consultation with the social partners and other relevant institutions, the Ministry of Social Affairs had amended the legislation regulating employment on ships and the labour relations of crew members. The new law had come into force on 1 July 2014. It had been drawn up in accordance with European Council Directive No. 2009/13/EC and the ILO Maritime Labour Convention and replaced the maximum weekly working hours requirement with a minimum weekly rest period requirement. Article 49§1 of the law stipulated that an agreement under which a crew member was left with a rest period of fewer than 84 hours over a seven-day period was null and void. Under Article 49§2 of the law, an agreement under which a watchkeeper was left with a rest period of fewer than 77 hours over a seven-day period was also null and void. Article 49§3 of the law stated that exceptions to the restriction described in paragraph 1 could be made by collective agreement, provided that the work did not undermine the employee's health or safety and that the crew member was entitled to at least 77 hours' rest over a seven-day period.

37. The representative of Estonia said that following consultation it had been decided that reducing the working hours of ship crew members would not be a reasonable step. Since the laws regulating crew members' working hours in other EU countries were based on the same sources, allowing crews to work fewer hours over a seven-day period would place Estonia at a competitive disadvantage. As this was a specific sector and in view of the special nature of crew members' work, the solution that had been adopted could be considered to be warranted and necessary.

38. The representative of Estonia also pointed out that ship crew members were covered by more protective measures than employees working on land. For example, annual leave entitlement for crew members was 35 working days. Furthermore, working hours for crew members who were not employed as watchkeepers or to ensure safety or security or prevent pollution of the environment had to be worked, in so far as

possible between 6 a.m. and 8 p.m. by ship's time. They could only be asked to work between 8 p.m. and 6 a.m. to carry out urgent tasks or when the nature of their work so required.

39. In reply to a question from the representative of Norway, who wished to know whether it was possible to work 72 hours non-stop, the representative of Estonia said that the new law did not set a limit on authorised working hours but a minimum weekly rest period.

40. The Chair noted that the new legislation changed nothing with regard to the maximum authorised working hours for ship crew members.

41. The GC took note of the information provided, encouraged the Estonian Government to provide an assessment of the new legislation in its next report and decided to wait for the ECSR's next assessment.

RESC 2§1 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 2§1 of the Charter on the ground that the working hours in the merchant shipping sector are allowed to go up to 72 hours per week.

42. The situation has not been in conformity with the Charter since Conclusions 2003.

43. The representative of Ireland pointed out that the provisions of national legislation were compatible with European and international standards. In particular, the working hours authorised in the merchant navy sector, which amounted to 72 hours over a seven-day period, were in line both with the ILO Maritime Labour Convention and European Directive 1999/63/EC concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST). This agreement set the maximum working hours or minimum rest period as follows:

> "(a) Maximum hours of work shall not exceed:
> (i) 14 hours in any 24-hour period; and
> (ii) 72 hours in any seven-day period;

or

(b) minimum hours of rest which shall not be less than:

(i) ten hours in any 24 hour period; and

(ii) 72 hours in any seven-day period."

44. The agreement implemented by Directive 2009/13/EC reiterated the working hours established in Directive 1999/63/EC.

45. The representative of Portugal pointed out that the directive did not prevent countries from adopting more favourable measures at national level.

46. The representative of the United Kingdom referred to the question of the diversity of sources of law guaranteeing fundamental social rights mentioned in the context of the Turin Process and the duty of states to abide by the principle of the "most favourable treatment" in order to reconcile any differences.

47. The representative of the IOE agreed with the views of the representatives of Ireland and the United Kingdom. She pointed out that the ILO Maritime Labour Convention was specific in that it reflected the needs of seafarers and the work on board a ship, where office hours did not apply. The ECSR did not take account of the special nature of the maritime section when it adopted its conclusions on reasonable working hours.

48. The representative of Finland agreed with the IOE representative's position on this matter.

49. The GC took note of the opinion of the states as to the special nature of maritime labour and asked the ECSR to present its reasoning more clearly when adopting conclusions on the subject. It decided to wait for the ECSR's next assessment.

RESC 2§1 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 2§1 of the Charter on the ground that the weekly working hours of workers on sea-going vessels may be up to 72 hours.

50. The situation has not been in conformity with the Charter since Conclusions 2007.

51. The representative of Italy pointed out that in Italy the question of working hours in sea fishing was governed by Legislative Decree No. 66 of 8 April 2003 on the implementation of European Directives 93/104/EC and 2000/34/EC concerning certain aspects of the organisation of working time and Legislative Decree No. 108 of 27 May 2005 on the implementation of Directive 1999/63/EC concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST). Article 18§2 of the Decree of 2003 and Article 3 of the Decree of 2005 fixed working hours on board fishing vessels at an average of 48 hours per week, calculated over a reference period of one year. These articles also established the maximum length of working hours on board (14 hours over a 24-hour period and 72 hours over a seven-day period) and the minimum number of hours of rest (10 hours over a 24-hour period and 77 hours over a seven-day period).

The representative of Italy pointed out that the reason for the finding of non-conformity had been that authorised weekly working hours could be up to 72 hours. This authorisation was linked to the special nature of the maritime sector and the specific demands of the work of fishing (influence of weather conditions, seasonal presence of certain species of fish). For this reason, the law also provided for appropriate forms of compensatory rest.

52. Lastly, the representative of Italy emphasised that national legislation was in conformity with the ILO Maritime Labour Convention, to which Italy was a Party. Consequently, the Italian Government considered that national legislation fully satisfied the international standards and EU legislation on working time aboard fishing vessels.

53. The representative of Russia pointed out that the situation of Italy was identical to that of Ireland.

54. The GC noted that the Italian Government considered itself to be in conformity with European legislation and international standards in this field and decided to wait for the ECSR’s next assessment and the presentation of its reasoning when adopting its conclusions on reasonable working hours on board ships.

RESC 2§1 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 2§1 of the Charter on the ground that the legislation allows weekly working time to be up to 66 hours.

55. This is the first time that the Committee has concluded that the situation is not in conformity with the Charter.

56. The representative of Turkey confirmed that there had been no change in the legislation since the adoption of the conclusions by the ECSR. According to the legislation in force, employees were authorised to work 66 hours over certain weeks of

the reference period provided that in exchange they worked less during other weeks with the result that the average working week did not exceed 45 hours over this period. The reference period was two months and could be extended to four months by collective agreements. For example, in a company in which the working week was six days, a worker who worked 66 hours per week for a total of three weeks would not exceed the limit of 45 hours per week if he or she worked 30 hours per week on average over the remaining part of the reference period.

57. The representative of Turkey stated that a consultation with the institutions concerned and the social partners would be carried out following the finding of non-conformity by the ECSR.

58. The GC took note of the information provided and of the desire of the Turkish government to take measures which took account of the finding of non-conformity and decided to wait for the ECSR's next assessment.

RESC 2§1 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 2§1 of the Charter on the ground that daily working hours can be authorised to go up to 16 hours.

59. The situation has not been in conformity with the Charter since Conclusions XIV-2 (1998).

60. The representative of Norway stated that the Norwegian government considered its national legislation to be in conformity with the Charter. In the opinion of workers, their working hours of seven and a half hours per day were well suited to family life. A 16-hour working day was authorised in exceptional circumstances with the agreement of social partners in companies bound by collective agreements. The rule authorising a total of 16 hours of work was an exceptional provision subject to several conditions. In particular, a written agreement had to be concluded with the employees' elected representatives, and the total of 16 hours could not be worked unless the employee was given a task which required overtime and for which there was an exceptional need over a limited time frame.

61. Following a request by the representative of Lithuania, the Secretariat outlined the ECSR's case-law on reasonable working hours.

62. The representative of Norway pointed out that in the conclusions on Norway, the ECSR pointed out that “daily working time should in all circumstances amount to less than 16 hours per day in order to be considered reasonable under the Charter”, while in its conclusions concerning Armenia it said that “daily working time should in no circumstances exceed 16 hours per day”.

63. In reply to a question from the Chair, the representative of Norway said that the Norwegian government had not contacted the ECSR even though the situation with regard to reasonable working hours had not been in conformity since 1998.

64. The GC noted that there had been no change in the legislation on reasonable working hours and that the Norwegian government considered itself to be in conformity with the Charter. It encouraged the Norwegian government to contact the ECSR about its finding of non-conformity and decided to wait for the ECSR’s next assessment.

RESC 2§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 2§1 of the Charter on the ground that the working hours in a 24 hours period may be up to 16 hours.

65. The situation has not been in conformity with the Charter since Conclusions XVI-2 (2004).

66. The representative of the Slovak Republic considered that the ECSR’s interpretation of Slovakian legislation had been based on a misunderstanding. Having outlined the relevant provisions of the Labour Code, he gave the example of an employee beginning work at midnight and working up to 8 a.m. After this period of work, if the rest period was reduced to eight hours, this employee would work only for four hours (from 4 to 8 p.m.) because, under the Labour Code, daily working hours were limited to 12 hours. He or she therefore could not work for any longer that day.

67. The representative of the Slovak Republic confirmed that it was impossible to work for 16 hours in one day in the Slovak Republic and said that the maximum length of a shift was twelve hours where the workload was distributed unevenly and nine hours where it was distributed evenly.

68. The GC took note of these explanations, invited the government of the Slovak Republic to provide clear and detailed information on working hours in the next report and decided to wait for the ECSR’s next assessment.

RESC 2§1 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 2§1 of the Charter on the ground that on-call periods during which no effective work is undertaken are assimilated to rest periods.

69. The situation has not been in conformity with the Charter since Conclusions 2003.

70. The representative of France began by citing the relevant French legislation then explained that, when replying to the ECSR's conclusions, a distinction had to be made between three situations:

- employees on standby in the workplace

Under French case-law, if employees were required to remain permanently available to their employers on a company's premises, this did not constitute an on-call period but effective working hours (Social Division of the Court of Cassation, 28 October 1997, No. 94-42054). Standby periods at night on company premises, premises designed for the purpose or in official lodgings on company premises constituted effective working time not an on-call period where employees were not able to go about their personal business. Therefore, the criterion used by the Social Chamber of the Court of Cassation to distinguish on-call periods from effective working hours was the possibility or not of going about one's personal business.
In a judgment of 28 May 2014 (No. 13-10339), the Social Division considered the entire span of hours spent on night watch, even when no action was required, to be effective working hours because the employee concerned had not been able to go about his personal business. Therefore, on-call time in the workplace was not regarded as rest time but as working time if employees could not go about their personal business.

- employees on standby at home

Where such periods were genuine on-call periods, only the duration of any call-out was considered to be actual working time because, outside such call-outs, employees were free to go about their personal business. This provision was compatible with the decisions of the Court of Justice of the European Union which, in its judgment on *Sindicato de Médicos de Asistencia Pública (Simap) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana* of 3 October 2000, had held that only time linked to the actual provision of services should be regarded as working time within the meaning of the relevant Directive.

According to circular DRT 06 of 14 April 2003, when employees were called out during on-call periods and they had not yet benefited from the minimum rest periods provided for in the Labour Code these had to be allocated in their entirety when the call-out ended. Since in most cases employees were called out before they had benefited from the minimum daily or weekly rest periods provided for by the Code, the on-call arrangements were particularly favourable to those concerned.

For these reasons, the Government considered that treating on-call periods as rest-periods was not in breach of the right to reasonable working hours, as specified in Article 2§1 of the Revised Charter.

- employees covered by a system of equivalence

A system of equivalence to statutory working time had been set up in occupations involving periods of inactivity. This related to situations in which a period of presence that was longer than the statutory working time (such as 38 hours) was considered to be equivalent to the statutory time (35 hours). Daily and weekly rest periods were not affected by this system, which related only to the method of calculating actual working time.

In its *Dellas* judgment of 1 December 2005, the Court of Justice of the European Union had ruled that Directive 2003/88/EC precluded a system of equivalence only where compliance with all the minimum requirements laid down by the directive in order to protect effectively the safety and health of workers was not ensured. The French *Conseil d'Etat* had applied this decision and pronounced the partial annulment of the Decree of 31 December 2001 establishing a system of equivalence in social and medico-social establishments run by private persons on a non-profit-making basis which had not explicitly guaranteed compliance with the thresholds and ceilings set by the aforementioned directive, which were to be assessed on an hour-by-hour basis.

Following this judgment, the Conseil d'Etat had issued an order, on 29 January 2007, pointing out the need to apply the European thresholds and ceilings so as to consolidate the system of equivalence in the social and medico-social sector (Decree No. 2007-106). Since then the government had issued eight further decrees relating to eleven occupations and occupational sectors.

71. In reply to a question from the representative of Romania, the representative of France confirmed that all this information had been communicated to the ECSR.

72. The GC took note of the information provided and decided to wait for the ECSR's next assessment.

RESC 2§1 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 2§1 of the Charter on the ground that in some collective agreements on-call time spent at home in readiness for work during which no effective work is undertaken is assimilated to rest periods.

73. This is the first time that the Committee has concluded that the situation is not in conformity with the Charter.

74. The representative of Slovenia said that since its last report on authorised working hours, three collective agreements which regulated on-call periods had been amended to bring the situation into line with the Charter. It was true that the collective agreement in the rail transport sector, to which there had been no change, restricted on-call periods to 150 hours per month and that on-call periods at home were not included in ordinary full-time hours, but on-call periods were extremely rare in this sector.

75. In reply to a question from the representative of Poland, the representative of Slovenia said that the collective agreement in the insurance sector, like the agreements in other sectors, provided that on-call work at home should be remunerated.

76. In reply to a question from the Chair, the representative of Slovenia said that the effect of the amendments made to the collective agreements concerned was to assimilate on-call periods to working time.

77. In reply to a question from the ETUC representative, the representative of Slovenia said that only the social partners had the authority to set on-call hours.

78. The GC took note of the amendment to the three collective agreements with the aim of bringing them into line with the Charter, invited the Slovenian government to provided details about this in its next report and decided to wait for the ECSR's next assessment.

RESC 2§1 "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

The Committee concludes that the situation in The former Yugoslav Republic of Macedonia is not in conformity with Article 2§1 of the Charter on the ground that the hours spent in preparedness for work of medical staff are regarded as a period of rest.

79. This is the first time that the Committee has concluded that the situation is not in conformity with the Charter.

80. The representative of “the former Yugoslav Republic of Macedonia” said that doctors’ on-call periods were governed by the Law on Health Protection. Article 218 of this law provided that ’preparedness’ was a form of work when the doctor did not have to be present at the health institution but had to be available by the telephone in readiness to perform work if called. Such hours were not counted as working time where no actual work was carried out.

81. The representative of “the former Yugoslav Republic of Macedonia” explained that this type of on-call duty was very rarely used. It was applied primarily in emergency situations by specialist doctors working in small communities and such situations were infrequent. Under the collective agreement for the health sector, when doctors were called out by telephone, they were paid 113% on top of their salary and if they were not called, 8%. The government of “the former Yugoslav Republic of Macedonia” considered the situation to be in conformity with EU law and the Social Charter.

82. The GC took note of the information provided, invited the government of “the former Yugoslav Republic of Macedonia” to add relevant details to the next report about the rules that applied to hours spent by doctors in “preparedness” and decided to wait for the ECSR’s next assessment.

Article 2§3 - Annual holiday with pay

RESC 2§3 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 2§3 of the Charter on the ground that, during the reference period, the minimum period of paid annual leave was less than four weeks or 20 working days.

83. This is the first time that the Committee has concluded that the situation is not in conformity with the Charter.

84. The representative of Bosnia and Herzegovina said that in order to bring the legislation into conformity with Article 2§3 of the Charter, the Ministry of Justice had drawn up and sent to parliament a bill to amend the Labour Law in the Institutions of Bosnia and Herzegovina. The bill contained an amendment to Article 25 of the Labour Law on the exercise of the right to annual leave designed to standardise the criteria and arrangements for taking annual leave for all the employees of Bosnia and Herzegovina’s institutions. The bill had been discussed on 15 April 2014 in the Chamber of Representatives but it had not been adopted. Therefore in view of the need to ensure that national legislation was in conformity with the Charter, the Ministry of Justice had included the preparation of a new Labour Law on its work programme for 2015.

The Federation of Bosnia and Herzegovina had also prepared a new Labour Law, whose provisions on minimum paid annual leave entitlement were in conformity with the Charter. The draft Labour Law had been sent by the government of the Federation of Bosnia and Herzegovina to parliament in November 2012, but it had not been adopted.

The representative of Bosnia and Herzegovina also stated that the work programme of the government and the National Assembly of the Republika Srpska provided for the adoption of a new Labour Law which would be in conformity with the Charter in terms of the minimum paid annual leave entitlement. No information was available about legislative activities in Brčko District.

85. The representative of Russian Federation pointed out that the authorities of Bosnia and Herzegovina had reacted promptly to the finding of non-conformity, even though the amendments had not yet been adopted.

86. The GC took note of the legislative activities described, called for the national legislation to be brought into conformity with Article 2§3 of the Charter as a matter of urgency and decided to wait for the ECSR's next assessment.

Article 4§1 – Revised Charter – Decent remuneration

RESC 4§1 ANDORRA

The Committee concludes that the situation in Andorra is not in conformity with Article 4§1 of the Charter on the ground that the minimum inter-professional wage does not ensure a decent standard of living.

87. The Secretariat said that in 2010 the ECSR deferred its Conclusions pending receipt of additional information.

88. The Representative of Andorra announced the following measures taken by the Government of Andorra: on the basis of the ECSR conclusion it would be intended to raise the inter-professional wage to the equivalent of 50% of the net average wage progressively in the period from 2016 to 2019. Prior to this decision an impact analysis had been carried out on social security contributions, amount of social benefits etc.

89. The GC congratulated the Government of Andorra on these positive developments and decided to await the next assessment of the ECSR.

RESC 4§1 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 4§1 of the Charter on the ground that the monthly minimum wage does not ensure a decent standard of living.

90. The Secretariat said that the situation was not in conformity since Conclusions 2010.

91. The Representative of Azerbaijan said that the monthly minimum wage in the public sector amounted to 27.5 % of the gross monthly average wage of AZN 398.20 (403.14€). Even though not quoting exact figures, she said the relevant figure in the private sector was higher. She added that the 'Azerbaijan 2020: Look into the future" strategy approved in 2012 aimed at gradually adjusting the monthly minimum wage with a view to attaining 60% of the average wage as requested by the ECSR.

92. The Representative of Poland recalled that the ECSR had already concluded in 2010, that the minimum wage was manifestly unfair. In fact, the situation had not changed in the meantime. The Chair considered the situation rather difficult since there was no positive development since 2010/2011.

93. The Representative of Azerbaijan said that appropriate proposals to increase the minimum wage had been submitted to the Cabinet of Ministers. However, no information could be given as to when this draft legislation would be adopted.

94. The GC voted on a warning which was not carried (11 in favour; 12 against).

95. The GC urged the Government of Azerbaijan to increase the monthly minimum wage considerably in order to bring the situation into conformity with the European Social Charter.

RESC 4§1 BELGIUM

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

- *……*
- *the average minimum wages of young workers do not suffice to ensure a decent standard of living.*

96. The Secretariat said that the ECSR had deferred its Conclusion in 2007 due to lack of information.

97. The Representative of Belgium said that the monthly minimum wage is currently set at 1289.55 € net, which according to Eurostat data is the second highest in Europe, just behind Luxembourg. Generally speaking, this wage is no longer reduced for the young workers since 1 January 2015.

However, the reduction remains in place for students at a certain rate compared to the monthly minimum wage in the following way: 20 years old: 94%; 19 years old: 88%; 18 years old: 82%; 17 years old: 76%; 16 years old and less: 70%.

The Representative of Belgium said that for the young workers less than 18 years old, this reduction was justified since they were still obliged to follow education at school. Concerning young students between 18 and 21 years old, this difference was justified by a number of reasons including the fact that they still live at that age with their parents.

98. The GC took note of these positive developments and decided to await the next evaluation of the ECSR.

RESC 4§1 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 4§1 of the Charter on the ground that the reduced national minimum wage applicable to adult workers on their first employment or following a course of studies is not sufficient to ensure a decent standard of living.

99. The Secretariat said that the situation was not in conformity since Conclusions 2007.

100. The Representative of Ireland said that the National Minimum Wage (NMW) was relatively high by International Standards. The most recent figures published by Eurostat showed that Ireland's rate was the fifth highest among the 22 European Union Member States which have a NMW.

As for young workers under the age of 18, they are entitled to 70% of NMW with a view to striking a balance between ensuring that young employees are not exploited and ensuring that the rate of pay does not encourage students to leave full-time education.

This Recommendation was made by the National Minimum Wage Commission who were appointed prior to the introduction of the National Minimim Wage Act 2000. It equally recommended that sub-minimum rates apply to employees in the first two years of employment over age 18 and to those undergoing structured training. The National Minimum Wage Commission was of the view that employers should be encouraged to focus on training and that the structure of the NMW should provide encouragement and inducement for employers to take on unskilled staff and to involve them in training.

The rationale underpinning these provisions is that, all other things being equal, an experienced employee is of more value and more productive than a new entrant or trainee. It is equally important that those seeking employment are not prevented from getting the opportunity to enter work because of their lack of experience or training.

101. The Representative of Ireland advised the GC that in February 2015 the Government established a Low Pay Commission which will, on an annual basis, examine and make reommendations to the Minister on the National Minimum Wage. Replying to a question by the Representative of Poland, the Representative of Ireland agreed to make the relevant Department officials aware of the ECSR,s findings.

102. The Chair noted the salary differences of young workers and 'established' workers.

103. The GC took note of the information provided and decided to await the next evaluation of the ESCR.

RESC 4§1 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 4§1 of the Charter on the ground that the minimum wage applied to private sector workers does not ensure a decent standard of living.

104. The Secretariat said that the situation was not in conformity since Conclusions 2010.

105. The Representative of Lithuania said that the Lithuanian Government had meanwhile assigned the task in the Governmental Program of 2012-2016 to increase consequently the monthly minimum wage (MMW) until it amounted to 50% of the monthly average wage (MAW) taking into account the economic developments.

The Representative of Lithuania informed the GC that in 2012 the net MMW amounted to 42% of the net MAW. In 2013, the MMW increased to 47.65% of the net MAW. In 2013, a tax relief was introduced for the low income population which increased the income of people with minimal wages 2.55 - 5.3%. In 2014, the MMW was increased by 3.5 %. In the beginning of 2015 there was little increase and the MMW was 300 €. According to provisional data in 2015, the MMW amounted to about 47% of the net MAW. On 19 May 2015, the Minister of Social Security and Labour submitted to the Government the draft legal act with the aim of increasing MMW by 8.3%.

106. Following the proposal of the Representatives of Romania and Poland, the GC congratulated the Government of Lithuania to these positive developments and decided to await the next evaluation of the ECSR.

RESC 4§1 NETHERLANDS

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

- *It has not been established that the statutory minimum wage ensures a decent standard of living;*
- *The reduced rates of the statutory minimum wages applicable to young workers are manifestly unfair.*

107. The Secretariat said that the situation was not in conformity since 1985. In 2011, the GC voted on a Recommendation which was not carried (1 in favour; 20 against). The GC then voted on a warning which was adopted (16 in favour; 7 against).

108. The Representative of the Netherlands made the following statement:

First ground of non-conformity

The Netherlands will provide in its next report the required data on the net average wage and the net minimum wage paid to a single worker without children as well as more precise information and data on supplements and benefits available to such a worker.

In addition, the Dutch Minimum Wage and Minimum Holiday Allowance Act are currently being reviewed by the relevant Ministry in consultation with the social partners. The results of this review may become public by the end of 2015.

Second ground of non-conformity

The Representative of the Netherlands recalled that the issue of minimum wage for young workers had been debated between the ECSR and the Netherlands during the last 25 years. The two main arguments put forward were the following: a higher minimum youth wage would result in less employment for young people; the current level of youth wage stimulated young people to invest and to finish their education.

Meanwhile, the present system of statutory minimum youth wages will be part of the above mentioned review of the Minimum Wage Act. The relevant question in this review will be: How suitable is the statutory minimum wage system in the present socio-economic context?

The Representative of the Netherlands concluded that the ECSR will be informed of this current review in due time.

109. The Chair noted with satisfaction that the relevant legislation was being reviewed and that the social partners will be consulted.

110. Replying to a question from the Representative of Romania, the Representative of the Netherlands said that trade unions and youth organizations hoped that this review would lead to an increase of the minimum youth wages.

111. Replying to a question from the Representative of Lithuania, the Representative of the Netherlands said that the minimum youth salaries had to be seen in a context where in that age group many young people still lived with their parents and consequently had no financial burden to carry for a whole household.

112. The GC recognized the political will expressed by the Government of the Netherlands to review the current situation with respect to minimum youth wages. It decided to await the next evaluation of the ECSR.

RESC 4§1 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 4§1 of the Charter on the grounds that the minimum wage for private sector workers does not ensure a decent standard of living

113. The Secretariat said that the situation was not in conformity since 2010.

114. The Representative of Portugal recalled that from May 2011 to June 2014, her country was under the Economic and Financial Assistance Program agreed between the Portuguese Government, the European Union and the International Monetary Fund. During that period, the national monthly minimum wage was frozen in Portugal.

In October 2014, the Portuguese Government together with the social partners agreed to raise the national monthly minimum wage gradually from 485 € to 505 € in December 2015.This amount referred to monthly earnings and covered remuneration in cash paid before social security contributions (11%) with no tax deductions. The situation was similar in the public sector.

115. The GC took note with satisfaction of these developments and decided to await the next assessment of the ECSR.

RESC 4§1 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 4§1 of the Charter on the ground that the national minimum wage is not sufficient to ensure a decent standard of living.

116. The Secretariat said that the situation was not in conformity since 2010.

117. The Representative of Romania said that the minimum wage is being set by the government after consultation with the social partners. For the period 2013 – 2016, the minimum wage will be increased progressively to reach by 2016 up to 1200 RON (267 Euros).

As from July 2015, the minimum wage will be at a level of 1050 RON per month. This amounted to 43.47 % of the average wage used to substantiate the social insurance budget for 2015.

118. The Chair asked the Government to indicate in the next report net wages and not gross wages allowing an easier comparison to be made by the ECSR.

119. The GC took note of the progress made with respect to setting the minimum wage and decided to await the next assessment of the ECSR.

RESC 4§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 4§1 of the Charter, on the ground that the minimum wage does not ensure a decent standard of living.

120. The Secretariat said that the situation was not in conformity since 2004.

121. The Representative of the Slovak Republic said that in the first months of 2015 the net minimum wage represented 49.7% of the net average wage. The minimum wage was increased in January 2015 by 11.24% compared to the previous year, a historically high increase. The government accompanied this increase by other measures such as paying health insurance to ensure a higher standard of living of the persons earning the minimum wage. All these measures combined are meant that by the end of 2015 the net minimum wages will reach more than 60 % of the net average wage at least in several regions of the Slovak Republic.

122. The GC congratulated the Government of the Slovak Republic to these positive developments and decided to await the next assessment of the ECSR.

Article 4§4 - Reasonable notice of termination of employment

RESC 4§4 ANDORRA

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

- *the amount of severance pay awarded on termination of the employment contract is insufficient for workers with less than ten years of service;*
- *The legislation does not provide for notice in the case of termination of employment during probationary periods.*

123. The Secretariat said that it was a first-time situation of non-conformity.

First ground of non-conformity

124. The representative of Andorra said that the Government was currently studying the modification of the Code of Labour Relations, taking into account the conclusions of the ECSR, with a view to ensuring a better conformity with the Charter. Moreover, although it did not concern specifically the Charter, Andorra had entered into discussions with the European Union on an association agreement which would also lead to modifications of the legislation more in line with the Charter.

125. In reply to a question by the Chair, the representative of Andorra clarified that Article 89 of the Code of Labour Relations provided for various possibilities with the regard to termination of the employment contract. The part relative to the situation of non-conformity concerned, for example, death or incapacity and retirement of employers who were natural persons. The current legislation did not provide for a period of notice for termination of the employment contract and this aspect was being studied by the Government to address the matter.

126. The GC took note of the information that legislative amendments had been announced by the Government and decided to await the next assessment of the ECSR.

Second ground of non-conformity

127. The representative of Andorra said that the most common duration of probationary periods was one month. The probationary period, subject to a written agreement by both parties, was for a short time to check if the working relations were suitable. Given the short duration of the probationary period, it was difficult to provide for a notice period.

128. In reply to a question by the Chair, the representative of Andorra said that the length of the probationary period depended on the salary of the person. If the salary was three times the minimum salary, the length of the probationary period was three months. If the salary was five times the minimum salary, the probationary period was for six months. However, the most common duration of probationary periods was one month.

129. The GC took note of the information provided, encouraged the Government to modify its legislation to bring the situation into conformity with the Charter and decided to await the next assessment of the ECSR.

RESC 4§4 ARMENIA

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

- *in most cases, no notice period and/or severance pay in lieu thereof is applicable to dismissal or termination of an employment contract;*
- *with regard to the particular situations in which provision has been made for notice and/or severance pay in lieu thereof, the period and/or amount is not reasonable as regards:*
    - *dismissal following the liquidation of the company or the change in circumstances, beyond five years of service;*
    - *dismissal on the ground of the employee's unsuitability for the job, long-term incapacity for work or having reached retirement age;*
    - *termination of employment contracts following a substantial change in working conditions or when the employee is called up for military service;*
    - *Termination of seasonal or temporary work contracts.*

130. The Secretariat said that the situation was not in conformity with Article 4§4 since 2007.

First and second grounds of non-conformity

131. The representative of Armenia said that there had been no legislative changes with regard to the issues raised in the conclusion. However, following the previous conclusions of non-conformity relative to this Article, amendments to the notice periods and severance pay were made in the Labour Code and the information was included in the last national report. Nevertheless, the ECSR concluded that the new legislative changes were, again, not in conformity with the Charter. Thus, a certain time would be required for initiating new legislative changes. With regard to the first ground of non-conformity concerning no notice period or severance pay, there were in fact just five cases concerned. For example, the case of an employee at the workplace under the effect of alcohol, narcotic or psychotropic substances, and the case of an employee who refused to pass a mandatory medical examination.

132. The Chair pointed out that the first ground was of particular concern as no notice period and/or severance pay applied in most cases which meant that the situation was not, therefore, limited to serious offences.

133. The representative of Norway wished to know whether the Committee took into account of the conditions for dismissal when discussing cases of non-conformity.

134. The representative of Lithuania referred to exceptional cases of dismissal without period of notice which could be considered as reasonable if there was a gross breach of duty.

135. The Secretariat said that the main criterion for the assessment of reasonableness was length of service and the only exception to the right of all workers to a reasonable period of notice concerned immediate dismissal for serious offences, as set out in the Appendix to the Charter.

136. The ETUC representative found the situation of non-conformity to be particularly serious as it dated from 2007 and he requested a clarification of the ongoing discussions.

137. The representative of Armenia said that the Ministry of Labour and Social Affairs had provided information on non-compliance to the social partners. The Ministry had also requested ILO expert assistance for developing new amendments to the Labour Code, however, the draft had not yet been drawn up.

138. The representative of Romania believed that the discussions underway would produce positive developments.

139. The Chair expressed reservations concerning the outcome of the discussions as there were differences between ILO instruments and the Charter.

140. The representative of the Russian Federation believed that the ILO could nevertheless provide expert advice on legislative matters as a first step.

141. The GC took note of the information provided, encouraged the Government to bring the situation into conformity with the Charter and decided to await the next assessment of the ECSR.

RESC 4§4 AZERBAIJAN

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

- *The notice period is not reasonable in the following cases:*
    - *dismissal on the ground of liquidation of the undertaking or reduction in the number of staff and termination of employment on account of a change in the terms and conditions of employment, beyond seven years of service;*
    - *termination of employment on account of being called up for military service or long-term illness or disability, beyond five years of service;*
    - *termination of employment on grounds stipulated in the employment contract, beyond three years of service;*
    - *dismissal during the probationary period;*

- *There is no notice period provided for in the following cases:*
    - *dismissal for professional incompetence or lack of qualifications;*
    - *termination of employment in the event of a change of ownership of the undertaking or the reinstatement of a former worker following a judicial decision or after military service;*
    - *termination of employment on account of withdrawal of the worker's driving licence or ban on performing certain duties or activities;*
    - *Termination of employment in the event of disability recorded in a judicial decision.*

142. The Secretariat said that this was a first-time situation of non-conformity.

First and second grounds of non-conformity

143. The representative of Azerbaijan provided information regarding amendments to Article 77 of the Labour Code which provided for notice periods and severance pay. According to this Article, the employer prior to the reduction of staff shall officially notify employees at least two months in advance. The employer, based on the consent of the employee, could terminate the employment against payment of two months' salary. Collective agreements may envisage broader provisions than those required in the legislation. Provisions did not include immediate termination of employment. Under Article 74, an employee may apply to the Court for illegal termination of the contract and have his/her position reinstated by a decision of the Court. Regardless of length of service, notice was given in accordance with Article 56 of the Labour Code and the appropriate section of Article 77, which defined the relevant allowance. The employee was officially notified one month in advance about a change in labour conditions. The Labour Code provided for the possibility of a probationary period of up to 3 months. In case of low performance of the employee during the probationary period, the labour contract may be terminated in line with Article 70 of the Labour Code. The representative of Azerbaijan referred to the rights and responsibilities of management and staff under the Labour Code, non-compliance with the labour contract and conditions for termination of the contract.

144. The ETUC representative wished to know to what extent the information provided was already known to the ECSR.

145. The representative of Azerbaijan mentioned amendments concerning qualification and professionalism as well as compensation in the event of change of ownership of an enterprise (approximately three times the average monthly wage).

146. The representative of Romania recalled that it was a first time situation of non-conformity and the Government should be encouraged to take steps to introduce appropriate legislative changes with a view to providing reasonable periods of notice in conformity with the Charter.

147. The representative of Poland observed that there was a range of situations for termination of the employment contract, some of which may be particularly serious, such as in the case of disability recorded in a judicial decision.

148. The representative of Azerbaijan said that an employee suffering from a long-term disability for over a period of six months was entitled to two months' average salary but without notice.

149. The GC took note of the information provided, urged the Government to make the necessary legislative amendments to bring the situation into conformity with the Charter and decided to await the next assessment of the ECSR.

RESC 4§4 BULGARIA

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

- *The period of notice is not reasonable in the following cases:*
  - *dismissal with the application of the legal period of notice, beyond three years of service;*
  - *dismissal in some cases of redundancy, beyond five years of service;*
  - *dismissal on grounds of long-term illness or incapacity for health reasons, beyond seven years of service;*
  - *retirement, between seven and ten years of service;*
  - *dismissal in respect of additional jobs, beyond six months of service;*
- *No notice period is provided for in the following cases:*
  - *termination of employment for enforcement of a prison sentence; disqualification from the category or academic diploma required by the employment contract; being struck off the list of a professional association; existing incompatibilities of functions identified under Article 107(a), paragraph 1 of the Labour Code; proven conflict of interest within the meaning of the Conflict of Interest Act;*
  - *Under specific circumstances, termination in the probationary period.*

150. The Secretariat said that the situation was not in conformity with Article 4§4 since 2007.

<u>First ground of non-conformity</u>

151. The representative of Bulgaria said with regard to (i) dismissal with application of the legal period of notice beyond three years of service, that Article 328§1 of the Labour Code (LC) defined grounds for dismissal and the period of notice, generally related to economic reasons for the employer. Compensations for default existed under Article 220(§1), payable together with compensation under Article 222 §§1&3. The minimum period of notice was 30 days for open-ended contracts, and 3 months for fixed-term contracts. Amendments (108/2008) for open-ended contracts provided that the period of notice within the range of 30 days to 3 months may depend on the length

of service. Taking into account the different nature of legal grounds under Article 328(§1) the Government did not consider the period of notice inadequate beyond 3 years of service. Concerning (ii) dismissal in certain cases of redundancy beyond 5 years of service, under Article 328(§1) reasons for dismissal under points 7 and 8 could not be considered as economic grounds in the same way as points 1-4. Regarding (iii) long-term illness or incapacity for health reasons, Article 325(§1) (9) and Article 327(§1) (1) provided for quick termination of the contract in the absence of suitable work, which the Government considered as justifiable. Concerning (IV) retirement between 7 and 10 years of service, Article 328(§1) (10) was amended in 2012 and 2015. In between the amendments, the employer had no power to terminate the employment contract of an employee upon acquisition of entitlement to contributory service and retirement-age pension. Since July 2015, the employer was again empowered to terminate the contract upon retirement, on the basis of providing notice and compensation in line with the above-mentioned legislation, and clarification of the non-conformity was requested. Concerning (v) dismissal in respect of additional jobs, Articles 110, 111 and 114 provided for work which was of an additional temporary nature compared to the main job. A shorter period of notice for termination, 15 days, applied to both parties and a longer period of notice was not considered as appropriate given the nature of such work.

Second ground of non-conformity

152. The representative of Bulgaria said that Article 330 of the LC provided for grounds for termination of the employment contract without notice related to the behaviour of the employee as fulfilment of obligations under the contract in such cases was impossible. It was pointed out that a notice period, during which the employee would be required to perform his/her employment obligations, was objectively impossible (for example, upon detention for enforcement of a prison sentence) or would be to the detriment of the employer's and third party's interest. Regarding disqualification from an academic category or diploma, termination applied only to employment contracts necessitating the academic rank. For persons struck off the list of a professional organisation, the employer was obliged to terminate unilaterally and without notice the employment contract as it was based on an administrative sanction which was imposed lawfully. The Government also believed that it was justified to have no period of notice concerning the existing incompatibilities identified under Article 107(a) (§1), as the existence of any grounds for incompatibility made the existence of the employment relationship illegal. The Government also considered that proof beyond doubt of the existence of conflict of interest constituted a valid reason for immediate termination of the employment contract. With regard to termination in the probationary period, clarification would be required of the specific circumstances concerned. As entitlement to terminate the contract without notice applied to the party (or parties) in whose favour the probationary period was agreed, the Government considered that introducing a period of notice would create difficulties.

153. The GC took note of the information provided and suggested the Government seek clarification with the ECSR. The GC encouraged the Government to provide all the relevant information in the next report and decided to await the next assessment of the ECSR.

RESC 4§4 ESTONIA

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

- *general notice periods are insufficient beyond three years of service;*
- *The wages due up to the end of the temporary contract may be withdrawn in the event of early termination on other than on economic grounds.*

154. The Secretariat said that this was a first time situation of non-conformity on these grounds.

First ground of non-conformity

155. The representative of Estonia said that on 1 July 2009 the new Employment Contracts Act (ECA) came into force. Section 97, subsection 2, provided for notice periods of extraordinary cancellation of the employment relationship by the employer, which depended on the duration of employment: (1) less than one year of employment – no less than 15 calendar days; (2) one to five years of employment – no less than 30 calendar days; (3) five to ten years of employment – no less than 60 calendar days; (4) ten and more years of employment – no less than 90 calendar days. Thus the notice periods were prescribed in law by five year intervals and these periods increased in proportion with duration of work. Payment of compensation was made if the notice period was not respected, equivalent to the amount the employee would have been entitled to for the term of the advance notice. Other legislative measures included reasonable time off granted to the employee, within the period of notice, to find new employment. Consequently a person which had worked for four years would be given notice of termination of employment no less than 30 calendar days. An employee who had worked for four years and had been dismissed on economic grounds also had the right to receive severance pay equivalent to one month´s wages. Under Section 8, subsection 1, of the Unemployment Insurance Act, an insured person had the right, if cancellation of the contract was not related to a serious offence, to receive an unemployment insurance benefit during the whole period when he/she was registered as unemployed, but not longer than: (1) 180 calendar days if the insurance period was shorter than 5 years; (2) 270 calendar days if the insurance period was 5–10 years; (3) 360 calendar days if the insurance period was 10 years or longer. Access was also possible to additional labour market services, according to section 7, subsection 1, and clause 5 of the Employment Programme 2014–2015. Although the negative conclusion had been taken seriously, the topic had not received the attention it deserved due to Parliamentary elections in March, A meeting was scheduled the following day with the new Minister of Health and Labour to discuss the situation and plan consultation with the social partners.

Second ground of non-conformity

156. The representative of Estonia provided explanations concerning section 85, subsection 5 of the ECA. An employer may not cancel ordinarily an employment contract and must have a reason for cancellation, which applied also to fixed-term contracts. If an employer cancelled an employment contract entered into for a specified term (other than for economic grounds) the reason was usually related to a serious offence on the part of the employee. In cases where the reason for the cancellation was directly linked to an employee's unwanted actions, it would be unjustified to require an employer to pay the wages corresponding to those that the employee would have been entitled to until the expiry of the contract. Section 97, subsection 2 of ECA provided for the notice periods of extraordinary cancellation of the employment relationship. Section 97, paragraph 3 of the ECA, stipulated when an employer may cancel an employment contract without adhering to the term for advance notice if, considering all circumstances and mutual interests, it could not be reasonably demanded that the performance of duties under the contract be continued until the expiry of the agreed term or term for advance notice.

157. The Chair asked for clarification concerning termination of the employment contract for reasons that were not economic and did not constitute a serious offence, such as incapacity to work.

158. The representative of Estonia mentioned grounds for long-term illness and disability resulting in incapacity for work. A reform was underway with a view to providing such persons with labour market help and services to continue the labour relationship.

159. The representative of Estonia, in reply to the representative of the ETUC, confirmed that both grounds of non-conformity would be brought to the attention of the Minister of Health and Labour and would be the basis of discussion with the social partners.

160. The GC took note of the willingness of Estonia to bring the situation into conformity with the Charter, encouraged the Government to provide all the information in the next report and decided to await the next assessment of the ECSR.

RESC 4§4 GEORGIA

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

- *the severance pay provided for during the reference period in the event of contract termination is not reasonable beyond three years of service;*
- *no provision is made during the reference period for notice during probationary periods or in the event of termination of employment owing to a breach of the employment contract, the death of the employer or the winding up of the company;*
- *the severance pay applicable in the civil service when an agency has been wound up or its staff has been cut is not reasonable beyond five years of service.*

161. The Secretariat said that the situation was not in conformity since 2010.

First and second grounds of non-conformity

162. The representative of Georgia said that the Parliament had amended the Labour Code in June 2013 and explained the Procedure for terminating labour agreements (Article 38). Employers were obliged to notify the employee in writing at least 30 days in advance and to grant a severance pay of at least 1 month's salary. In addition, the employer had the right to give 3 days' notice prior to termination but, in such cases, employees were granted a severance pay of at least 2 months' salary. Regarding the grounds, these concerned economic circumstances, technological or organizational changes requiring downsizing; incompatibility of an employee's qualifications or professional skills with the work; long-term disability, unless otherwise provided for by a labour agreement, if a disability period exceeded 40 consecutive calendar days or the total disability period exceeded 60 calendar days within six months. There were standard procedures applicable to employees without taking into consideration their seniority. Negotiations were underway concerning reasonable severance pay and notice for probationary periods with social partners and relevant Ministries. The Government wished to underline that the situation related to grounds 1 and 2 was under review.

Third ground of non-conformity

163. The representative of Georgia said that the Government had started the process of reforming the civil service. For this purpose the new amendments to the Law of Public Service had been elaborated by the Civil Service Bureau, and had already been submitted and discussed at the third hearing in the Parliament. The Civil Service Bureau systematically updated the existing civil service legislation while at the same time working on drafting new laws. According to the new law, under Article 109: (1) In case of dismissal due to liquidation of an institution or reduction in the number of posts, an official shall receive compensation in the amount of two months' salary. (2) In case of dismissal due to long-term disability, conscription for military or alternative service, an official shall receive compensation in the amount of one month's salary. This new draft had been passed to the Parliament and it would be adopted later in the month.

164. The GC took note of the information provided concerning amendments to the Labour Code, encouraged the Government to provide all the relevant information in the next report and decided to await the next assessment of the ECSR.

RESC 4§4 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 4§4 of the Charter on the ground that the periods of notice applicable to employees and civil servants are inadequate.

165. The Secretariat said that the situation has not been in conformity with Article 4§4 since 1975. The report was not submitted in due time for Conclusions 2010. A Recommendation (RChS(95)6) was adopted in 1995.

166. The representative of Ireland provided information on the Minimum Notice and Terms of Employment Act 1973 to 2005. The amount of notice an employee was entitled to depended on the length of time they had worked for the employer: persons employed for 13 weeks to 2 years were entitled to 1 weeks' notice; persons employed for 2 to 5 years, to 2 weeks' notice; persons employed for 5 to 10 years, to 4 weeks' notice; persons employed for 10 to 15 years, to 6 weeks' notice and persons employed for 15 years and more, to 8 weeks' notice. An employer and an employee may agree on payment in lieu of notice. Furthermore, in situations where an employer became formally insolvent, awards in respect of the Minimum Notice and Terms of Employment Act, 1973 may be paid from the insolvency payments scheme to qualified applicants. There had been no change to the situation since the last report on this subject. It should be noted that in light of Ireland's robust unfair dismissals legislation, the issue of minimum notice generally arises in the context of redundancy. The Redundancy Payment Act provided, separate to minimum notice entitlement, for payment of a statutory redundancy lump sum on being made redundant. All eligible employees were entitled to 2 weeks' pay for every year of service, plus a bonus week, subject to the maximum ceiling on gross weekly pay which was €600. The Representative of Ireland said that the Government was constantly working to update Ireland's robust suite of employment rights legislation. In recent years the focus had been on reforming workplace relations structures with a view to streamlining them. In this regard, the Workplace Relations Act was signed into law in May 2015.

167. In reply to the Chair, the Representative of Ireland clarified that the new law dealt with procedural rather than substantive aspects of employment law. It had an effect from the point of view of streamlining how employees exercised their rights, however, there were no substantive changes to the periods of notice. The representative of Ireland agreed that it would be useful to clarify the situation of non-conformity with the ECSR.

168. The GC took note of the information provided, encouraged the Government to seek clarification with the ECSR and decided to await the next assessment.

RESC 4§4 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 4§4 of the Charter on the ground that no notice is given in case of termination of employment based on a judicial decision which prevents the performance of work; the withdrawal of administrative licences required for the performance of work; the request from bodies or officials authorised by the law; and the unfitness for work certified by authorised bodies.

169. The Secretariat said that it was a first time situation of non-conformity.

170. The representative of Lithuania said that it was a situation of non-conformity for the first time although there were no changes in the legislation concerned and the situation was not new. The Appendix to the Charter stated that Article 4§4 "shall be so understood as not to prohibit immediate dismissal for any serious offence". The Government believed that some of the mentioned grounds could be justified as immediate dismissal for serious offence, such as termination of employment based on a judicial decision which prevented the performance of work; the withdrawal of administrative licences required for the performance of work; the request from bodies or officials authorised by the law; unfitness of work certified by authorised bodies. Nevertheless the working group that prepared the new Labour Code was informed about this situation of non-conformity.

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

RESC 4§4 MALTA

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

- *The notice periods generally applied are not reasonable in the following cases:*
  - *less than six months of service;*
  - *between six months and two years of service;*
  - *between three and four years of service;*
- *The notice period of one week applicable to probationary periods is not reasonable;*
- *No notice period is provided for in the event of dismissal in economic, technological or organisational circumstances requiring changes in the workforce.*

172. The Secretariat said that the situation was not in conformity since 1998. On the last occasion, the Governmental Committee adopted a Warning.

<u>First ground of non-conformity</u>

173. The representative of Malta said that Law N° 16/2012, referred to in the conclusion, was not of relevance as it referred to a notice of coming into force of an article in the Commissioner for Revenue Act (Chapter 517). Regarding notice periods under Chapter 452, an employee can avail himself/herself of the outstanding balance of

leave in agreement with the employer. The law did not regulate special leave to seek employment; however, it did not preclude the taking of such leave if agreed upon by both parties or under a collective agreement. The employer and employee may agree on longer periods of notice in cases of technical, administrative, executive or managerial posts. In so far as the Department of Industrial and Employment Relations was concerned, no complaints had arisen on this issue.

Second ground of non-conformity

174. The representative of Malta said that notice periods by the employer or employee under an indefinite contract were as follows: for an employee working with the same employer for more than one month but not more than six months: one week; for more than six months but not more than two years: two weeks (according to Article 36(f) of Chapter 452). Thus for more than six months employment, the notice period was two weeks, not one week as indicated in the conclusion.

Third ground of non-conformity

175. The representative of Malta said, with regard to dismissal without notice or severance pay, that it was pertinent to note that if economical, technological or organisational circumstances required changes in the workforce, and it resulted in a redundancy, notice was still due in line with the legislation. With regard to exceptional notice periods as a temporary measure designed to prevent dismissals under section 42 of Chapter 452, the Director could authorise different conditions of employment than those specified in the law to avoid redundancies as long as this was a temporary measure (eg. a four day week). Concerning redundancy as a result of liquidation, bankruptcy or insolvency, and death of the employer, notice periods applied under the terms of the law. The Government reiterates that the period of notice regulated by Chapter 452 was enacted after consultations with all stakeholders, including trade unions and employers' associations. Prior to its enactment, a White paper was issued and all stakeholders were given the opportunity to make recommendations. The periods of notice as stipulated were not contested. The notice periods also applied to the termination of employment by employees and such periods were considered adequate to facilitate employment mobility. The periods of notice were not a contentious issue and the Government had not received any requests from the social partners requesting longer periods.

176. In reply to a question by the Chair, the representative of Malta said that all circumstances were covered by the law. The periods of notice under the legislation applied if economical, technological or organisational circumstances required changes in the workforce which resulted in redundancy.

177. The Chair observed that the situation had not changed and recalled that the Warning, issued on the last occasion, still applied.

178. The GC took note of the information provided, encouraged the Government to seek clarification with the ECSR and decided to await the next assessment.

RESC 4§4 REPUBLIC OF MOLDOVA

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

- *As a general rule, no notice period and/or severance pay in lieu thereof is applicable to dismissal in the private sector, or termination of duties in the public sector;*
- *With regard to the particular situations in which provision has been made for notice or severance pay in lieu thereof, the period or amount is not reasonable as regards:*
    - *dismissal on the ground of the employee's unsuitability, beyond three years of service;*
    - *termination of duties in the public sector as a result of liquidation, refusal to accept a geographical transfer or staff reductions, beyond three years of service;*
    - *termination of duties in the public sector on other grounds, beyond three months of service.*

179. The Secretariat said that this was a first time situation of non-conformity on these grounds, although the situation was not in conformity with Article 4§4 in Conclusions 2010.

First ground of non-conformity

180. The representative of the Republic of Moldova believed that the report had not been explicit enough or the relevant Department had not fully understood the conclusion of non-conformity. The notice periods for termination of individual employment contracts were foreseen in the Labour Code, for both the public and private sectors. Under Article 184 with regard to both indefinite and fixed-term contracts, the employer must give a notice period of: 2 months in the case of liquidation, staff reduction; and 1 month in the case where it has been duly confirmed that the employee is unsuitable for the occupied post. Under Article 83, the employee must be given at least 10 days' notice of termination of an individual fixed-term labour contract drawn up to replace a worker who was, for example, on maternity or study leave, the fixed-term contract terminating on the return of the worker.

Second ground of non-conformity

181. The representative of the Republic of Moldova said that the national legislation did not provide for the notice period in terms of length of service with the employer. Under Article 183, an employee with a considerable length of service was granted preferential rights to retain their job in the event of a reduction in personnel. However, severance pay was calculated on the basis of the number of years worked with the employer (under Article 186), equal to the average weekly salary for each year worked in the company but not less than an average monthly salary. The legislation did not

provide for replacing the notice period by severance pay. The severance pay was to supplement the notice period, for example, in the case of liquidation of the company or a reduction in personnel. Employees were informed two months prior to termination of the employment contract, whilst keeping all the existing working conditions at the time of notice. The employees were granted one day free per week to look for another job. The average salary for such days was maintained during the whole period of notice. A severance allowance was paid, the amount of which depended on the number of years worked in the company. In view of the fact that the ECSR did not stipulate the exact definition of a reasonable period of notice, the Government believed that the standards provided for by the legislation were in conformity with the Charter. Collective agreements or individual contracts may contain more favourable conditions than those provided for by the Labour Code. As many countries had similar conclusions of non-conformity, the representative of the Republic of Moldova proposed that the ECSR clarify the reasonable periods of notice before consultations took place with a view to modification of the legislation.

182. The Chair, in reply to the suggestion by the representative of the Republic of Moldova, agreed that it would be useful to ask the ECSR to discuss aspects of interpretation of Article 4§4 with the Governmental Committee at its meeting in May 2016.

183. The GC took note of the information provided, observed that further clarification was required and decided to await the next assessment of the ECSR.

RESC 4§4 NETHERLANDS

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

- *notice periods are not reasonable;*
- *no notice of termination is required during the probationary period.*

184. The Secretariat said that the situation was not in conformity since 2007.

First ground of non-conformity

185. The representative of the Netherlands said that statutory notice periods for the employer under Article 7:672, paragraph 2 of the Civil Code, depended on how long the employment contract had lasted on the date when notice was given. It went from at least 1 months' notice for up to 5 years of service to 4 months' notice after 15 years of service. As of 1 July 2015, dismissal law had changed in favour of the employee. The statutory notice periods were applicable not only in cases of dismissal procedures at the request of the public employment service, UWV, but also in cases of judicial rescission of the employment contract by the County Court. UWV was competent for redundancies for commercial reasons and long term incapacity to work due to illness. In case of other reasonable grounds for dismissal, the County Court could rule in favour of a judicial rescission. The procedural time was deducted from the given notice period, but at least 1 months' notice period should remain. In case of dismissal due to serious culpability of

the employee, the termination date could be set earlier. In case of non-respect of the applicable notice period by the employer, compensation for the wage loss was due. The Government believed that the notice periods were reasonable under Article 4§4 of the Charter.

Second ground of non-conformity

186. The representative of the Netherlands said that the probationary period did not exist automatically and was subject to an agreement in writing between the employer and the employee, which applied to both parties. If an employment contract regulated a probationary period, either party may terminate the contract with immediate effect within that period. A probationary period enabled testing the working relationship and provided for a first assessment by the employer. If an employer terminated the contract during the probationary period for a different purpose, this may constitute an abuse of the right. In this case, the employee could go to court to dissolve termination of the contract. As of 1 January 2015, a probationary period was no longer possible in contracts that did not exceed a period of six months. This was a second change in favour of the employee, ensuring a balance between the employer's interests and the employee's job security. In conclusion, as the probationary period only applied to contracts over 6 months and was limited to a maximum of 2 months, the Government did not deem an additional notice period within the probationary period to be necessary. Moreover, for temporary contracts of six months or longer that ended automatically, a specific duty to give notice entered into force on 1 January 2015. This was a third change to legislation in favour of the employee. The employer must inform the employee at least one month before the contract automatically ended concerning its extension (or not) and the conditions which applied, otherwise a fine was imposed of up to one month's salary.

187. The GC took note of the modifications to the legislation introduced in 2015, encouraged the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RESC 4§4 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 4§4 of the Charter on the grounds that the following notice periods are not reasonable:

- *general notice periods, for workers with more than three years of service and those with ten years of service who are younger than 60;*
- *notice periods applicable to temporary workers with less than one year and those with more than three years of service;*
- *notice periods applicable to civil servants with more than seven years of service.*

188. The Secretariat said that it was a first time conclusion of non-conformity.

First ground of non-conformity

189. The representative of Norway said that the regulation in this area, in place for many years, remained unchanged and notice periods were for 1 to 6 months depending

on length of service and age. The period of notice ran from (and including) the first day of the month following the day the notice was given. The legislation should be seen in the light of the general regulations which ensure strict conditions. Employees may not be dismissed unless it is objectively justified and the employer must be able to demonstrate good reasons. Dismissals due to restructuring etc. would not be justified if there was other suitable work in the undertaking, to which the employee had a preferential right, subject to being suitably qualified. Concerning dismissals, the employer must discuss the matter with employee(s) and their representatives, and notify the Labour and Welfare Service. Projected collective redundancies shall not come into effect earlier than 30 days after the Labour and Welfare Service had been notified. In the event of a dispute, the employee may remain in the post as long as the negotiations were in progress. The system also provided for economic support for people who had lost their jobs. Unemployment benefits equalled approx. 62.4 per cent of the gross income. The Government considered that the system guaranteed reasonable notice of termination of employment. General notice periods in the Working Environment Act applied to both parties and many work contracts contained longer periods of notice than those regulated by the law.

Second and third grounds of non-conformity

190. The representative of Norway said, with regard to notice periods applicable to temporary workers and to civil servants, that during the contract period, the statutory rules on termination of employment applied to temporary workers as for other workers. This was clarified through an amendment which came into force on 1 July 2015. With regard to civil servants, the last report may have given an incomplete picture of relevant regulations. The Civil Servant Act clearly stated that the period of notice for civil servants with more than 2 years of continuous service and temporary officers with more than 4 years of continuous service was 6 months. A period of 3 months applied when the employee terminated the contract. The Government believed that the regulations were well within the standards laid down by the Charter.

191. The GC took note of the information provided, encouraged the Government to provide all the information in the next report and decided to await the next assessment of the ECSR.

RESC 4§4 PORTUGAL

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

- *the notice periods applicable to probationary periods in the private sector are insufficient below four months of service;*
- *the notice periods applicable to probationary periods for fixed-term, seasonal or show contracts in the private sector are insufficient;*
- *no provision is made for notice of the termination of duties during probationary periods for tenured civil servants;*
- *the conditions governing the termination of the duties of tenured civil servants are left to the discretion of the parties.*

192. The Secretariat said that this was a first time situation of non-conformity on these grounds, although the situation had not been in conformity with Article 4§4 in Conclusions 2010.

First and second grounds of non-conformity

193. The representative of Portugal said that the situation had not changed. The maximum probationary period applicable to employment contracts changed in accordance with the type of employment contract. For open-ended contracts, the probationary period may be between 90 and 240 days, depending on the activity. For temporary contracts equal or superior to six months (or uncertain term contracts which were foreseeable as equal or superior to six months), a probationary period of 30 days was applicable. For fixed-term contracts less than six months (or uncertain term contracts with a foreseeable duration less than six months), a probationary period of 15 days was applicable. The law established that the probationary period may be reduced by an agreement or collective bargaining agreement, and may even be excluded by written agreement between the parties. Notice of 7 days must be given by the employer if the probationary period had lasted for more than 60 days, and a notice of 15 days must be given if more than 120 days of probationary period had already elapsed.

Third and fourth grounds of non-conformity

194. The representative of Portugal said, with regard to civil servants, that the probationary period and the notice period for public employment termination (for both appointed and hired workers) were included in the recent General Labour Law on Public Functions (LTFP), Law No. 35/2014. Article 45 of LTFP provided for the general rules for the probationary period. If the probationary period was concluded unsuccessfully, the effects thereof terminated automatically without the right to any compensation. The probationary period could be terminated before its term when the worker did not have the required skills for the position. Termination by mutual agreement between the public employment entity and the worker by means of a fair compensation was provided for under LTFP, both for appointed and hired employees. Under Article 295, to enter into the agreement, the public employer had to meet certain requirements, such as proof of

efficiency gains, reduction of expenses, budget availability, in order to bear the cost inherent to the compensation to be awarded to the worker.

195. The GC took note of the information provided, encouraged the Government to provide all the information in the next report and decided to await the next assessment of the ECSR.

RESC 4§4 ROMANIA

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

- *the notice period for dismissal for physical or mental incapacity or for professional inadequacy or as a result of the abolition of posts is insufficient;*
- *the legislation makes no provision for notice periods during probationary periods and in the event of legally automatic termination of employment.*

196. The Secretariat said that it was a first time situation of non-conformity on these grounds, although the situation has not been in conformity with Article 4§4 since 2003.

First ground of non-conformity

197. The representative of Romania said that under Law N° 53/2003 of the Labour Code, conditions for notice and duration were included in the individual employment contract. Dismissal for reasons related to the employee included: a decision of the competent authorities concerning medical expertise, physical and/or mental health conditions preventing fulfilment of duties and if, professionally, the employee did not correspond to the job. If ordering dismissal for the aforementioned reasons and if the individual employment contract ceased by virtue of Article 56, para 1(e), the employer had to propose other suitable vacancies. If no such vacancies existed, the territorial employment agency could propose suitable work. The employee had 3 working days from receiving notification to present his/her written consent to the new job offer. In case of dismissal by virtue of Art 61(c), the employee received compensation corresponding to the applicable collective agreement or the individual employment contract. Dismissal for reasons that did not relate to the employee must be related to a real and serious cause. Persons dismissed under Art 61 (c) and (d), or Articles 65 and 66, were entitled to notice of no less than 20 working days. Exceptions concerned persons dismissed under 61(d) who were on probation. In case of unreasonable or illegal dismissals, the court could order its cancellation, ensure the payment of compensation equal to indexed wages and restore the employee's position. Law 62/2011 on social dialogue provided for organising collective negotiations and collective labour contracts. For termination of the individual employment contract due to physical or mental unfitness, professional non-compliance or abolition of posts, notice shall not be less than 20 days. Parties could negotiate a longer notice period higher than the minimum period under the legislation, which the Government considered as consistent with the requirements of the Charter.

Second ground of non-conformity

198. The representative of Romania said that Law 53/2003 of the Labour Code provided for a probationary period, in order to test the employee's skills, not exceeding 90 calendar days for executive positions and a maximum of 120 calendar days for management positions. Testing of professional skills of persons with a disability was carried out solely by virtue of the probationary period not exceeding 30 calendar days. During, or at the end of the trial period, the individual employment contract may be terminated, by written notification only, without advance notice, at the initiative of either party without the need of a motivation. During the probationary period, the employee enjoyed all rights and obligations under the Labour Law, the applicable collective labour contract, the internal regulations and the individual employment contract. The Government considered that the situation was justified by the duration of the probationary period and the entitlement of each party to termination of the employment contract. Parties could agree compensation in accordance with provisions of the applicable collective agreement or individual employment contract.

199. The GC took note of the information provided, encouraged the Government to provide all the information in the next report and decided to await the next assessment of the ECSR.

RESC 4§4 RUSSIAN FEDERATION

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

- *The notice period is not reasonable in the following cases:*
  - *dismissal of employees with more than fifteen years of service following the dissolution of the organisation or reduction in staff numbers;*
  - *dismissal of employees with more than six months of service for medical incapacity, call-up for military service, judicial or administrative reinstatement of the employee or refusal to be transferred when an employer relocates;*
  - *dismissal during probationary periods;*
  - *dismissal of employees in additional employment with more than six months of service upon reinstatement of the principal post holder;*
  - *early termination of temporary contracts;*
- *Notice periods applicable to employees of self-employed persons or religious organisations or to home workers are left to the discretion of the parties to the employment contact.*

200. The Secretariat said that it was a first time situation of non-conformity.

First and second grounds of non-conformity

201. The representative of the Russian Federation said that the Parliament envisaged a discussion of situations of non-conformity by the Tripartite Committee of the Russian Federation. The case of Article 4§4 would be dealt with during the meeting of the Tripartite Committee in February 2016 and measures would be planned to remedy the situation. All the information would be provided in the next report.

202. The GC took note of the information provided, encouraged the Government to provide all the information in the next report and decided to await the next assessment of the ECSR.

RESC 4§4 SLOVAK REPUBLIC

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

- *notice periods on dismissal on economic, health, or any other grounds are not reasonable beyond five years of service;*
- *three days' notice periods on dismissal during the probationary period are not reasonable.*

203. The Secretariat said that it was a first time situation of non-conformity on these grounds.

First ground of non-conformity

204. The representative of the Slovak Republic said that the notice period for dismissal of three months had been deemed as not reasonable by the ECSR for workers beyond 5 years of service.

205. However, the conclusion did not take into consideration additional compensation that was provided to the employees who had been given notice, more specifically the severance pay. Severance pay in the Slovak Republic was paid on top of the usual wage that the employee earned during the notice period. The amount of the severance pay depended on the number of years the employee had worked for the employer. The Government believed that the conclusion should take into account the severance pay as an additional compensation for employees who had been given notice of dismissal. With regard to an employee with more than five years of service, he/she would not only be given three months' notice period during which they were guaranteed their usual wage, but on top of it, at least two additional monthly wages as severance pay plus an additional monthly salary in the case where the employee had reached pension age. As a summary, the compensation for a worker who reached more than five years of service was at least 5 months' wages, and for a worker with a high number of years of service it was even more, as proposed by the social partners. It was pointed out that this compensation was provided to all employees, whether they worked full time or part time.

Second ground of non-conformity

206. The representative of the Slovak Republic said that the conclusion was based on the fact that previously it was possible to extend the duration of the probationary period up to nine months. This provision of the Labour Code was abolished and the duration of the probationary period was now fixed at three months for all workers, with the exception of the highest management positions in statutory organs where the probationary period was fixed at 6 months, without any further possibility of prolonging this period. This amendment, based on the proposals of the social partners, was prepared by the Government and adopted by the Parliament.

207. The GC took note of the information provided, encouraged the Government to provide all the information in the next report and decided to await the next assessment of the ECSR

RESC 4§4 SLOVENIA

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

- *Notice periods are not reasonable for employees with more than three years of service in the following circumstances:*
  - *dismissal in companies with ten employees or fewer in accordance with some collective agreements;*
  - *receivership or liquidation;*
  - *ordinary dismissal for economic reasons;*
- *No notice period is provided for in the following circumstances:*
  - *dismissal on refusal to transfer a contract to a successor employer;*
  - *dismissal during probationary periods;*
  - *expiry of work permits;*
  - *liquidation where no administrator has been appointed.*

208. The Secretariat said that it was a first time situation of non-conformity.

First ground of non-conformity

209. The representative of Slovenia said that the situation of non-conformity referred to the old Employment Relations Act which had not been in force since March 2013. While preparing the new Act, the relevant case law of the ECSR was fully taken into account. Under the new legislation, all employers must respect the minimum notice periods stipulated by the law in case of dismissals. Since March 2013, it was not possible to determine shorter notice periods by collective agreements in case of dismissal in companies with 10 employees or fewer. With regard to receivership or liquidation, there were no new regulations however it was pointed out that the situation in this area was in conformity in Conclusions 2010 and the Government would like clarification on this point by the ECSR. Concerning ordinary dismissals for economic

reasons, under the new Act after a two year period of employment, the 30 day notice period was increased for each year of employment with the same employer by 2 days, but shall not exceed 60 days.

Second ground of non-conformity

210. The representative of Slovenia firstly clarified the situation concerning dismissal on refusal to transfer a contract to a successor employer. Although there was no provision for an explicit notice period in the above-mentioned new legislation, the Act secured workers' rights to be informed about all aspects at least 30 days prior to the transfer, including the implications of refusal to transfer. Concerning probationary periods, under the new Act, the notice period for dismissal was 7 days. With regard to work permits, these were granted for a defined period of time. The new Act stipulated that an employment contract may be exceptionally concluded for a fixed-term, which may apply to employment of a foreigner or a person without citizenship who had been granted a work permit for a defined period of time. In case of termination of the fixed-term employment contract, a foreign worker had equal rights as a domestic worker, depending on the reason for dismissal and duration of work. The Act provided that the employee was entitled to severance pay, regardless of the duration of employment, in case of termination of employment prior to expiration of the fixed-term contract. With regard to the last point of the conclusion, it was clarified that liquidation where no administrator had been appointed was not envisaged in the current legislation. It concerned a temporary solution in 2007 and it had not been in force since 2008. The Government considered that the situation was in conformity with Article 4§4 of the Charter.

211. The GC took note of the information provided, in particular concerning the new law, encouraged the Government to provide all the information in the next report and decided to await the next assessment of the ECSR.

RESC 4§4 TURKEY

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

- *no period of notice is required for dismissal during a probationary period;*
- *no period of notice is required for dismissal on the grounds of long-term illness, custody or arrest.*

212. The Secretariat said that it was a first time situation of non-conformity on these grounds although the situation had not been in conformity with Article 4§4 in Conclusions 2010.

First ground of non-conformity

213. The representative of Turkey said that the Labour Law provided for parties to include a trial period in the employment contract, the duration of which shall not exceed two months. The probationary period was an exceptional clause of the law and was not

obligatory in the employment contract. It was subject to the agreement of both parties, who decided and signed together. During the trial period, workers could benefit from all the rights provided by law, such as being a member of trade union, joining a strike and receiving all wages for days worked. The probationary period was of benefit to both the employer and the employee to prepare for the reality of the work contract. During the trial period, the employer or the worker could terminate the employment contract with no period of notice. At the end of the trial period, the employment contract would be valid and there was no need to draw up a new contract. For determining the periods of notice and severance payments, the calculation started from the first day of the trial period. Regarding all legal rights of the workers, the trial period was included in the total duration of the working period. The worker was insured for social security starting the day before the first working day, regardless of whether there was a trial period in the employment contract or not.

Second ground of non-conformity

214. The representative of Turkey said that the Labour Act allowed the employer or the employee to immediately terminate an employment contract for a just cause, for a definite or indefinite period, before its expiry or without the prescribed notice periods for defined reasons. The reasons for 'breaking of the employment contract' for a just cause related to health, immoral or dishonourable conduct, or other similar behaviour, and force majeure, and the scope was defined to prevent arbitrary dismissals. The employee was entitled to severance pay if the contract was terminated by the employer for reasons concerning the employee's health or force majeure, or for termination by the employee for a just cause, without notice, which included reasons of health, immoral or dishonourable or similar conduct of the employer or force majeure. In order to prevent arbitrary dismissals, the Health Committee determined the employee's health condition. Under general principles of the Law of Obligation, all contracts may be terminated in cases of force majeure provided certain requirements were met. The employee could legally challenge the justification of grounds and, if upheld by the court, was entitled to be re-engaged within one month or receive compensation equivalent to at least four months' wage, up to a maximum of eight months' wages. Article 26 of the Labour Act provided for the right to break the employment contract for immoral, dishonourable or malicious behaviour of the other party.

215. The Chair pointed out, with regard to the first ground of non-conformity, that a period of notice should be provided for during the probationary period. With regard to the second ground of non-conformity, it would be important to provide full information in the next report concerning entitlement to severance pay.

216. The GC took note of the information provided, encouraged the Government to provide all the relevant information in the next report and decided to await the next assessment of the ECSR.

RESC 4§4 UKRAINE

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

- *Notice periods are not reasonable in the following circumstances:*
    - *termination of employment for refusal to agree to a transfer when the undertaking relocates or refusal to accept essential changes in working conditions; dismissal as a result of changes in the organisation of production or labour or a reduction in staff numbers; dismissal for unfitness for medical reasons, lack of qualification or withdrawal of access to top-secret information; or the reinstatement of the previous post holder, beyond seven years of service;*
    - *termination of employment or dismissal on all other grounds, beyond two years of service;*
- *No notice is required for dismissal during the probationary period.*

217. The Secretariat said that this was a first time situation of non-conformity on these grounds although the situation had not been in conformity with Article 4§4 in Conclusions 2010.

First ground of non-conformity

218. The representative of Ukraine said that a study had been made of the explanation of the ECSR, distributed in 2008, concerning the length of notice period in the case of termination of employment, which referred to a notice period of 45 days as acceptable for seniority between 7 and 15 years. It was pointed out that the period of notice in Ukraine was two months. Taking into account the conclusion of non-conformity and the importance to strengthen national legislation and practice in the line with the Charter, the Government adopted in May 2015 a comprehensive Action Plan on the implementation of the Revised Charter for the period from 2015 to 2019. The Action Plan provided for, inter alia, the development of proposals concerning reasonable period of notice for termination of employment in accordance with the length of service. The first step would be a seminar in Kyiv on 28 October 2015 organised by the Department of the European Social Charter and the Ministry of Social Policy of Ukraine where proposals would be discussed to bring the situation into conformity. All the proposals would be summarised after the seminar in order to seek ways to bring the national situation into line with Article 4§4.

Second ground of non-conformity

219. The representative of Ukraine said, with regard to notice for dismissal during the probationary period, that the situation for the reference period had not changed. However, information was provided on the new Labour Code draft, registered in the Parliament in December 2014, which provided that the employer had the right to dismiss the employee during the probationary period with a notice of termination of three days. The updated information would be provided in the next report.

220. In reply to the Chair, the representative of Ukraine said that the above-mentioned seminar would focus on issues of non-conformity, including Article 4§4, and would involve relevant institutions, social partners and members of parliament to discuss ways to bring the situation into conformity.

221. The GC took note of the information provided, welcomed the willingness of Ukraine to bring the situation into conformity and decided to await the next assessment of the ECSR.

Article 4§5 - Limits to deduction from wages

RESC 4§5 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 4§5 of the Charter on the grounds that:

- *withdrawing wages entirely for reasons connected with the quality and quantity of production deprives workers and their dependants of any means of subsistence;*
- *after all authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves and their dependants.*

222. The situation has not been in conformity with the Charter since Conclusions 2007.

223. The representative of Armenia said that in conformity with the Labour Code as amended in July 2015, the salary paid to the employee after all deductions and charges cannot be lower than the minimum wage provided by law and the fifty percent of the monthly salary of the employee.

224. The GC took note of the information provided and congratulated the Government of Armenia for the amendments adopted in order to respect the requirements of the Charter. It decided to wait for the ECSR's next assessment.

RESC 4§5 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 4§5 of the Charter on the grounds that:

- *following all authorised deductions, the wages of workers with the lowest earnings do not enable them to provide for themselves or their dependants;*
- *guarantees in place to prevent workers from waiving their right to limitation of deduction from wages are insufficient.*

225. This is the first time that the Committee has concluded that the situation is not in conformity with the Charter.

First ground of non-conformity

226. The Representative of Azerbaijan said that deductions from wages were operated in accordance with Article 175 of the Labour Code. This Article stipulates deductions based on the written consent of the employee or based on documents provided by law. Part 2 of this Article defines deductions from wages made on the basis of the employer's instructions. Conditions that prevent deductions are defined in Part 3 and 4 of this Article.

Furthermore, the Representative of Azerbaijan underlined that national legislation prohibits deductions exceeding 50% of the wage.

In addition, the Representative of Azerbaijan said that since January 2006, “The Targeted Social Assistance” programme focused on the social protection of low-income workers is running. According to this programme, if, after all deductions, an employee’s income is below 105 AZN per person, the employee can obtain social assistance subject to a favorable decision of a competent commission.

Second ground of non-conformity

227. The Representative of Azerbaijan said that according to the information provided by the Ministry of Labour, negotiations between employers and employees on deductions from wages can be conducted and may lead to reductions in the level of deductions. For example, damage caused by the employee to the employer. According to law, deductions cannot exceed 50% of the wage.

228. The GC took note of the information provided, invited the Government of the Azerbaijan to provide clear and detailed information on wage deductions in the next report and decided to wait for the ECSR’s next assessment.

RESC 4§5 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 4§5 of the Charter on the ground that, after all authorised deductions, the wages of workers with the lowest pay do not enable them to provide for themselves or their dependants.

229. This is the first time that the Committee has concluded that the situation is not in conformity with the Charter.

230. The Representative of Bulgaria said that the Government expressed an opinion in principle on this conclusion because the application of Article 272, paragraph 1 and 2 of the Labour Code is directly related to Article 446 of the Code of Civil Procedure; no deductions may be made from a factory or office worker's labour remuneration without the worker's consent, except for:

1. advance payments received;
2. amounts overpaid as a result of technical error;

3. taxes deductible from the labour remuneration under special laws;
4. social insurance contributions, which are for the account of the factory or office worker who is insured against all social insurance risks;
5. distrains imposed according to the established procedure;
6. deductions in the case under Article 210 (4).

The total amount of the monthly deductions under the foregoing paragraph may not exceed the amount fixed in the Code of Civil Procedure.

Furthermore, the representative of Bulgaria noted that the national minimum wage set is an imperative limit below which no enforcement could be applied and that applies to all types of claims mentioned in Article 446, paragraph 1 of the Code of Civil Procedure, i.e. it is not subject to any deductions other than for alimony obligations. The amount of the monthly pay subject to deductions is determined after taxes and compulsory contributions.

Finally, the representative of Bulgaria informed that the Council of Ministers has submitted to the National Assembly Law amending and supplementing the Code of Civil Procedure, No. 502-01-58 / 13.07.2015, which provides for deletion of point 1 of Article 446, paragraph 1 and amendment of point 2 as follows: “if the convicted person is paid amounts from the minimum wage up to BGN 600 per month – one third of the amount above the minimum wage if such person has no children and one fourth if having dependent children”. It means that the income exempt from seizure cannot be lower than the national minimum wage.

231. The GC took note of the legislative changes underway in Bulgaria and decided to wait for the ECSR’s next assessment.

RESC 4§5 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 4§5 of the Charter on the ground that the guarantees in place to prevent workers from waiving their right to limitation of deduction from wages are insufficient.

232. This is the first time the Committee examined the situation on the protection of wages in Cyprus.

233. The Representative of Cyprus noted that wage determination in Cyprus is freely agreed between an employee and an employer, either by use of a personal contract of employment, or by the applicable provisions of an enterprise or sectorial collective agreement.

She stressed that in accordance with the law, the compatibility with the subsistence needs of workers and their dependents is determined on an individual basis. Thus, deductions for damages caused to the employer intentionally or through gross negligence and to payment of wages to third parties, cannot be made without the written consent of the employee. It is clear that on the basis of the exercise of their free will,

employees will not consent to deductions if they cannot meet the minimum subsistence requirements specific to their personal situation.

Furthermore, the Representative of Cyprus recalled that the employee has the right to file a complaint with the Department of Labour Relations of the Ministry of Labour, Welfare and Social Insurance. The Competent Authority will examine the case and if the subsistence requirements are not met, legal action will be taken against the offending employer. Since 2014, a Minimum Guaranteed Income Legislation has been introduced, providing guidelines in respect to minimum poverty levels for citizens requesting public assistance. So far, no complaints have been submitted to the competent authority in the matter.

In addition, the representative of Cyprus informed that Protection of Wages Act was amended in 2012, making fines stricter, so any employer who contravenes the provisions of the Act is guilty of a criminal offence and liable to conviction to a sentence of up to 6 months imprisonment (instead of 3 months as was provided for before the amendment), or a fine not exceeding €15,000 (only €3,417 before), or both sentences. This significant increase in the level of fines and penalties are considered to be an effective deterrent for any possible infringement of the application of the Protection of Wages Act.

Finally, the Representative of Cyprus underlined that although there is no specific limit to the overall deduction from wages applicable to civil servants, state employees and hourly-paid (blue collar) employees, deductions are customized to protect employees with low wages.

In reply to a question from the Chair, the Representative of Cyprus confirmed that no changes have occurred since the last report.

234. The GC took note of the information provided, invited the Government of Cyprus to provide clear and detailed information on guarantees in place to prevent workers from waiving their right to limitation of deduction from wages in the next report and decided to wait for the ECSR’s next assessment.

RESC 4§5 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 4§5 of the Charter on the ground that, after maintenance payments for children and other authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

235. This is the first time that the Committee has concluded that the situation was not in conformity with the Charter.

236. The Representative of Estonia said that the only reason that allows making deductions from the minimum wage is the benefit of a child. The aim of this rule is to protect children's right to get support from their parents.

She recalled that, according to the section 102 of the Family Law Act, debtor can ask the court to reduce the amount of child support that he or she has to pay, if he or she is not able to pay child support in full amount, because it would damage his or her other children or his or her own maintenance.

Moreover, the Representative of Estonia recognised that the minimum wage was below the Social Charter standards. In this context, the minimum wage has become a major social concern for the government which pursues the goal of achieving the minimum wage up to 45% of the average wage within four years. This will be discussed in a new governmental committee, Labour Market Committee, which will include social partners and government representatives.

237. The GC took note of the information provided, in particular the commitment to increase the minimum wage, and decided to wait for the ECSR's next assessment.

RESC 4§5 FINLAND

The Committee concludes that the situation in Finland is not in conformity with Article 4§5 of the Charter on the ground that the attachable amount of wages leaves workers who are paid the lowest wages and their dependants insufficient means for subsistence.

238. The Representative of Finland said that there was no universal minimum wage in the Finnish legal framework; the employer's unions and workers trade unions agree upon pay and other terms of employment in a collective agreement. According to the Employment Contracts Act (55/2001), Chapter 2, Section 10 if neither a collective agreement binding under the Collective Agreements Act (436/1946) nor a generally applicable collective agreement is applicable to an employment relationship, and the employer and the employee have not agreed on the remuneration to be paid for the work, the employee shall be paid a reasonable normal remuneration for the work performed.

As regards the attachment of salary, the Representative of Finland said that as a general rule, one third of wages, salaries, pensions, unemployment benefits and

maternity benefits can be garnished. In this context, holiday pay, perquisites, commissions and various fees are also considered as wages. The garnished amount is calculated from the debtor's income net of tax. Social subsidies, such as rent support and child subsidies, cannot be garnished. When effecting a garnishment, it is always required that a protected portion, that is the amount needed for the livelihood of the debtor and his or her family, is exempt from seizure. In the calculation of the protected portion, due note is taken of the persons the debtor supports, including the spouse and the minor children and adopted children of the debtor or the spouse, if residing in the same household. If the spouse or the children have an income of their own exceeding the protected portion, €690,70 per month as of 1st January 2015, they are disregarded in the determination of the protected portion. The protected portion, which is the monthly amount of money that the debtor is left with in order to be able to pay for his or her necessary living expenses, is always taken into account in the garnishment of wages and salaries as well as in the schedules of payment. The protected portions are adjusted annually in accordance with the national pension index. The debtor may appeal against the garnishment in a District Court.

Furthermore, the Representative of Finland emphasized that those workers who are paid the lowest wages and e.g. part timers in some sectors are finally protected by the Enforcement Code stipulating that if wages are less than the protected portion there will be no garnishment. Finally these persons may have right to social assistance, including preventive social assistance granted by municipalities, and the insufficient means for subsistence are thus covered.

239. In reply to a question from the Chair, the Representative of Finland confirmed that the last report in the matter focused on the legal framework.

240. The GC took note of the information provided, invited the Government of Finland to provide clear and detailed information on the attachable amount of wages of workers who are paid the lowest wages in the next report and decided to wait for the ECSR's next assessment.

RESC 4§5 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 4§5 of the Charter on the grounds that:

- *the safeguards preventing workers from waiving their right to limits to wage deductions are inadequate;*
- *after authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.*

241. The Committee previously noted (Conclusions (2010)) that Ireland failed to submit its report in due time. It had concluded prior to this (Conclusions 2007) that the situation in Ireland with regard to protection of wages was not in conformity with Article 4§5.

242. The Representative of Ireland said that the relevant legislation regarding deductions from wages is the Payment of Wages Act 1991 which provides for safeguards in relation to wage deductions. The Act places strict conditions and restrictions on employers in relation to deductions from wages which arise from any act or omission of the employee (e.g. bad workmanship or breakages) or are in respect to the supply by the employer of goods and services necessary for the job (e.g. uniforms).

She added that if an employee considers that deductions are not "fair and reasonable", they can take a case to an Adjudication Officer of the new Workplace Relations Commission which has been established by the Workplace Relations Act 2015, and, on appeal to the Labour Court. Prior to the 2015 Act cases could be taken to a Rights Commissioner and, on appeal, to the Employment Appeals Tribunal. All of these bodies are independent in the exercise of their quasi-judicial functions.

Finally, the representative of Ireland emphasized that the Irish Government was very concerned by the suggestion that quasi-judicial bodies established to safeguard workers' rights would not, in the application of the "fair and reasonable" test, ensure that workers have an adequate means of subsistence. The Irish Government refutes any such suggestion, noting that no concerns in this regard have been raised at national level.

243. In reply to a question from ETUC, the representative of Ireland noted that, unlike in certain European countries, there is not a single standard of "fair and reasonable". However, the rules of equity dictate that a concept similar to the "fair and reasonable" test set out in the 1991 Act be employed in instances where orders are being made which result in attachments to individuals' earnings in order to ensure that an employee has enough financial means.

244. In reply to a question from the Chair, the Representative of Ireland said that there is legislation authorising deductions for child support. Financial circumstances are taken into account in the making of such orders.

245. The GC took note of the information provided, invited the Government of Ireland to provide clear and detailed information in the next report and decided to wait for the ECSR's next assessment.

RESC 4§5 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 4§5 of the Charter on the ground that, after all authorised deductions, the wages of workers with the lowest pay do not enable them to provide for themselves or their dependants.

246. The situation has not been in conformity since Conclusions VIII (1984).

247. The Representative of Italy observed that the Committee, when examining the situation in Italy, took into consideration the limits applicable to attachment of wages as determined by Presidential Decree No. 180/1950 of 5 January 1950 standardising the law on the assignment or attachment of civil servants' payments, wages and pensions, and by Article 545 of the Code of Civil Procedure. Furthermore, she said that this situation has been changed: the Act No. 132, in force since 6 August 2015, modified Article 545 of the Code of Civil Procedure. Now, deductions cannot be done on the income below 150% of social assistance which amounts to 672€ per month. In other words, the elusive amount of salary amounts to 1,374 €.

248. In reply to a question from the Chair, the representative of Italy said that there is no minimum wage in Italy.

249. The GC took note of the information provided on the new legislation and decided to wait for the ECSR's next assessment.

RESC 4§5 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 4§5 of the Charter on the ground that after authorised deductions, the wages of workers with the lowest pay do not enable them to provide for themselves or their dependants.

250. The situation has not been in conformity since the Conclusions 2007.

251. The Representative of Lithuania noted the difficulty in understanding the ECSR's conclusions. In 2007 and 2010, the conclusions were of a general nature and did not mention workers with the lowest pay. At the 123rd GC meeting, the Secretariat had explained that those conclusions could be linked with Conclusion 2010 of non-conformity issued under Article 4§1. Consequently, the Lithuanian Government had made efforts to remedy the situation under Article 4§1. The situations concerning deductions from wages remained the same. The fact was that all deductions could be made only in cases prescribed by law. Deductions from the minimal monthly wage would exceed 20 % only in exceptional cases (for example in the case of the compensation of a victim of a criminal act, deductions were authorised by several

papers). However, the total amount of deductions would not exceed 50 % of the minimal monthly wage.

She explained that only the part of the wage which exceeded the minimum wage was subject to deductions at the rate of 70%. The Representative of Lithuania concluded by saying that a new Labour Code was being drafted and that the drafting group was aware of the ECSR's conclusions.

252. The Chair proposed that 4§4 and 4§5 be submitted for discussion with the ECSR in May 2016.

253. The GC noted that there had been no changes in the situation since its last conclusions, hoped that the minimum wage could be increased in order to meet the requirements of Article 4§1 and decided to wait for the ECSR's next assessment.

RESC 4§5 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 4§5 of the Charter on the ground that, after all authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves and their dependants.

254. The situation has not been in conformity since Conclusions 2007.

255. The Representative of the Republic of Moldova said that accordingly to the Ministry of Justice, it almost never happens to accumulate some enforceable titles on the injury to the employer and the family allowances that address 50-70% of deductions, in particular regarding the wages of workers with the lowest pay. In fact, a judicial body examines each case individually bearing in mind the financial situation of both parties and it decides the most favorable level of deductions from the point of view of respect for fundamental rights of the worker and the best interest of the child. If the personal financial situation is weak, the judicial body has a possibility to decrease the level of deductions.

In addition, the Representative of the Republic of Moldova said that the minimum wage is reviewed annually and it is periodically adjusted to the inflation rate. A person whose income is very law is eligible to receive social assistance.

256. The GC took note of the information provided and decided to wait for the ECSR's next assessment.

RESC 4§5 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 4§5 of the Charter on the ground that there are insufficient guarantees in place to prevent workers from waiving their right to limits to deduction from wages.

257. The situation has not been in conformity since Conclusions XVI-2 (2004).

258. The Representative of Norway said that in accordance with the Working Environment Act, no amounts may be deducted from pay or holiday pay unless the right to make such deductions arises from specific provisions; deductions may – for instance - be made when authorized by law, in respect of trade union dues or when stipulated in advance by written agreement. The amount of the deduction may however not be unlimited. As for the deductions which are not otherwise determined and limited by law or collective agreement, a provision clearly limits the right of deduction to the part that exceeds the amount reasonably needed by the employee to support himself and his household. The understanding of this provision will be the same as in a corresponding rule laid down in the Creditor Safety Act, relating to the right to attachments to wages.

Furthermore, the Representative of Norway pointed out that as from 1 January 2010, the relevant limitation in the Working Environment Act also applies to deductions agreed on in advance. This amendment was made as a direct response to the conclusion of non-conformity from the Committee at this point. Despite the legal amendment, the Committee confirmed its conclusion of non-conformity. The Government of Norway cannot totally agree with the Committee's understanding at this point as a clear provision now prohibits the possibility of depriving employees of their means of subsistence. Hence, the parties are not free to agree what they want at this point and the employee cannot waive his rights to the statutory limitations. Nor is it left to the employer to make the final considerations at this point.

The Representative of Norway added that if the legal limitations are not respected by the employer or the employer and the employee do not agree about the level of deduction, the employee may take the case before the court of justice at any stage. The violation of the limitation rule is considered in the Working Environment Act as a criminal offence.

Finally the Representative of Norway recalled that the regulation of June 2014 lays down specific rates regarding subsistence. The legal basis of the regulation is the Creditor Safety Act, which has a similar provision as the limitation rule in question. Due to the reference to the Creditor Safety Act in the preparatory works, the new regulation will be the basis also for the assessment pursuant to the WEA of the amount reasonably needed for subsistence for the worker and his/her household. Relevant details concerning this regulation will be provided in the next report.

259. The GC took note of the information provided on the new legislation and decided to wait for the ECSR’s next assessment.

RESC 4§5 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 4§5 of the Charter on the ground that guarantees in place to prevent tenured civil servants and civil service contractual staff from waiving their right to limitation of deduction from wages are insufficient.

260. The situation has not been in conformity since Conclusions XIII-5 (1997).

261. The Representative of Portugal said that according to the General Labour Law on Public Functions (LTFP) - the Law No. 35/2014, the worker cannot authorise the deduction of an amount higher than one sixth of his/her remuneration. The worker can only authorise the public employer to make any discounts or deductions from his/her remuneration in the cases of meals in the workplace, telephone use, supply of foodstuffs, fuels or materials, at the worker's request, as well as other expenses led by the public employer on behalf of the worker with his/her prior approval. However, these deductions can never exceed one sixth of the remuneration. That limit does not include deductions for the State, Social Security or other entities, required by law.

Furthermore, the Representative of Portugal noted that the work regime included in the LTFP must be seen with the provisions of the Code of Civil Procedure (approved by Law No. 41/2013 of 26 June 2013) which establishes that two thirds of the net share of wages cannot be seized. The law establishes as a maximum limit the amount equivalent to three national minimum wages at the date of each seizure and as a minimum limit, when the person does not have another income, the amount equivalent to one national minimum wage (RMMG).

262. The GC took note of the information provided on the new legislation and decided to wait for the ECSR's next assessment.

RESC 4§5 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 4§5 of the Charter on the ground that, after the subtraction of the combined amount of all authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

263. The situation has not been in conformity since Conclusions 2007.

264. The Representative of Romania said that the Fiscal Code established the legal framework for taxes and compulsory social contributions. In conformity with Article 56 of the Code, natural persons are entitled to a deduction from their monthly net wage of an amount in the form of personal deduction which are calculated taking into account the number of dependents. For tax payers who earn gross monthly wages between 1,000.01 RON and 3,000 RON, the value of personal deductions is calculated according to the Order of the Minister for Public Finance No. 2016/2005. In the case of

contributors who earn gross monthly wages over 3,000 RON, no personal deductions are provided. She added that Article 57 of the Fiscal Code provides for the calculation and payment methods.

The Representative of Romania noted that the Committee did not consider the provisions of the Fiscal Code in the assessment of the situation in Romania under Article 4§5 of the Charter.

265. The GC took note of the information provided, invited the Government of Romania to provide clear and detailed information in the next report and decided to wait for the ECSR's next assessment.

RESC 4§5 RUSSIAN FEDERATION

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 4§5 of the Charter on the ground that, following all authorised deductions, the wages of employees with the lowest pay do not enable them to provide for themselves or their dependants.

266. It is the first time the Committee examines the situation with regard to the protection of wages in the Russian Federation.

267. The Representative of the Russian Federation said that a general agreement between the national union of trade unions, national confederations of employers and the Government provides for consultations in 2014-2016 regarding the development of consensus proposals on the gradual increase of minimum wage in the years 2014 – 2016 up to the subsistence minimum level of the working population. The Ministry of Labour and social partners, including the Russian tripartite committee for the regulation of social and labour relations discussed several times a deadline and mechanisms of the minimum wage increase. Also, the State Duma held a round table on the subject. However, no consensus has been reached as regards the definition of "minimum wage".

She added that the working population in the Russian Federation comprises 72 million people; 46 million of them are employees. 2% of employees (900 000 people) receive the minimum wage.

268. The GC took note of the information provided on the Russian tripartite committee and decided to wait for the ECSR's next assessment.

RESC 4§5 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 4§5 of the Charter on the grounds that:

- *workers may waive their right to limitations on deductions from wages;*
- *after all authorised deductions, the wages of workers with the lowest pay do not enable them to provide for themselves or their dependants.*

269. The situation has not been in conformity since Conclusions 2007.

First ground of non-conformity

270. The Representative of the Slovak Republic noted that the ECSR based its conclusion on the provisions of Section 131 paragraph 3 of the Labour Code which says that deductions could be agreed upon between the employer and employee in written form. However, he pointed out that this provision of the Labour Code had to be interpreted together with the paragraph following it, which says that deductions from wages cannot be higher than the amount specified by the Government Regulation No. 268/2006 on Deductions from Wages and the Act 233/1995 Coll. on Judicial Executors and Enforcement Actions (Enforcement Rules). The Article 71 paragraph 1 sentence 1 of the Enforcement Rules Act specifies that if there are deductions from the wage to be made, only one third of the net wage can be deduced.

Second ground of non-conformity

The Representative of the Slovak Republic said that even if deductions are to be made, workers still have sufficient funds to ensure a decent standard of living for themselves and their dependants. The deduction from wage system is set in a way which guarantees that workers are never left without adequate resources to ensure a decent standard of living. The threshold for deductions from wages was set on the basis of proposals from social partners.

271. The GC took note of the information provided on the new legislation and decided to wait for the ECSR's next assessment.

RESC 4§5 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 4§5 of the Charter on the ground that, after all authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependants.

272. The situation has not been in conformity since Conclusions XVI-2 (2003).

273. The Representative of Turkey said that according to the Turkish legislation, the wages of workers with the lowest pay are protected against all authorized deductions. One quarter of the wages can be deducted, transferred or assigned to a third party in a

month, provided that any allowances awarded by a judge to members of the employee's family are not included in this sum. This provision shall apply without prejudice to the rights of persons entitled to alimony. Such criteria as size of the family, number of dependents, number of children and number of wage earners in the family are taken into consideration by the judge. Deductions which deprive workers of their livelihoods are forbidden by the courts.

Subsequently, the representative of Turkey explained that the minimum wage is determined together with social partners by taking into consideration the living standards and economic and social conditions of the country. In Turkey, minimum wage - after the tax deductions – amounts to 1000 TL. The minimum wage is reviewed twice a year and it is periodically adjusted to the inflation rate in consultation with the social partners. According to the legislation, at least 750 TL of the minimum wage is under protection, and this sum could be increased by the decision of the judge. Deduction should be fair and reasonable.

The representative of Turkey added that no employer has right to impose a fine on an employee's wage for reasons other than those indicated in the collective agreement or the employment contract. The employee must be notified of any wage deductions for fines and informed of their reason.

274. The GC took note of the information provided, invited the Government of Turkey to provide clear and detailed information in the next report and decided to wait for the ECSR's next assessment.

RESC 4§5 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 4§5 of the Charter on the ground that, following all authorised deductions, the wages of workers with the lowest pay are not sufficient to enable them to provide for themselves or their dependants.

275. The situation has not been in conformity since Conclusions 2010.

276. The Representative of Ukraine pointed out that the last two years have proven the most difficult in the history of the country with over 1.5 million internally displaced persons because of the military actions in eastern Ukraine. In 2014, all social measures, including minimum wage were frozen.

She added that the Government of Ukraine has managed to stabilize the economic situation in the country and the Parliament adopted the law in September 2015 on the strengthening of social standards. The updated information will be submitted in the next report under this thematic group.

277. The GC took note of the information provided, encourages Ukraine to bring the situation into conformity with Article 4§5 of the Charter and decided to wait for the ECSR's next assessment.

Article 5 - Right to organise

RESC 5 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 5 of the Charter on the grounds that:

- *it has not been established whether there is adequate protection against discrimination for employees who are trade union members or participate in trade union activities;*
- *it has not been established that trade union representatives have access to workplaces to carry out their responsibilities;*
- *the minimum membership requirements set for forming trade unions and employers' organisations are too high;*
- *the following categories of workers cannot form or join trade unions of their own choosing: employees of the Prosecutor's Office, civilians employed by the police and security service, self-employed workers, those working in liberal professions and the informal sector workers;*
- *police officers are prohibited from joining trade unions.*

278. The Secretariat said with the exception of the fifth ground of non-conformity (prohibition for police officers to join trade unions) all the other grounds were non-conformity situations for the first time.

First ground of non-conformity

279. The Representative of Armenia said that according to the Labour Code an employment contract could not be terminated due to membership in a trade union or involvement in the activities of a trade union. As for future amendments to the law, the Government of Armenia would study international experience in anti-discrimination legislation.

Second ground of non-conformity

280. The Representative of Armenia said that the law allowed members of trade unions to visit the workplace and carry out their trade union functions including conducting collective bargaining. This information may not have been included in the initial national report.

Third ground of non-conformity

281. The Representative of Armenia said that the issue of minimum membership requirements had been discussed by the Tripartite Committee in September 2015. The Tripartite Committee had been invited to make proposals for amending the law to bring it into conformity with the European Social Charter.

Fourth and fifth ground of non-conformity

282. The Representative of Armenia said that the Minister of Labour and Social Affairs had informed the relevant bodies including the Prime Minister of this Conclusion of non-conformity. To date, only the police service replied in saying that the Conclusion would be studied when making proposals for future reforms.

The Representative of Lithuania as well as the Representative of ETUC deplored that no relevant new information could be provided on the third to fifth ground of non-conformity.

283.. Following a question from the Representative of IOE on the minimum number required to form an employers' organization the Representative of Armenia replied that at the national level it was more than 50 %.

284. The Representative of the Netherlands said that trade union rights are to be considered as basic human rights. Given that on these issues of paramount importance any positive developments were missing he proposed to vote for a warning.

285. The GC voted for a warning which was not carried (14 in favour; 16 against).

The GC asked the Government of Armenia to make efforts to be in compliance with the European Social Charter and decided to await the next assessment of the ECSR.

RESC 5 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 5 of the Charter on the grounds that:

- *it has not been established that, in practice, the free exercise of the right to form trade unions is ensured in multinational companies;*
- *it has not been established that there is an adequate and proportionate compensation to the harm suffered by a worker discriminated against for having joined a trade union;*
- *the social and economic interests of the police are not protected by professional organisations or trade unions.*

First ground of non-conformity

286. The Secretariat said that the situation was not in conformity since Conclusions 2010.

287. The Representative of Azerbaijan confirmed that most of multi-national companies discouraged the foundation of trade unions, in particular in the oil, gas, construction and service industry.

Second ground of non-conformity

288. The Representative of Azerbaijan said that according to the Labour Code any kind of discrimination on the basis of membership in a trade union was prohibited. The legislation did not foresee any compensation for discrimination for trade union membership. However, appeal to the court was possible. In addition, the Labour Code prohibited terminating a labour contract on the basis of membership in a trade union. If the right of equal treatment was violated, the criminal code applied with punishments up to five hundred manats or up to one year of prison.

289. Following a specific question from the Representative of ETUC the Representative of Azerbaijan admitted that members of the police had not the right to form and join trade unions.

Third ground of non-conformity

290. The Representative of Azerbaijan said that the social and economic rights of the police were ensured by the Human Resources Department of the Ministry of Internal Affairs.

291. In the ensuing discussion, the Representative of Lithuania found the second ground of non-conformity very serious. In the past, the GC had already voted for a warning when the compensation was not considered 'adequate'.

292. The GC voted for a warning on the 2nd ground of non-conformity which was carried (18 in favour; 6 against).

The GC urged the Government of Azerbaijan to make efforts to be in compliance with the European Social Charter and decided to await the next assessment of the ECSR.

RESC 5 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 5 of the Charter on the grounds that:

- *legislation does not provide for adequate compensation proportionate to the harm suffered by the victims of discriminatory dismissal based on involvement in trade union activities;*
- *foreign workers' right to form or to participate in the formation of trade unions is subject to prior authorisation.*

First ground of non-conformity

293. The Secretariat said that the situation was not in conformity since Conclusions 2010. In 2011, the GC had voted on a warning which had been carried (21 in favour, 4 against).

294. The Representative of Bulgaria explained the relevant Articles of both the Labour Code and the Discrimination Act. These Articles complemented each other in situations where claims were forwarded simultaneously. However, they could also apply separately and independently meaning that even if compensation was awardable for the period during which the worker had been unemployed, there was no prohibition for claims under the relevant Article of the Discrimination Act. The reason behind this was the different grounds for awarding compensations. One ground could be any kind of unlawful dismissal; the other ground could be used in all cases of discriminatory actions.

The Representative of Bulgaria summarized by saying that arguments put forward by the Bulgarian Government had not been sufficiently valued by the ECSR. Upon 'discriminatory dismissal', anyone including those discriminated against because of 'trade union membership' were entitled to compensation for material and non-material damages.

Second ground of non-conformity

295. The Representative of Bulgaria noted that since 15th ~~of~~ August 2002 a regulation was in force authorizing foreigners with an extended residence permit to carry out a non-profit activity in the country. According to the Government of Bulgaria the simple fact that an authorization was to be issued did not limit at all the right of foreigners to organize.

296. Replying to questions from the Representatives of Lithuania and ETUC the Representative of Bulgaria provided the following clarification; the upper limit of six months' salary as compensation was prescribed by the law on unlawful dismissal whereas compensation due to discriminatory acts had no upper limit.

297. As for the second ground of non-conformity the Representative of Bulgaria said that the ESCR must have been confused. She clarified that a foreigner legally residing in Bulgaria was allowed to form and join a trade union.

298. The GC invited the Government of Bulgaria to provide the precise information in the next report and decided to await the next evaluation of the ECSR.

RESC 5 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 5 of the Charter on the grounds that it has not been established that:

- *the right to form trade unions is guaranteed in practice;*
- *the right to join a trade union is guaranteed in practice.*

First and second ground of non-conformity

299. The Representative of Estonia felt that the ECSR conclusion of non-conformity was misleading because it described discrimination problems in Estonia as widespread. The real situation was that trade union membership only rarely led to labour disputes.

Consequently, the conclusion of non-conformity did not result in an amendment of either the Constitution, or the Trade Unions Act or the Equal Treatment Act. However, a revision of the Penal Code entered into force on 1 January 2015. It prescribed that it was subject to pecuniary punishment or up to one year of imprisonment, if founding of a religious association/political party/trade union was prevented or if a person was compelled to join such an association or if a person was prevented from joining it.

300. The GC took note of the positive developments with respect to the revision of the Penal Code and decided to await the next evaluation of the ECSR.

RESC 5 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 5 of the Charter on the grounds that:

- *it has not been established that the requirement as to minimum number of members presents no obstacle to the founding of organisations;*
- *it has not been established that the legal framework allowing restrictions on the right to organise that may be included in employment contracts is not detrimental to the right to organise;*
- *the protection against discrimination based on trade union membership in the context of recruitment and dismissal is insufficient;*
- *it has not been established that trade unions are entitled to perform their activities without interferences from authorities and/or employers;*
- *it has not been established that the conditions possibly established with respect to representatives of trade unions are not detrimental to the right to organise;*
- *it has not been established to which extent the right to organise applies to staff of law enforcement bodies and the prosecutor's office.*

301. The Representative of Georgia informed the GC of legislative changes introduced into the Labour Code in June 2013. One of the provisions allowed a trade union to be formed if 50 % of staff adhered to it as compared to 100 % beforehand.

Being a member of a trade union was no justification to be discriminated against. Likewise, the issues with respect to the right to organise and its inclusion in employment contracts were solved. Compensation for unlawful dismissal was introduced. On a general basis compensation was a one month salary whereas it was two months if the contract was terminated on a three day notice. As for the police, they had the right to form a trade union, but did not have the right to strike.

302. The GC took note of the positive developments in Georgia and decided to await the next evaluation of the ECSR.

RESC 5 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 5 of the Charter on the grounds that:

- *certain closed shop practices are authorised by law;*
- *the national legislation does not protect all workers against dismissal on grounds of membership of a trade union or involvement in trade union activities;*
- *police representative associations are prohibited from joining national employees' organisations.*

First ground of non-conformity

303. The Secretariat said that the situation was not in conformity since 1991/1992. In 2010, the national report had not been examined due to its late submission.

304. The Representative of Ireland recognized that certain closed shop practices permitted in Irish law were of a specific concern to the ESCR. However, such arrangements existed only in cases where both trade unions and employers had reached an agreement in the context of the Irish system of voluntary collective bargaining. Any change to this arrangement would require the Irish Authorities to interfere with collective agreements freely negotiated under the Irish system of voluntary collective bargaining.

The Representative of Ireland said that the Irish Courts had considered closed shop arrangements in a number of legal cases. The judgments suggested that employees had a right to dissociate where a closed shop arrangement was introduced and enforced against a worker already in employment (i.e. post entry closed shop). However, there was a presumption of constitutionality in the case of a pre-entry closed shop arrangement as it could be argued that an employee who accepted a job offered subject to his or her joining a trade union could be deemed to have waived his or her right to disassociate. It was up to the individual to decide whether or not to waive this right.

Second ground of non-conformity

305. The Secretariat said that the situation was not in conformity since 1997-1998 onwards.

306. The Representative of Ireland said that the present legislative position of the Government whereby the protection of trade union members against dismissal did not apply to members of trade unions not holding a negotiation license was a reasonable provision being one of a number of legislative provisions aimed at avoiding the proliferation of trade unions. These provisions had ensured a stable climate of industrial relations which had contributed greatly to social and economic progress.

The Representative of Ireland added that insofar as the said legislation might impose a limitation on the rights guaranteed by the European Social Charter, the Government of Ireland would put forward that this legislation was in accord with the objectives of Article G of the Revised European Social Charter which permitted such a limitation where it was considered necessary in a democratic society for the protection of the rights and freedom of others. The granting to members of unlicensed trade unions of the same rights as accorded to members of trade unions holding a negotiation license would be counter-productive to the objectives of the Irish Government in its efforts in the public interest to facilitate the rationalization of the trade union movement and to reduce the number of trade unions so as to improve their organization and bargaining power.

Third ground of non-conformity

307. The Representative of Ireland said that the ECSR decision with respect to Collective Complaint No. 83/2012 – European Confederation of Police (EUROCOP) v. Ireland – had been referred to an independent, comprehensive review of the Irish national police force that is being conducted under the terms of a collective agreement concluded in May 2013 between Government, Unions and representative associations representing public sector workers. In that decision the ECSR found Ireland not in conformity with the European Social Charter on grounds of the prohibition against police representative associations from joining national employees' organizations.

This review was to be completed in the coming months. At this stage it was not appropriate to prejudge the outcome. The Representative of Ireland assured the GC that Ireland had taken full note of the ECSR findings and that they would be fully considered and repeated its commitment to engagement with all relevant parties on these issues with a view to seeking solutions which respect the European Social Charter.

308. The discussion held in the GC focused on the first ground of non-conformity meaning the pre-entry closed shop arrangements permitted according to Irish law. After discussion the closed shop system was considered as an outdated one notwithstanding the point made by the Representative of Ireland regarding the presumption of constitutionality in the case of pre-entry closed shop arrangements.

309. As for the first ground of non-conformity, the GC voted for a warning which was carried (16 in favour; 6 against).

The GC urged the Government of Ireland to comply on all grounds with the European Social Charter and decided to await the next evaluation of the ECSR.

RESC 5 MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 5 of the Charter on the grounds that:

- *trade unions not operating nationwide are required to belong to a national, sectorial or inter-sectorial trade union in order to acquire legal personality which unduly restricts the right to form trade unions;*
- *it has not been established that compensation and penalties are provided for by law in case of discrimination based on trade union membership;*
- *it has not been established that the national law is applied in such a way that it does not impair the freedom to register a trade union.*

310. The Secretariat said that the situation on the first two grounds was not in conformity since 2010 whereas the third ground of non-conformity was a new one.

First ground of non-conformity

311. The Representative of the Republic of Moldova said that the part of the law on trade unions, which prescribed that primary trade unions may acquire the status of legal entity only if they were members of a national branch or a national intersectoral trade union, had not changed.

Second ground of non-conformity

312. The Representative of the Republic of Moldova said that the right of workers to form and join trade unions was sanctioned by 40 to 50 conventional units.

Third ground of non-conformity

313. The Representative of the Republic of Moldova said that her Government applied the law in such a way as to allow the registration of trade unions. For example, since 2009 twenty-two new trade unions had been registered.

314. With respect to the second ground of non-conformity, the Representative of ETUC insisted that a sanction had to be persuasive. In that context, he wished to know the value of a 'conventional unit'. The Representative of the Republic of Moldova replied that the sum was important but could not give a figure to it.

315. The GC encouraged the Government of the Republic of Moldova to be more explicit in the next report and decided to await the next evaluation of the ECSR.

RESC 5 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 5 of the Charter on the ground that the criteria used to determine representativeness are not adequate.

316. The Representative of Portugal said that no new information could be provided on this issue. The origin of the conclusion of non-conformity had been an observation of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) which requested in 2012 that the Government worked out objective, precise and predetermined criteria to evaluate the representativeness and independence of employers' and workers' organisations.

The Representative of Portugal stressed that the Government could not directly interfere in this matter because it was a privileged competence of the independent acting Economic and Social Council. In 2008, the President of the Economic and Social Council took the initiative of launching a general discussion on the composition of the Council with the cooperation of the members. This initiative has not provided any results yet. The Portuguese Government had no competence in this area. Recently a new Council President had taken office. He may take up and conclude the work done by his predecessor.

317. The GC wished the new President of the Economic and Social Council success in his efforts and decided to await the next evaluation of the ECSR.

RESC 5 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 5 of the Charter on the ground that the right of the non-representative trade unions to exercise key trade union prerogatives is restricted.

318. The Secretariat said that the situation was not in conformity on this specific ground for the first time.

319. The Representative of Romania explained that the notion of non-representative was not defined in the national legislation. Trade union rights were guaranteed by law to all trade union organizations. Trade unions could support and assist their members and have the right to defend the individual and collective interests of members derived from the employment relationship and the collective bargaining through specific actions as provided by the law.

In accordance with the law, trade union was the generic name for the union, federation or confederation union. It was based on the right of free association in order to protect the rights enshrined in the national legislation, collective agreements and individual employment or collective labor agreements as well as in the covenants, treaties and conventions to which Romania was a party with a view to promoting professional, economic and social interests of its members. Several Articles of national law guaranteeing trade union rights and their prerogatives were quoted. Thus, trade unions could support and assist their members and have the right to defend the individual and collective interests of members derived from the employment relationship and the collective bargaining agreement through the specific actions provided by law, both in court and in public institutions/authorities. In order to achieve the purpose for which they were established, trade unions had the right to use specific means such as negotiations to settle disputes through conciliation, mediation, arbitration, petition, picket protest, march, rally and demonstration or strike, as provided by the law.

320. Several Representatives looked for further information as to which key trade union prerogatives the non-representative trade unions were allowed to carry out. In re-reading the narrative part of the ECSR conclusions they felt that important trade union activities such as collective bargaining were to be carried out by representative trade unions only.

321. The Representative of ETUC saw the underlying reason of the ESCR conclusion of non-conformity in the amended law on Social Dialogue (July 2013) which provided new rules for representativeness at company level. This amended law recognized the right of a trade union to bargain and sign a collective agreement only if its members represented at least half plus one of the company's total number of employees (compared with one third in the previous legislation). This meant that only one trade union could be representative in a company compared up to three under the previous legislation. However, this situation could also mean that in some companies there were no trade unions at all and representation would then fall on some sort of workers' representation.

322. The Representative of the Netherlands said that the amended law on Social Dialogue was a governmental attempt to reshape the landscape of trade unions, an attempt which he considered unacceptable and in violation of basic human rights. Consequently he suggested voting for a warning.

323. The GC voted for a warning which was not carried (7 in favour; 17 against).

324. The Representative of Romania deplored that the GC discussion deviated from the specific ECSR conclusion of non-conformity as well as the fact that her attempts to re-open the debate were not admitted. The Representative of Lithuania agreed that the debate went beyond the initial ground of non-conformity. The Chair as well as the Representatives of the Netherlands and ETUC disagreed. The Chair maintained that the discussion tried to clarify the underlying reasons for the conclusion of non-conformity.

RESC 5 SERBIA

The Committee concludes that the situation in Serbia is not in conformity with Article 5 of the Charter on the ground that the minimum threshold imposed by legislation in order to form an employer's organisation constitutes an obstacle to the freedom to organise.

325. The Representative of Serbia said that on 12 November 2014 the Minister of Labour, Employment, Veterans and Social Affairs had issued a decision to set up a specific Working Group. The Working Group had been entrusted to conduct an analysis of the provisions on social partnership and collective bargaining including an analysis of compliance with International Labour Standards of all relevant Serbian legislation. This Working Group was authorized to evaluate all relevant law in Serbia in this field, in particular labour law, strike law, social and economic council law, amicable settlement of labour disputes law and employment law bearing in mind all comments and recommendations of the ILO Committee of Experts and the relevant ECSR conclusions. The aim was to harmonize Serbian law with international standards.

This Working Group was supposed to finalize its work by November 2015. The intention of the Government was to incorporate its findings into a new labour law due to be adopted in June 2016. This law was supposed to be in line with international standards.

326. The GC took note of the new developments and decided to await the next evaluation of the ECSR.

RESC 5 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 5 of the Charter on the grounds that:

- *it has not been established that the fees charged for the registration of the employers' organisations are reasonable.*
- *it has not been established that domestic law provides effective sanctions and remedies in case of discrimination and reprisals based on trade union membership and activities.*

- *it has not been established that domestic law provides for compensation that is adequate and proportionate to the harm suffered by the victim in case of discrimination and reprisals based on trade union membership and activities.*
- *it has not been established that the criteria used to determine representativeness are open to judicial review.*
- *the right of nationals of other Parties to the Charter to form trade unions is restricted.*

327. The Secretariat said that all these grounds were first time situations of non-conformity.

First to third ground of non-conformity

328. The Representative of Ukraine said that with respect to the first three grounds of non-conformity a joint consultation of the Ministry of Social Policy and the Ministry of Justice with the ILO correspondent in Ukraine will take place in November 2015. The main aim of the consultation would be to analyze the practical implementation of the existing national legislation with a view to the sanctions imposed in case of discrimination based on trade union membership as well as in how much compensation provided to victims of discrimination could be considered adequate.

During this consultation the issue of fees charged for the registration of employers' organizations would also be discussed because it fell under the responsibility of the Ministry of Justice.

Fourth ground of non-conformity

329. The Representative of Ukraine said that a law on social dialogue had been adopted in December 2010. This law prescribed that the criteria used to determine representativeness were to be open for judicial review.

Fifth ground of non-conformity

330. The Representative of Ukraine said that foreigners had the right to join trade unions but not to form trade unions.

331. Replying to a question from the Representative of Lithuania, the Representative of Ukraine said that consultation with relevant Ministries and ILO experts would be held in order to seek a solution to the question of foreigners to be allowed to form trade unions.

332. The GC took note of the on-going and planned consultations within other relevant Ministries and the ILO experts and decided to await the next evaluation of the ECSR.

Article 6.2 – Negotiation procedures

RESC 6§2 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 6§2 of the Charter on the ground that there is no adequate promotion of voluntary negotiations between employers or employers' organisations and workers' organisations.

333. The Secretariat said that it was a first time situation of non-conformity.

334. The representative of Azerbaijan said that art.25 of the labour code of the Republic of Azerbaijan specifies the right to enter into collective agreement. Regarding the first ground of non-conformity, according to art.30 of the labour code, drafting collective agreement and entering into such agreement and its term is determined by the agreement of Parties concerned and it's officially documented. The Cabinet of Ministers of the Republic of Azerbaijan, the Azerbaijan Confederation of Trade Unions and The National Confederation of Employer (Entrepreneurs) of Azerbaijan stipulated a "General Collective Agreement" for the period of 2014-2015. This agreement is the basis for the development and conclusion of Tariff agreements and collective contracts. The parties have signed this document and stated that they would try to regulate the working relations through social dialogue and collective agreements. With regards to the inquiry on the extension of the collective agreement it was noted that the Article 32 of the Labour Code defines the validity term for the collective agreement. According to this article, the validity of the agreement can be from one to three years. The collective agreement is applicable to all staff members, including those hired after its signing. Art. 36 of the Labour Code defines the Sectorial (tariff) collective agreement which can be signed between ministries of the Republic of Azerbaijan and professional and sectorial unions of trade unions, This applies also to public servants working in the ministries. Such sectorial collective agreement is made between the Ministry of Labour and Social Protection of Population and the National Committee of Azerbaijan State Departments and Public Servants Trade Union Confederation.

335. The Lithuanian representative said that this case of non-conformity originated mainly from a lack of information that should have been provided by the Azerbaijan government. It was emphasized that all countries should be more careful and pay more attention to the deadline fixed in order to respond timely to the ECSR.

336. The Polish representative asked for more statistics on collective agreements and on information concerning specific training for social partners on how to conduct collective agreement negotiations.

337. The Azerbaijan representative said that she was not in a position to answer these questions but confirmed will provide additional information at a later stage.

338. The GC took note of the information provided. It asked the representative of Azerbaijan to provide the required to the questions posed by the ECSR and to give more comprehensive detailed information on the specific situation regarding collective agreements. This information should include statistical data as well as specific initiatives undertaken to organize special training for social partners.

The GC decided to await for the next assessment of the ESCR.

RESC 6§2 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 6§2 of the Charter on the ground that machinery for voluntary negotiations is not sufficiently promoted.

339. The Secretariat said that the situation was not in conformity since Conclusions 2010.

340. The representative of Bulgaria said that art. 3 of the Labour code on “Tripartite cooperation” was recently amended in July 2015 inserting new paragraph 3 and paragraph 4. The amendments adopted created a statutory opportunity to signing agreements for passing statutory instruments between representatives of employee’s and employer’s organizations. The State encourages the development of bipartite social dialogue on matters concerning the regulation of employment relationships, social security relationships and the standard of living, which are also the subject of tripartite cooperation. In September 2015, the Council of Minister adopted a Decision approving the draft Law amending and supplementing the Civil Servant Act. The proposed amendments to the Civil Servant Act regulate the right of civil servants to strike and collective bargaining. The proposed amendments to the Civil Servant Act are connected with the alignment of the Bulgarian legislation with international legal commitments. There are regulated matters that could be the subject of the collective agreement in the state administration, as well as the right of civil servants to strike and the categories of senior officials who cannot strike. The Bulgarian representatives explained in details the major changes taking place in the collective bargaining field. In the light of the above mentioned reforms concluded saying that the Bulgarian government believes that the social partners are actively involved in the procedure for extension of a collective agreement concluded at the industry or at the sectorial level.

341. The representative of ETUC wanted to know whether the number of workers covered by collective agreements decreased in recent years. He also wanted to know whether the new law on civil servants had finally been adopted.

342. The representative from Bulgaria answered that she would provide the requested statistical data in the next report. Concerning the draft law it had been approved by the National Council for Tripartite Cooperation and by the Council of Administrative Reform and was now waiting for the final approval of the Parliament.

343. The IOE representative asked for clarification on "how damages are calculated in the event that one month following a proposal for negotiation submitted by trade union, an employer or employer's organisation who are required to negotiate fail to do so", because it seemed that was not a way to encourage collective free bargaining. Instead it looked more like forcing the employer to conclude an agreement. She also asked what kind of mediation and arbitration procedure existed before going to the civil court.

344. The Bulgarian representative answered that the labour disputes could be put for consideration by the National Institute for Arbitration and Conciliation or by the court. She added that the information requested by the IOE representative would be provided in the next report after consultation of the Labour Law Directorate at the Ministry.

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

RESC 6§2 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 6§2 of the Charter on the ground that the promotion of collective bargaining is not sufficient

346. The Secretariat said that it was a first time situation of non-conformity.

347. The Estonian representative said that the "Employment Contracts Act (ECA)" that entered into force on 1 July 2009, established derogations that can be made by a collective agreement. For example, the calculation period for summarized working time (up to 4 months) may be extended by a collective agreement to up to 12 months in certain sectors. Those derogations offer employers and employees a chance to agree on more suitable terms by concluding a collective agreement in comparison with the Employment Contract Act, provided that working does not harm employee's health and safety. Also, it enables employees to promote their interests more easily since there is the employer's interest in concluding the collective agreement. Therefore, it encourages parties to enter into a collective agreement. The government has supported, using

different monetary funds (European Social Fund, Norway Grants) the administrational development of social partners to raise their capacity as social partners to each other and to government and to educate their members and trade unions shop-stewards about labour law and to raise their negotiation skills. Next year will be completed the next labour force survey that is done after every five years, and that will give us information how big a percentage of work force is now covered by collective agreements. The last time (2009) the percentage was 33. To improve the legal framework in the end of September (30) of this year the Estonian Parliament adopted the amendments to the Collective Labour Dispute Resolution Act. The amendments include the regulation covering the election, functions and proceedings of the national conciliator. The representative of Estonia concluded by saying that social partners are very much involved in composing new regulations and in choosing new directions for Estonian labour and social policy.

348. The GC took note of the information provided. It requested the government of Estonia to respond timely to the questions posed by the ECSR and decided to await the next assessment of the ECSR.

RESC 6§2 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 6§2 of the Charter on the grounds that:

- *voluntary negotiations between employers or employers' organisations and workers' organisations are not promoted in practice;*
- *it has not been established that an employer may not unilaterally disregard a collective agreement;*
- *it has not been established that the legal framework allows for the participation of employees in the public sector in the determination of their working conditions.*

349. The situation has not been in conformity with the Charter since Conclusions 2010 for the second ground of non-conformity.

350. This was a first time situation of non-conformity for the first and the third ground.

<u>First ground of non-conformity</u>

351. The representative of Georgia said that regarding the support of negotiations between employees and employers, very important legislative changes were carried in the Labour Code of Georgia in 2013, three Articles (Artt. 41, 42 and 43 of Chapter X) were amended concerning the collective agreement. The Labour Code of Georgia has been amended with the purpose of enhancing the promotion and development of social

dialogues between employers and employees. These changes aim to facilitate the negotiation in order to conclude a collective agreement.

Second ground of non-conformity

352. The representative of Georgia said that from 2013, the Georgian Labour Code established the grounds for terminating labour agreements, which applies to both types of the labour contract – for individual and collective labour agreements. The employer can terminate the agreement only in cases envisaged by the Labour Law. A collective agreement shall be concluded only in writing, which can be fixed-term and open-ended. In case of a fixed-term, the collective agreement must contain its effective and expiry dates. Also the open-ended collective agreement must contain clauses for its revision, modification, and termination. According to all this, the legislation gives enough guarantees to employees against the possibility that an employer could voluntarily disregard the application of a collective agreement unilaterally.

Third ground of non-conformity

353. The representative of Georgia said that the Government of Georgia has started to work on a package of amendments to the Law on Public Service. This provision will allow employees to participate in the determination of their working conditions. Moreover, the participation of employees in the public sector in the determination of their working conditions will be part of a new EU pilot project, which will organize the piloting of these activities in the public authorities of Georgia. The results of this on-going project will be provided as soon as they will be available.

354. The representative of the Netherlands asked the Georgian representative to provide additional information on the second and third ground of non-conformity.

355. The Georgian representative said that the Government of Georgia was in the process of changing and amending their Labour code in order to respond to the questions posed by the second ground of non-conformity. She admitted that for the third ground of non-conformity the Georgian Labour Code did not envisage any possibility for the public sector employees to participate in the determination of the working conditions.

356. The Norwegian representative asked to provide statistical data on collective agreements. The Georgian representative said that this information could not be provided due to the absence of a National Statistical Institute in Georgia. The Government relied on the Trade Unions' assistance to get this kind of statistics.

357. The Georgian representative said that the Government hoped that the newly established Labour Inspectorate within the Ministry of Labour (established 2 years ago) would be able to collect statistical data concerning collective agreements as from 2016.

358. The Chair noted that the latest statistics dated back to 2010 and originated from the ILO. This information showed that 25.9% of the workers were covered by collective agreements. Regarding the first and second ground of non-conformity it seemed that the Georgian legislation had not been followed by practical implementation.

359. The Lithuanian representative recalled the importance to provide clear answers to the ESCRs' question on the second ground of non-conformity. She asked the Georgian representative to indicate explicitly if an employer could disregard/not respect unilaterally a collective agreement in practice even if the legislation requested it.

360. The Georgian representative said that the Government would provide additional information in the next report concerning the conclusion on labour disputes.

361. The representative of the Netherlands asked if the problem was related to the non-application of the law and the lack of control mechanisms. The Georgian representative said that the problem originated from the fact that the Labour Inspectorate had only recently been re-established (2015) after its abolition in 2006. The enforcement of law would be guaranteed once the labour inspection was again operational.

362. The ETUC representative said that the Georgian representative should provide additional information on the second ground of non-conformity. On the third ground of non-conformity he suggested that, since there was an EU OSHA-ILO Project in Georgia to promote the participation of employees in the public sector in the determination of their working conditions, to associate some experts from the Council of Europe to such a project.

363. The GC took note of the information provided. It asked the Georgian Government to provide all the additional information highlighted during the discussion in the next report.

364. The GC decided to await the next assessment of the ECSR.

RESC 6§2 HUNGARY

The Committee concludes that the situation in Hungary is not in conformity with Article 6§2 of the Charter on the ground that no promoting measures have been taken in order to facilitate and encourage the conclusion of collective agreements, even though the coverage of workers by collective agreements is manifestly low.

365. The representative from Hungary said that the legal environment provides for adequate protection of the right to organise and bargain collectively. The trade unions may organise themselves within the workplaces pursuant to the provisions of the Labour Code, the employer shall provide for them the basic conditions of functioning and shall not refuse the proposal for collective negotiations. Federations and national confederations function both in the employee and employer organisations for safeguarding their interests. Both the sectorial organisations and the confederations are members of international federations and they participate intensively in the work of such federations - particularly since joining the EU. The organisation and integration of the trade unions have been given an impetus in the recent years.

A Call for tenders was launched in January 2013 with the primary objective of reinforcing and promoting the cooperation of the organisations participating in social dialogue to enable them to strengthen and enhance their capacity and efficiency, and prepared them to better represent the interests of employees and employers.

A specific two years project (2013-2015) entitled ‘For work’ was implemented in a consortium and was based on four pillars: impact assessment of the new Labour Code on employers and employees, promoting the entry into collective agreements by advising, training of entrepreneurs and educating the young people with curricula covering the subjects of the world of work. The right of employees and professionals in the public sector to bargain collectively and organise themselves is guaranteed by the provisions of Act CXCIX of 2011 on Public Service Officials and Act XLII of 2015 on the Service Status of Professional Members of Law Enforcement Agencies. For these categories of employees no collective agreements may be concluded; such agreements are excluded and in this regard no changes have taken place since the relevant acts were promulgated and the conclusion of collective agreements on the workplace level in the public sector is not allowed by law. The collective agreements are concluded at the macro level, and the content of employment relationship is defined by the relevant acts, in the elaboration of which the social partners have the right to be consulted.

Finally, the Hungarian representative gave statistical data as a result of action taken by the government at national level to promote collective bargaining. The number of workers covered by multi employment wage agreements has increased significantly from 160.000 in 2013 to 280.000 in 2014: the number of employees covered by collective agreements in 2013 was 350.000 and increased to 400.000 in 2014.

366. The GC took note of the positive developments in Hungary and encouraged the Hungarian government to continue to develop appropriate training policies and projects in order to help social partners to achieve and increase the number of collective agreements in the country.

The GC decided to await the next assessment of the ECSR.

RESC 6§2 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 6§2 of the Charter, on the ground that the legislation and practice fail to ensure the sufficient access of police representative associations into pay agreement discussions.

367. The Secretariat said that it was a first time situation of non-conformity.

368. The Irish representative apologised for the late submission of the national report. She said that new procedures had been established to seek to ensure that this problem will not occur again in the future.

The Irish representative pointed out that this finding has been referred to an independent, comprehensive review of the Garda Síochana that is being conducted under the terms of a collective agreement concluded in May 2013 between unions and representative associations representing public sector workers on the one part and the Government on the other part. Each of the Associations representing the ranks in the Garda Síochána (the national police force) took part in these discussions.

This review has the following terms of reference:

- *To review and make recommendations on the use by An Garda Síochána of the resources available to it, with the objective of achieving and maintaining the highest levels of efficiency and effectiveness in its operation and administration.*

- *The review shall encompass all aspects of the operation and administration of An Garda Síochána, including:*
  - *the structure, organisation and staffing of An Garda Síochána;*
  - *the deployment of members and civilian staff to relevant and appropriate roles;*
  - *the remuneration and conditions of service of members of An Garda Síochána, including an evaluation of annualised hours/shift pay arrangements;*
  - *the appropriate structures and mechanism for the future resolution of matters relating to pay, industrial relations and attendance matters.*

The final two points in these terms of reference deal with the remuneration and conditions of service of members of An Garda Síochána, and the appropriate structures and mechanism for the future resolution of matters relating to pay, industrial relations and attendance matters.

The Irish representative clarified that the Labour Court, which was established under the Industrial Relations Act, 1946, is not a court of law. It operates as an industrial relations tribunal, hearing both sides in a case and then issuing a Recommendation (or Determination/Decision/Order, depending of the type of case) setting out its opinion on the dispute and the terms on which it should be settled. The review is on-going and is expected to be completed in the coming months. In fact on the 22nd of September 2015 a meeting of all parties was convened with a view to advancing the process.

Finally the Irish representative gave an update on the major reform of Ireland's collective bargaining laws which was brought about by the Industrial Relations (Amendment) Act 2015 which came into effect on 1st August of this year. The legislation was brought forward further to a commitment in the Programme for Government to ensure that Irish law on employees' right to engage in collective bargaining is consistent with recent judgements of the European Court of Human Rights. The legislation balances the interests of workers and employers by providing certainty and clarity for businesses while enhancing collective bargaining in the workplace.

It was finally pointed out that this legislation does not affect the situation as regards the police force (An Garda Síochána) as members of An Garda Síochána are excluded from scope of the Industrial Relations Act.

369. The GC stressed the importance and relevance of the collective complaints procedure in this particular case. It took note of the intention of the Irish government to seek solutions which respect the Charter as a follow up to the ECSR conclusion on the 2013 collective complaints EUROCOP vs Ireland.

The GC invited the Government of Ireland to bring the situation into conformity with the European Social Charter and decided to await the next assessment of the ECSR.

RESC 6§2 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 6§2 of the Charter on the ground that the voluntary negotiations are not sufficiently promoted in practice.

370. The situation has not been in conformity with the Charter since Conclusions 2010.

The Slovak Republic representative gave information about the recent development in the field of promotion of collective bargaining. In 2014, the Act 416/2013 Coll. changed the way in which master level collective agreements are extended. The extension of higher level collective agreements is now possible even without the consent of the employer affected by the extension. The Ministry of Labour, Social Affairs and Family of the Slovak Republic will extend a higher level collective agreement to other employers if at least one of the contracting parties of the original higher level collective agreement submits a proposal for extension. This extension is possible if the employers bound by this collective agreement employ a higher number of workers in the given industry

branch than employers in the same branch that are not covered by this collective agreement. In accordance with the new act, 5 master level collective agreements were extended in such a way in 2014. The Slovak representative said that in 2014, 20 master level collective agreements have been concluded, while in 2013 only 14; this shows that collective bargaining is gradually rising and is better promoted in the Slovak Republic, which is also proven by the fact that in 2014, the number of workers who were covered by a higher level collective agreement increased by 44.12%.

371. The Polish representative asked if the Slovak Government was taking appropriate measures such as specific training to promote collective bargaining skills. The Slovak representative pointed out that the Government had put in place a number of specific projects aiming to emphasize and to strengthen social dialogue on the basis of best practice established in other EU Member states.

372. The GC took note of the positive development in the Slovak Republic and decided to await the next assessment of the ECSR.

RESC 6.2 SWEDEN

The Committee concludes that the situation in Sweden is not in conformity with Article 6§2 of the Charter on the ground that the statutory framework on posted workers does not promote the development of suitable machinery for voluntary negotiations between employers and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements.

373. The Secretariat said that it was a first time situation of non-conformity.

374. Since the latest report Sweden had a new government which has fixed as one of the main priorities the establishment of better and fair working condition for all and to achieve the principle of equal pay for equal work at the same working place according to laws and collective agreements applied in the country where the posted workers temporarily performs his duties, while respecting the free movement of services. At EU level the Government is aiming to make possible a revision of the posting of workers and at national level it strives to amend the rules on posting including the Laval case which is relevant in the case of non-conformity submitted by the ECSR. In their latest report the Swedish representative informed and mentioned that there was an inquiry made by an ad hoc Parliamentary Committee on posting of workers, which is formed of Committee representatives of political parties and Swedish social partners involved and they presented their proposals to the government on the 30th September. They submitted a number of proposals to safeguard the status of collective agreements, for example the Committee suggested the appointment of a representative who is authorised to negotiate and conclude collective agreement when this is requested by an employee's organisations, and also suggested that industrial actions are always permitted in order to achieve collective agreements for posted workers containing minimum conditions under applicable Swedish sectorial agreements. The Committee also proposes the introduction of a new form of collective agreement for posted workers

with particular legal consequences and conditions. The next step of the Government will be to analyse these proposals closely in order to decide how to continue the work, i.e. if and in that case which modifications of national legislation in the field of posted workers might be proposed.

375. In reply to an ETUC representative question on what kind of new form of collective agreement was proposed, the Swedish delegation explained that it is a soft/light collective agreement which will not have the same legal consequences as a normal collective agreement for example the rules on co-determination and the union veto rights will not apply and also the union concluding the agreement will have a new supervisory power. In other words, this collective agreement will have the possibility to ask for additional documentation (employment contract, time sheets etc.) in order to assess the situation of the posted worker.

376. In reply to a question from the chairperson if the government is worried not only to be in line with the EU directive on posted workers but also about this non-conformity situation about this article of the Charter the Swedish delegate confirmed that the new Swedish government is fully aware of the situation.

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

Appendix I

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(1) 131e meeting, Strasbourg, 18-22 May 2015

(2) 132° meeting, Strasbourg, 5-9 October 2015

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Appendix II

Table of signatures and ratifications – situation at 1 December 2015

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	15

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 examined orally following the proposal of the European Committee of Social Rights

RESC 2§1 ARMENIA
RESC 2§1 ESTONIA
RESC 2§1 FRANCE
RESC 2§1 IRELAND
RESC 2§1 ITALY
RESC 2§1 LITHUANIA
RESC 2§1 NORWAY
RESC 2§1 SLOVAK REPUBLIC
RESC 2§1 SLOVENIA
RESC 2§1 “THE FORMER YOUGOSLAV REPUBLIC OF MACEDONIA”
RESC 2§1 TURKEY

RESC 2§3 BOSNIA AND HERZEGOVINA

RESC 4§1 ANDORRA
RESC 4§1 AUSTRIA
RESC 4§1 AZERBAIJAN
RESC 4§1 BELGIUM
RESC 4§1 IRELAND
RESC 4§1 LITHUANIA
RESC 4§1 NETHERLANDS
RESC 4§1 PORTUGAL
RESC 4§1 ROMANIA
RESC 4§1 SLOVAK REPUBLIC

RESC 4§4 ANDORRA
RESC 4§4 ARMENIA
RESC 4§4 AZERBAIJAN
RESC 4§4 BULGARIA
RESC 4§4 ESTONIA
RESC 4§4 GEORGIA
RESC 4§4 IRELAND
RESC 4§4 LITHUANIA
RESC 4§4 MALTA
RESC 4§4 REPUBLIC OF MOLDOVA
RESC 4§4 NETHERLANDS
RESC 4§4 NORWAY
RESC 4§4 PORTUGAL
RESC 4§4 ROMANIA
RESC 4§4 RUSSIAN FEDERATION
RESC 4§4 SLOVAK REPUBLIC
RESC 4§4 SLOVENIA
RESC 4§4 TURKEY
RESC 4§4 UKRAINE

RESC 4§5 ARMENIA
RESC 4§5 AZERBAIJAN
RESC 4§5 BULGARIA
RESC 4§5 CYPRUS
RESC 4§5 ESTONIA
RESC 4§5 FINLAND
RESC 4§5 IRELAND
RESC 4§5 ITALY
RESC 4§5 LITHUANIA
RESC 4§5 REPUBLIC OF MOLDOVA
RESC 4§5 NORWAY
RESC 4§5 PORTUGAL
RESC 4§5 ROMANIA
RESC 4§5 RUSSIAN FEDERATION
RESC 4§5 SLOVAK REPUBLIC
RESC 4§5 TURKEY
RESC 4§5 UKRAINE

RESC 5 ARMENIA
RESC 5 AZERBAIJAN
RESC 5 BULGARIA
RESC 5 ESTONIA
RESC 5 GEORGIA
RESC 5 IRELAND
RESC 5 REPUBLIC OF MOLDOVA
RESC 5 PORTUGAL
RESC 5 ROMANIA
RESC 5 SERBIA
RESC 5 UKRAINE

RESC 6§2 AZERBAIJAN
RESC 6§2 BULGARIA
RESC 6§2 ESTONIA
RESC 6§2 GEORGIA
RESC 6§2 HUNGARY
RESC 6§2 IRELAND
RESC 6§2 SLOVAK REPUBLIC
RESC 6§2 SWEDEN

Appendix IV

List of deferred Conclusions

ANDORRA	RESC 4§3
ARMENIA	RESC 2§4, 4§3, 6§2
AUSTRIA	RESC 4§3, 4§5
AZERBAIJAN	RESC 29
BELGIUM	RESC 4§4, 4§5
BOSNIA AND HERZEGOVINA	RESC 2§2, 2§5, 2§6, 4§3, 5, 6§1, 6§2, 6§3, 6§4, 21, 22, 28
CYPRUS	RESC 2§1, 2§3, 29
ESTONIA	RESC 6§4, 22
FINLAND	RESC 2§4, 6§4, 22
FRANCE	RESC 2§2, 4§1, 4§5, 5
GEORGIA	RESC 4§2
HUNGARY	RESC 2§2, 5, 21, 22
IRELAND	RESC 22
ITALY	RESC 2§2, 4§1, 4§3, 6§3
LITHUANIA	RESC 4§3, 26§1
MALTA	RESC 2§4, 4§1, 4§3, 4§5, 6§4, 26§2, 28
REPUBLIC OF MOLDOVA	RESC 2§2, 2§4, 4§3, 6§3, 26§1, 29
MONTENEGRO	RESC 2§2, 4§2, 4§3, 4§5, 5, 6§1, 6§2, 6§3, 6§4, 28
NETHERLANDS	RESC 4§5
NORWAY	RESC 2§2, 4§1
PORTUGAL	RESC 4§3
ROMANIA	RESC 2§2, 4§3, 6§2
RUSSIAN FEDERATION	RESC 2§3, 2§7, 4§3, 5, 6§1, 6§3, 6§4, 21, 22, 28, 29
SERBIA	RESC 2§2, 4§1, 4§3, 4§5, 6§1, 6§2, 6§3, 21, 22, 26§1, 28
SLOVENIA	RESC 2§2, 4§1, 4§3, 4§5
SWEDEN	RESC 4§4
‘THE FORMER YOUGOSLAV REPUBLIC OF MACEDONIA”	RESC 4§2, 4§3, 4§5, 6§2, 21, 26§1, 26§2, 28, 29
TURKEY	RESC 4§3, 28
UKRAINE	RESC 2§5, 4§3, 29

Appendix V

Warning(s) and Recommendation(s)

Warning(s)[5]

Article 5 **(Right to organise)**

– Azerbaijan
Legislation does not provide for adequate compensation proportionate to the harm suffered by the victims of discriminatory dismissal based on involvement in trade union activities;

– Ireland
Clauses in collective agreements or legally authorized arrangements whereby jobs are reserved in practice for members of a specific trade union are in breach of the freedom to join or not to join a trade union.

Recommendation(s)

–

Renewed Recommendation(s)

–

[5] If a warning follows a notification of non-conformity, it serves as an indication to the state that, unless it takes measures to comply with its obligations under the Charter, a recommendation will be proposed in the next part of a cycle where this provision is under examination.