Strasbourg, 13 February 2013

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EUROPEAN SOCIAL CHARTER

GOVERNMENTAL COMMITTEE

REPORT CONCERNING CONCLUSIONS 2011 OF THE EUROPEAN SOCIAL CHARTER (revised)

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

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

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

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

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I. Introduction

1. This report is submitted by the Governmental Committee of the European Social Charter and the European Code of Social Security (hereafter "The Governmental Committee") made up of delegates of each of the forty-three states bound by the European Social Charter or the European Social Charter (revised)[2]. Representatives of the European Trade Union Confederation (ETUC) attended the meetings of the Governmental Committee in a consultative capacity. Representatives of both the International Organisation of Employers (IOE) and the Confederation of European Business (BUSINESSEUROPE) were also invited to attend the meeting in a consultative capacity, but declined the invitation.

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

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

4. In accordance with Article 21 of the Charter, the national reports to be submitted in application of the European Social Charter concerned Albania, Andorra, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Lithuania, Malta, Republic of Moldova, Netherlands (Kingdom in Europe), Norway, Portugal, Romania, Slovenia, Slovak Republic, Sweden, Turkey and Ukraine. Reports were due by 31 October 2010.

5. Hungary submitted its report in June 2012 only. The European Committee of Social Rights adapted its working schedule allowing the Conclusions to be adopted in September 2012, in time for the 126th meeting of the Governmental Committee. Hungary indicated that it will do its utmost to ensure that national reports are provided within the set deadlines as from 2013.

6. Conclusions 2011 of the European Committee of Social Rights were adopted in December 2011 (Albania, Andorra, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Lithuania, Malta, Republic of Moldova, Netherlands (Kingdom in Europe), Norway, Portugal, Romania, Slovenia, Slovak Republic, Sweden, Turkey and Ukraine).

7. The Governmental Committee held two meetings in 2012 (26-30 March 2012, 8-12 October 2012). In accordance with its Rules of Procedure, the Governmental Committee at its March meeting elected Mme Jacqueline MARECHAL (France) as its new Chair. It also elected a new Bureau, which is now composed of Ms Merle MALVET (Estonia, 1st Vice-Chair), Ms Elena VOKACH-BOLDYREVA (Russian Federation, 2nd Vice-Chair), Ms Joanna MACIEJEWSKA (Poland) and Ms Lis WITSØ-LUND (Denmark). The Chair and the Bureau were elected for a period of two years.

8. Following a decision of the Committee of Ministers taken at its 1151st meeting on 19 September 2012, two meetings of the Bureau of the Governmental Committee and the Bureau of the European Committee of Social Rights (24 October 2012 and 6 December 2012) were held to discuss

[2] List of the State Parties on 1 December 2012: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

the proposals to reflect upon ways of streamlining and improving the reporting system of the European Social Charter.

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

10. The Governmental Committee was satisfied to note that since the last supervisor cycle, the following ratifications had taken place:

- On 6 January 2012 "The former Yugoslav Republic of Macedonia" ratified the Revised European Social Charter;
- On 4 April 2012, the Czech Republic ratified the European Social Charter's additional Protocol providing for a system of collective complaints;
- On 27 June 2012, by notification to the Secretary General, Estonia accepted the following additional Articles of the Revised European Social Charter: Articles 10§2, 13§4, 18§1, 18§2, 18§4, 26§1, 26§2 and 30.

11. The state of signatures and ratifications on 1st December 2012 appears in Appendix II to the present report.

II. Examination of Conclusions 2011 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 supervisor 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 modalities decided by the Bureau in December 2011, it dealt with Conclusions of non-conformity in the following manner:

Conclusions of non-conformity for the first time: States concerned are invited to provide written information on the measures that have been taken or have been planned to bring the situation into conformity. This information appears *in extenso* in the reports of the meetings of the Governmental Committee. However, because of the gravity of some situations, the Governmental Committee decided at its 125th meeting in March 2012 that it should proceed to an oral examination of some of these situations (see Appendix III to the present report for a list of these Conclusions). Several States did not provide the requested information and therefore the Bureau decided on 5 December 2012 to send a letter to the Permanent Representations of the States concerned, asking to submit this information with a view to including it in the detailed reports.

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

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

14. The Governmental Committee examined the situations not in conformity with the European Social Charter listed in Appendix III to the present report, it used the voting procedure for 8 of them, and adopted 4 warnings (see Appendix V 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. During its examination, the Governmental Committee took note of important positive developments in several States Parties. It also asked Governments to take into consideration any previous Recommendations adopted by the Committee of Ministers.

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

17. 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 2006-2009 (Conclusions 2011), provisions related to the thematic group "Children, families, migrants")

(Adopted by the Committee of Ministers on ....

at the .... meeting of the Ministers' Deputies)

The Committee of Ministers,[3]

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

Having regard to Article 29 of the Charter;

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

Considering Conclusions 2011 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 2011 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". State Parties having ratified the European Social Charter or the European Social Charter (revised) are (1 December 2012): 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 2011 – Revised European Social Charter (RESC)

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

Article 7§1 – Prohibition of employment under the age of 15

RESC 7§1 ALBANIA

The ESCR concludes that the situation in Albania is not in conformity with Article 7§1 of the Charter on the grounds that:

- *definition of light work authorised by legislation is not sufficiently precise as there is no definition of the types of work which may be considered light or a list of those which are not,*
- *and prohibition of employment under the age of 15 is not guaranteed in practice.*

First ground of non-conformity

18. The representative of Albania informed the Committee that the Ministry of Labour, Social Affairs and Equal Opportunities had requested the ILO to draft a guiding note which provided suggestions for the review of the Labour Code in the light of international labour standards. Based on a gap analysis with respect to the EU requirements on social policy and employment, the amended Article 98 of the Labour Code would increase the minimum age from 14 to 15 years, in accordance with Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work.

The representative of Albania reported that, as soon as the draft amendments to the Labour Code were approved by Parliament, it was envisaged to review Council of Ministers Decision No. 205 of 9 May 2002 (OJ 9 May 2002, No. 18, p. 587) on the protection of minors at work on the basis of the ILO guiding note, which recalls that summer employment of children under 14 years of age is prohibited under Article 6 of the ILO Convention No. 138.

The representative of Albania further informed the Committee that the Council of Ministers Decision No. 205, as amended by Council of Ministers Decision No. 384 of 20 May 1996, provided a definition of difficult or hazardous work with harmful exposure to physical, biological and chemical agents, so as to exclude employees under 18 years of age from these kinds of work. She inferred that all other kinds of work had necessarily to be considered light work.

The representative of Albania reported that several Council of Ministers Decisions had yet to be adopted pursuant to Law No. 10237 on health and safety at work:

- listing occupational diseases, pursuant to Article 25, Paragraph 4 of the Law;
- implementing medical care at work, pursuant to Article 23, Paragraph 3 of the Law;
- defining rules, tasks, equipment and pharmaceuticals with which medical care units should be equipped in the enterprise, pursuant to Article 39, Para. 2 of the Law;
- defining rules, procedures and types of medical checks to be performed in accordance with the performed employment, pursuant to Article 11, Para. 2 of the Law.

Separate provisions defined specific measures to be taken by the employer, in consultation with the occupational physician, to provide special medical monitoring of young people under 18 years of age.

[4] State Parties in English alphabetic order.

The representative of Albania stressed that these Council of Ministers Decisions were in the process of being approved.

19. In reply to a question from the Chair, the representative of Albania informed the Committee that the review of the Labour Code was still on-going, but should be concluded before the end of the year.

20. The Committee took note of the information, encouraged the Government of Albania to complete the review of the Labour Code, and requested it to bring the situation into conformity with the European Social Charter.

Second ground of non-conformity

21. The representative of Albania affirmed that its Government was strict and successful in enforcing the law on children's rights. Labour inspections carried out in 2011 had found 295 children from 16 to 18 years of age in employment, out of which 271 children had authorisation from the State Labour Inspectorate, 24 children had no such authorisation, and no children under 15 years of age were in employment. She pointed out that under Albanian legislation, only registered businesses were subject to labour inspection, and that street children were excluded from such inspection.

22. The representative of ETUC questioned the figures and asked which measures were taken to ensure labour inspection in places and areas of economic activity which were not subject to such inspection.

23. The representative of Albania, confirmed that inspection was limited to registered businesses. She added that specific statistics were available on areas of economic activity open to inspection.

24. The Secretariat confirmed that labour inspection was a problem, since the ECSR had mentioned Article 3§3 of the Charter referring inter alia to labour inspection, and had concluded that there was no efficient inspection system.

25. In reply to a question from the Chair, the representative of Albania specified that labour inspection covered construction and building sectors, but not agriculture.

26. The Chair stressed that control of child labour was important in family businesses especially if they were not subject to labour inspection.

27. The Committee took note of the information. It asked the Albanian Government to provide more specific information with respect to areas of economic activity open to inspection in its next report, and urged the Albanian Government to bring the situation into conformity with the European Social Charter.

RESC 7§1 ARMENIA

The ESCR concludes that the situation in Armenia is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and cannot qualify as light work.

28. The representative of Armenia informed the Comittee that, under the provisions of Article 144 of the Labour Code, which prohibits overtime work to persons under 18 years of age, and of Article 139 of the Labour Code, which limits working time to 8 hours per day, persons under 18 years of age may not work more than 8 hours per day.

29. She reported, however, that in accordance with Article 143 of the Labour Code, working time for children under 15 years of age could rise up to 10 hours per day in organisations operating with an uninterrupted schedule or conducting activities of special nature, where it is not possible to keep the daily or weekly duration of working time. Summary recording of working time would be applied in such cases, ensuring that it did not exceed the normal working hours in the recorded period of time, limited

to 6 months. She specified that neither labour inspections nor trade unions reported such cases in practice for persons under 18 years of age.

30. The representative of Armenia informed the Committee that the Labour Code was currently under review so as to exclude children from the application of summary recording of working time. She hoped that the amendments could be voted soon, and agreed to provide detailed information on further developments in the next report.

31. In reply to the question from the Chair whether the ECSR had misunderstood the report, if working time was generally limited to 8 hours per day, the representative of Armenia confirmed that the Labour Code had gaps, and that it was the purpose of the current review of the Labour Code to close these gaps.

32. The Committee took note of the information It encouraged the Government of Armenia to complete the review of the Labour Code and invited it to bring the situation into conformity with the European Social Charter.

RESC 7§1 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 7§1 of the Charter on the ground that the prohibition on the employment of under 15 year olds does not apply to children employed in occasional or short-term domestic work.

33. The representative of Cyprus provided information concerning Article 7, paragraphs 1 and 3. A bill had been submitted to parliament amending Article 3 of the basic Law on the Protection of Young Persons at Work n° 48(1)/2001. This law prohibited the employment of children with the exception of occasional or short-term work with regard to (a) the provision of domestic work in a private household or (b) employment that does not hurt, is not harmful, and is not dangerous for teenagers in the family business.

With the amended law on the Protection of Young Persons at Work N° 15(1)/2012 which was enacted and published in the Cyprus Government Official Gazette on 23.2.2012, Article 3 of the basic law n° 48(1)/2001 was replaced by the following provision:

> "3. (1) The present Law covers the employment of young people by each employer.
>
> (2) The scope of the Law referred to in subsection (1) excludes occasional or short-term employment that is not considered harmful, damaging and dangerous for teenagers who are employed in a family business."

According to the definition of the law "young people" refers to persons under the age of 18 years.

As a result of the amended Law N° 15(1)/2012, occasional or short term domestic work with regard to the provision of domestic work in a private household is now included within the scope of the Law and is prohibited.

34. The Committee congratulated Cyprus for the positive development in its legislation.

RESC 7§1 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 7§1 of the Charter on the ground that the minimum age of 15 years for employment does not apply to children employed by a close relative.

35. The representative of Ireland provided information which is relative to Article 7, paragraphs 1, 3, 4 and 8, due to the inter-related nature of the provisions. The Protection of Young Persons (Employment) Act 1996 (PYP) put in place a single composite piece of legislation regulating the protection of young persons in employment generally, including industrial work. The exclusion of close relatives from a limited number of provisions of the Act reflects the nature of Irish society with family run businesses and farms playing a significant key role in the economy. There are almost 200,000 small firms representing a workforce of about 655,000 people in Ireland. A significant proportion of these firms employ less than 10 people and almost 49 % are sole owner entities. There is also a strong rural tradition in which small farms predominate. There are approximately 128,000 family farms in Ireland. On a practical level the involvement of close relatives, including spouses and children in family run businesses, continues to be a vital part of the assistance given to ensure the viability and survival of such businesses. The current economic challenges and the consequent pressures on the competitiveness of small enterprises, makes the assistance of close relatives in such businesses ever more important.

In the Protection of Young Persons Legislation, the definition of 'close relative' is narrowly defined and there are also narrow limits on the type of employment in which a close relative can be employed. It should also be noted that in excluding close relatives from certain provisions of the Act, Ireland is in compliance with the EU Council Directive 94/33/EC. Whilst the full provisions of the Act do not apply to close relatives, it is important to note that other sections of the Act relating to rest periods, breaks and night time work still apply. Contrary to the conclusions reached by the ECSR, close relatives are <u>not</u> excluded from the provisions prohibiting night time work for both children and young persons. There are also important safeguards built into Irish safety, health and welfare legislation in which there are no exemptions permitted in respect of the employment of close relatives. A code of practice, launched in 2010 by the Health and Safety Authority, aims at preventing accidents to children and young persons in agriculture. The Health and Safety inspectorate carried out 1754 agricultural investigations and inspections in 2010. In addition to safety and health legislation, there is a strong corpus of education and child welfare legislation, which ensures that children and young persons' educational attainment is paramount to their possible work within family businesses and farms. The National Education Welfare Board is tasked with promoting school attendance, participation and retention.

In relation to the finding regarding evidence of enforcement of the PYP Act, there are practical and logistical difficulties in obtaining reliable statistical evidence of the number of close relatives employed in Ireland due to the very nature of such assistance within a largely domestic environment. However, enforcement of the Act is undertaken by the National Employment Rights Authority (NERA) who carry out inspections to ensure that the Act is being enforced.

In conclusion, the absence of official complaints or other pressure domestically for review of this legislation is noteworthy. The legislation reflects the economic realities in Ireland where family businesses remain paramount and where assistance by family members is core to traditions and customs. It is also consistent with the requirements of the EU Council Directive and is underpinned by a range of protective safety and health and education legislation. In these circumstances, it is felt that a review of the legislation is not warranted at this time.

36. The Committee took note that the situation had not changed and that Recommendation CM/RecChS(2007)1 is still in force. It urged the Government to bring the situation into conformity with the Charter.

RESC 7§1 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 7§1 of the Charter on the ground that it has not been established that the legislation prohibiting employment under the age of 15 is effectively applied.

37. The representative of Italy informed the Committee that, with the entry into force of Act No. 296 of 27 September 2006 on 1 September 2007, the length of compulsory schooling had been raised to 10 years, which de facto set the minimum employment age at 16. She indicated that, as part of the education system reform, Law No. 167 of 14 September 2011 had broadened the possibility of completing one's compulsory education through apprenticeship to children aged 15 and 16. In the 2007/2008 academic year some 2 % (41 028) of young people aged between 14 and 17 had had an apprenticeship, 88.7 % (2 080 148) had attended upper secondary school and 4.4 % (102 297) had been enrolled in the regional vocational training schemes.

The representative of Italy drew attention to the Government's commitment to combating child labour and its inclusion among the strategic objectives of the Ministry of Labour and Social Policy for the 2011-2012 period. She indicated that the labour inspectorate's circulars for 2012 provided for reinforced measures to verity the lawfulness of the employment of minors in some branches of activity and compliance with the prohibition on engaging minors in dangerous, arduous or unhealthy tasks or processes. The labour inspectorate had also introduced a measure to record the age of employed minors, which would make it possible to include information on the number of children aged 15 who were working in the next report on Article 7.

The representative of Italy stated that the only data available at present, which had been included in the report, submitted to the ECSR, were those resulting from the survey conducted by ISTAT in 2008 and updated in 2011. Part of this survey had concerned activities that children said they performed on a regular basis within the family context (baby-sitting, dog-sitting, catch-up lessons) and that did not necessarily interfere with children's development, their compulsory school attendance or the right to play, as provided for in the United Nations Convention on the Rights of the Child, which was why these activities were not regarded as child labour in Italy. Reverting to a question by the Committee concerning the verifications performed by the labour inspectorate's services to ensure the light nature of these activities and the absence of any threat to minors' health, morality or education, the representative of Italy explained that, insofar as the home where these minors lived with their families did not constitute a workplace and the parents did not meet the definition of an employer, the labour inspectorate's services, whose authority was limited by law to inspecting places of work, were unable to carry out such verifications.

She stated that Italy enforced compulsory schooling up to the age of 16, since 95 % of minors aged from 14 to 17 attended upper secondary school or the regional vocational training classes or were working as apprentices.

She said that this statement also applied to the ground of non-conformity under Article 7§3 of the Charter.

38. In reply to a question from the Chair, she indicated that ISTAT had conducted the 2008 survey of its own initiative, so as to shed light on the situation of young people, including their customary activities that did not qualify as work.

39. Answering a question from the ETUC representative, she indicated that apprenticeships were a useful means of coming to the rescue of under-performing students and introducing them to the world of work. Apprenticeship contracts provided for the payment of wages and of social contributions. She underlined the training aspect of this manner of working that entailed compliance with the compulsory education requirement.

40. The Secretariat pointed out that the legislation itself had never posed a problem, but the ECSR had noted that 120 000 children were working illegally in practice and there was still no information in respect of this finding.

41. The representative of Italy declared that the lack of information was due to the unavailability of statistical data. Although there were data on the total number of children found to be working, in the past no information was recorded by age brackets, and her department had only recently rectified the

labour inspectors' practices in this regard. It should be possible to provide the information in the next report on the basis of an analysis of the data by age bracket.

42. Noting that it was unable to rule on the situation for lack of information, the Committee called on the Government of Italy to provide the relevant information in the next report and asked it to bring the situation into conformity with the European Social Charter.

RESC 7§1 REPUBLIC OF MOLDOVA

The ECSR concludes that the situation in the Republic of Moldova is not in conformity with Article 7§1 of the Charter on the ground that the Republic of Moldova did not take sufficient measures to guarantee the prohibition on employment before the age of 15 in practice.

1. The representative of the Republic of Moldova, reiterating her Government's commitment to eliminating child labour, informed the Committee that, under the law governing the Labour Inspectorate, as in force, labour inspectors were authorised to carry out, at any time, all kinds of verifications concerning all employers.

2. She indicated that her country had been participating since 2009 in the global action plan against the worst forms of child labour as part of the ILO's International Programme on the Elimination of Child Labour (IPEC) and that, in October 2011, it had approved a national action plan to combat child labour incorporating 40 measures, including updating of the current legislation, awareness-raising efforts targeting employers, improvements in children's access to good quality education, and provision of material support for families whose children were involved in work.

3. She added that the labour inspectorate's departments had conducted inspections of 30 undertakings in 2011 and taken note of 224 employed minors under the age of 18, including 70 under the age of 17. They had drawn up over 18 reports. Offences could be sanctioned under a system of fines based on conventional units, applied depending on the circumstances. She proposed to provide a table showing the labour inspectorate's activities by types of business concerned and types of offences found. She said that the labour inspectorate's departments also had a budget for awareness-raising activities such as seminars to explain the legislation, the risks and the penalties that could be incurred by parents and employers.

4. The representative of ETUC pointed out that the ground of non-conformity solely concerned the insufficient measures taken and noted that the inspections mentioned concerned corporate undertakings, whereas the vast majority of children worked in family businesses and non-formal sectors. The representative of Poland shared his concern.

5. The representative of the Republic of Moldova replied that the figures cited concerned registered businesses in which children had been found working, but it was difficult to carry out verifications in a strictly family environment, since that entailed an interference in the private sphere. She referred to the awareness-raising and training measures targeting labour inspectors.

6. The Secretariat referred to the conclusions of the European Committee of Social Rights under Article 3§3 of the Charter finding that the Republic of Moldova did not have an effective labour inspection system and underlined that the problem lay in the effectiveness of labour inspections in practice.

7. In reply to a question from the Chair on the 40 measures implemented under the national action plan to combat child labour, the representative of the Republic of Moldova stated that her country's Government had issued recommendations and that the plan was in place until 2016 .

8. Responding to another question from the Chair, the representative of the Republic of Moldova specified that, insofar as the country had a mostly agricultural economy, farmers were subject to the inspections and measures mentioned.

9. The Committee took note of the information provided, reiterated that child labour could have serious consequences for children's physical health and development. It encouraged the Government of the Republic of Moldova to provide all relevant information in its next report. It asked the Government of the Republic of Moldova to bring the situation into conformity with the European Social Charter.

RESC 7§1 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 7§1 of the Charter on the grounds that:

- *light work is not defined by national legislation or practice;*
- *that prohibition of employment under the age of 15 is not guaranteed in practice.*

First ground of non-conformity

52. The representative of Romania provided the following information in writing:

The report states that there are no specific provisions concerning light work for children under 15 and that a working group has been set up in order to regulate activities regarding, among others, light work, artistic, cultural and sport.
Protecting of young people at the workplace is achieved by **GD no.600/2007 on protection young people at workplace**, published in the Official Gazette no.473 of July 13, 2007 **and Law no. 53/2003 - Labour Code, republished** in the O.G. No.345 of 18.05.2011.
Provisions of GD no.600/2007 are meant to ensure protection of young people against economic exploitation, of any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardize their education. There are also regulations to ensure protection of young people at the workplace also in Law. 53/2003 - Labour Code, republished.
GD no. 600/2007 provisions apply to any person under the age of 18 who concludes an individual labour contract in accordance with the legislation in force. Is allowed employment of children from the age of 16 years for light works, or of age 15 years only with parental consent.
According to the national legislation, under the age of 18 is not allowed to any category of persons to perform hard labour, harmful or dangerous.
Under the legislative act mentioned, the employer shall ensure young people working conditions appropriate to their age.
The employer is obliged to protect young people against risks for safety, health and their development, risks arising from their inexperience, insufficient awareness of existing or potential risks or the fact that young people are still developing.
Subcommittee established within National Steering Committee (NSC) to prevent and combat child labour exploitation issued a draft law to regulate how cultural, artistic, sports, advertising and modelling activities can be carried by children to prevent hazardous work. It will be promoted by the Ministry of Labour, Family and Social Protection as a law; the document is currently undergoing external approval. In terms of domestic activity, the report states that children less than 15 years engaged in domestic activities are monitored by the child protection system.
Regarding this aspect we mention that regarding "domestic work", in accordance with legislation, in case it becomes a dangerous work, are applicable the provisions of GD no.867/2009 on the prohibition of hazardous work for children. At the same time, if the performance of such activities meets elements that can lead to considering them as an offence, then it falls under the Penal Code as it was above mentioned.
In these two cases, dangerous labour and abuse, monitoring as a result of a notification is provided by General Directorate for Child Protection. Regarding prevention, intervention and monitoring, in 2011 was approved GD no.49 with 2 annexes:

- Framework methodology on prevention and intervention into a multidisciplinary team and network intervention in cases of violence against children and domestic violence;
- Methodology on inter-institutions and multidisciplinary intervention on exploited children or at risk of exploitation through labour, children victims of trafficking and migrant Romanian children victims of other forms of violence in other countries.

According to the Government Decision above-mentioned, Specializing Unit in Child Labour within the General Directorate for Child Protection has initiated the development of a unitary set of tools to monitor all forms of violence against children and domestic violence starting from the models promoted by the monitoring mechanisms of child labour exploitation.

Children under the age of 15 cannot be employed in domestic works, because these works are not provided by the Labour Code, consequently they cannot conclude labour contracts.

Regarding the last two paragraphs, the National Steering Committee (NSC) to prevent and combat child labour will take note of the Committee request and will discuss the definition of domestic work and other areas of child labour in the above set of tools.

Second ground of non-conformity

53. The representative of Romania presented information on Government Decision 600/2007 on young people at work which ensures the protection of young people from economic exploitation, from work which may harm their safety, health or physical, mental, moral or social development or jeopardise their education. There are also regulations to ensure the protection of young people at work in the Labour Code, Law n° 53/2003, republished in 2011.

GD 600/2007 provisions apply to any person under the age of 18 who has entered into an individual contract in compliance with the law. Employment of children from 16 years of age is permitted for light work, or from 15 years of age subject to parental consent. No category of persons under the age of 18 is permitted to perform hard, harmful or dangerous work. The employer is responsible for ensuring working conditions and is obliged to protect young people from all forms of risks.

A subcommittee established within the National Steering Committee (NSC) to prevent and combat child labour has prepared a draft law to regulate cultural, artistic, sport, advertising and modelling activities to prevent children from hazardous work. It will be promoted by the Ministry of Labour, Family and Social Protection and the draft legislation is currently undergoing external approval.

With regard to the national report which states that children under 15 years of age engaged in domestic activities are monitored by the child protection system, the provisions of GD n° 867/2009 apply which prohibit hazardous work for children. If the performance of such activities involves elements which may be considered as an offence, then the provisions of the Penal Code outlined above apply.

Full information concerning all elements of legislation will be provided in writing and will be included in the next report.

54. The Chair asked for clarification concerning children under 15 years of age employed in domestic work provided it was not dangerous for them.

55. The representative of Romania replied that the Labour Code did not provide for children under 15 to be engaged in domestic work. Very light work involving tasks appropriate to the age of the child to develop intuition may be carried out but not involving hard or dangerous activities which could harm the child's development.

56. The representative of Poland underlined that implementation of the law is important as the conclusion of non-conformity is particularly based on the situation in practice. Further information is necessary as to monitoring, frequency of inspections, the number of offences and measures taken against those who are not respecting the law. This view was supported by the representative of the ETUC who said available statistics show dismissal of a large number of cases.

57. The representative of Lithuania underlined that the problem was related to a lack of statistics from the Ministry of Justice rather than from the labour inspectorate.

58. The representative of Romania, in reply to a question from the representative of Poland concerning the obligation of employers to conform to legislation, confirmed that the law provides a framework for offenders to appear before a court.

59. The Secretariat recalled that the conclusion of non-conformity is based on the non-application in practice of existing legislation and the lack of an adequate response by courts so information from the Ministry of Justice is extremely important.

60. The representative of Romania agreed to provide more information from the Ministry of Justice and this aspect which will be highlighted in the next report. She mentioned, as an example of other methods employed apart from criminal proceedings to combat child labour, a direct line to the Directorate for Child Protection which registers calls reporting problems concerning child labour.

61. The Committee took note of legislative developments and welcomed the creation of a Working Group. It expressed concern about the situation in practice and requested the Government to provide additional statistical data on the implementation of legislation as well as other practical efforts undertaken. It called for the Government to take the necessary steps to bring the situation into conformity with the Charter.

RESC 7§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 7§1 of the Charter on the ground that it has not been established that the definition of light work and its duration are sufficiently precise.

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

Pursuant to Act No. 125/2006 Coll. on Work Inspection and change and amendment of Act No. 82/2005 Coll. on Illegal work and Illegal Employment and change and amendment of certain acts as amended, Work Inspectorate is responsible for the supervision of employment regulations observation. According to Article 11§5 of the Labour Code, light work is permitted by the Labour Inspectorate based on an application of the employer in consultation with the relevant public health authority. The permit must specify the number of hours and conditions applying to such light work. The relevant work inspectorate may withdraw the permit, in cases when the permit conditions are breached.

Persons aged less than 15 years or persons aged over 15 years who have not yet completed compulsory schooling are forbidden to work. These persons may carry out light work which does not result in a danger to their health, safety, further development or school attendance. The work can be carried out only for the purposes of:

a) taking part in a cultural performance and artistic performance,
b) sports events,
c) advertising activities.

The Labour Inspectorate (as listed in the Labour Inspectorate internal regulation for issuing light work permits) allows young persons under the age of 15 to carry out light work only if it:

a) Does not exceed physical or mental abilities of the person concerned;
b) Does not pose danger to the person concerned, or if it does not expose the individual to harmful physical, biological or chemical factors;
c) Does not threaten the person concerned with pollutants that are toxic, carcinogenic, cause genetic damage or permanently damage health;
d) Does not expose the person concerned to dangerous radiation;
e) Does not expose the person concerned to heat, cold, noise or vibrations;

f) Is free of risks, which the person concerned is unable to recognize, or which they would be unable to avoid due to the one´s insufficient attention or experience;
g) Does not require the person concerned to manipulate heavy objects or load disproportionate to their physical abilities;
h) Is suitable for the person concerned on the basis of their medical examination for the purpose of carrying out the work concerned.
The potential employer is obliged to provide the Labour Inspectorate with the required documents proving the above mentioned conditions are met. The documents may contain photographs of the place of work to prove it is safe and that minors are not threatened by the environment.
If the above mentioned conditions are met, then:
a) The maximum daily work time may not exceed 6 hours;
b) The maximum weekly work time may not exceed 30 hours;
c) The maximum daily work time may not exceed 2 hours during a school day;
d) The minimum daily rest period must be at least 14 consecutive hours and the minimum weekly rest period must be at least 2 consecutive days;
e) The minimum break during the work time is at least 30 minutes after 3 hours of work.
The Labour Inspectorate carries out regular inspections to make sure these conditions are met. The inspection focuses on:
a) How the safety at work is secured;
b) Evaluation of possible risks;
c) Examination whether the work concerned is allowed/legal;
d) Evaluation of work environment factors (noise, vibrations, lighting, air conditioning, temperature, dust control, radiation, toxins, carcinogens, harmful biological substances), their amount and means of their disposal;
e) Providing of first aid;
f) Work time and rest period examination.
After each inspection, the participating labour inspector prepares a thorough documentation listing all findings and conclusions. In case of breach of any single of the above mentioned conditions, the Labour Inspectorate withdraws the permit issued to the given employer.

RESC 7§1 TURKEY

The ECSR concludes that the situation in Turkey is not in conformity with Article 7§1 of the Charter on the ground that the prohibition of employment under the age of 15 is not guaranteed in practice.

63. The representative of Turkey indicated that under article 71 of the Labour Law, No. 4857 of 10 June 2003, employment of children under the age of 15 was prohibited and children over the age of 14 could be employed only in light work and on condition that they had completed their primary school education. He stipulated that labour inspectors regularly verified whether employed children had reached the statutory working age and could impose a fine of a maximum of TRY 1 200 in the event of a breach. The inspections had brought to light 13 278 cases of employment of children under 15 in 2010, and 8 443 in 2011. The arrangements were effectively bringing about a steady decrease in the number of children under 15 who worked.

The representative of Turkey added that the statistical institute had conducted surveys on this subject in 1994, 1999 and 2006, with a view to determining the branches of the economy concerned, the prevailing employment conditions and the demographic, social and economic data relating to children in work. On the basis of a comparison of the results, it had concluded that there had been a significant decline in the proportion of children between the ages of 6 and 17 who worked, from 15.2 % in 1994 to 10.3 % in 1999 and 5.9 % in 2006. The employment rate for children between the ages of 6 and 14 had been 2.6 %, or 320 000 children, in 2006.

The representative of Turkey observed that the 2006 data no longer reflected the current situation, since a number of projects had been launched to eliminate the worst forms of child labour. He expected the next survey, due for the end of the year, to confirm the downward trend in child labour.

The representative of Turkey indicated that, on the basis of the current figures, his country's Government was pursuing its efforts, notably in the context of the ILO's International Programme on the Elimination of Child Labour (IPEC), which Turkey had joined in 1992. Pursuant to this programme Turkey had devised a national policy and a framework programme for the 2005-2015 period, supplemented by ad hoc projects, aimed at eradicating the worst forms of child labour (concerning children working on the streets, in industry and in agriculture), preventing seasonal work by children in the agricultural sector and developing national capacity in this field.

He added that the Government had drawn up a national action plan, in co-operation with UNICEF, which aimed to reinforce youth protection over the 2011 to 2016 period, in particular through lasting improvements in equality of access to education for young people between the ages of 14 and 18. This action plan included surveys to determine the reasons for early school leaving and repetition of school years so as to propose corrective action; to identify the profiles, needs and expectations of young people aged between 14 and 18 and propose responses; to study the education and employment situations of those in this age bracket and to formulate proposals enabling them to benefit from the educational opportunities on offer.

The representative of Turkey confirmed that the length of compulsory schooling had been increased from 8 to 12 years, making school compulsory up to the age of 18 and making it harder to employ children under the age of 15.

64. In reply to a question from the ETUC representative, the representative of Turkey indicated that the 12-year period of compulsory schooling started at the age of 5½ or 6, depending on the family's wishes, that the statistics institute alone monitored the child labour situation and that the previously mentioned decrease from 15.2 % in 1994 to 5.9 % in 2006 reflected the effectiveness of the projects implemented in this sphere.

65. He also indicated that the labour inspectorate had the task of verifying the application of the employment legislation, and that the education inspectorate was responsible for verifying whether children were of compulsory school age.

66. The Committee took note of the downward trend in child employment. It decided to await the outcome of the survey planned for the end of the year and encouraged the Government of Turkey to continue its efforts to bring the situation into conformity with the European Social Charter.

RESC 7§1 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 7§1 of the Charter on the ground that the definition of light work is not sufficiently precise because there is no definition of the types of work which may be considered light or a list of those which are not.

67. The representative of Ukraine provided the following information in writing:

> Article 20 of the Draft Labour Code provides that specially authorized central executive body shall approve the list of types of light work. In this manner after adoption of the new Labour Code, which was submitted to the Parliament on 2 April 2012, the list of types of light work will be developed, the performance of which may involve a person under the age of 15 years.
> Updated information will be provided in the next report.

Article 7§2 – Prohibition of employment under the age of 18 for dangerous or unhealthy activities

RESC 7§2 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 7§2 of the Charter on the ground that the prohibition of employment under the age of 18 for dangerous or unhealthy activities is not guaranteed in practice.

68. The representative of Albania provided the following information in writing:

> In compliance with child protection legislation, the Minister of Labour, Social Affairs and Equal Opportunities and Minister of Interior issued a joint order No. 125 dated 23.08.2012 "On protection of rights of children who are exposed to various forms of abuse against them" through which is required by the State Police and the State Social Service to cooperate together to identify street children and take them in protection. A joint action in Tirana has already begun, which will be extended to the whole country, in order to remove children from the streets and with the collaboration of Child Protection Unit at the municipalities and communes, these children will be provided with all the support necessary.
> Pursuant to this order a draft working plan has been established “to protect minor street children who are exposed to various forms of abuse against them". The purpose of this draft working plan is to coordinate the work between the institutions for the protection of minor street children, prevention of criminal offense against this category of minors, taking them into protection and rehabilitation entities and creating safer environments.

RESC 7§2 FRANCE

The Committee concludes that the situation of France is not in conformity with Article 7§2 of the Charter on the ground that legislation does not lay down an absolute prohibition for persons under the age of 18 to work on dangerous activities outside the vocational training context or without having had such training beforehand.

69. The representative of France provided information concerning legislation which provides a strict framework for the employment of young persons. The ground of non-conformity concerns unqualified persons under 18 years of age who are carrying out dangerous work which is not in the context of vocational training and therefore not within the scope of the legislation which provides for a derogation for young persons undergoing or having completed vocational training.

As mentioned in the previous report, a reform is underway with a view to amending the Labour Code but it is not known, at this stage, when it will be finalised as the procedure is a complex, transversal issue. This aspect of the reform is important, however, it is not a priority for the Government, which will focus firstly on the procedure for derogation and then on the modification of the Decree which provides for the list of prohibited work. The problem of non conformity, in practice, does not concern a high number of young persons in France although it is very difficult to carry out an evaluation.

70. The representative of France, in reply to a question by the representative of Estonia, said other protection measures for young workers are in place, including regular controls by the Labour Inspectorate and the occupational physician.

71. The representative of ETUC expressed concern that the matter is no longer considered a priority which conveys a worrying message particularly as there is no information as to when the reform will take place.

72. The representative of France, in reply to a question from the representative of Portugal, confirmed that France is in compliance with EU Directive 94/33 related to the protection of young people at work.

73. The Committee expressed concern about the situation as the reform has not yet been carried out and urged the Government to bring the situation into conformity with the Charter.

RESC 7§2 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 7§2 of the Charter on the ground that it has not been established that the labour inspectorate undertakes inspection visits in training places where some tasks carried out by persons under the age of 18 could be considered dangerous or unhealthy even if they have not been declared as such.

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

> En réponse au cas de non-conformité soulevé par le Comité, on souligne que la réglementation en vigueur en matière de protection des jeunes sur les lieux de travail interdit de manière générale l'emploi de travailleurs âgés de moins de 18 ans à des taches dangereuses ou insalubres. Comme nous l'avons déjà expliqué, on peut déroger de cette interdiction seulement pour des raisons indispensables à la formation professionnelle et pendant le temps nécessaire, à la condition que ces taches soient exercées sous la surveillance de formateurs compétents et dans le respect de toutes les conditions de santé et de sécurité prévues par la législation. Sauf les instituts techniques et professionnels, l'exercice de ces taches dans le cadre de la formation doit être préalablement autorisé par la Direction provincial du travail, après avis favorable de la structure sanitaire locale (ASL).
>
> Parmi les informations soumises dans le rapport, il y a la précision du Ministère de l'Education nationale que les programmes d'instruction des instituts mentionnés au-dessus ne prévoient aucune activité qui puisse être définie comme dangereuse ou insalubre. En effet, ces activités iraient à l'encontre des principes de formation et de sécurité élémentaires des élèves dont il est question dans les programmes actuels. En pratique, bien que la législation prévoie la possibilité pour les adolescents fréquentant les instituts techniques et professionnels d'exercer des taches dangereuses ou insalubres s'elles sont indispensables pour leur formation, aucune activité de ce type n'est menée par eux et, par conséquent, les Directions provinciales du travail n'ont pas réalisé d'inspections.
>
> Pour ce qui est des programmes des cours de formation professionnelle menés par les Régions et adressés aux mineurs de 18 ans soumis à l'obligation scolaire ou visant à obtenir une qualification ou un diplôme professionnel, on représente ce qui suit. A la suite des récentes réformes de l'enseignement (prière de voir le dernier rapport), les jeunes ont la possibilité de choisir entre le système éducatif de l'Etat et celui des Régions afin d'accomplir l'obligation scolaire ou d'obtenir une qualification professionnelle et peuvent passer de l'un à l'autre. Par conséquent, les programmes scolaires régionaux sont définis à la suite d'accords stipulés entre le Ministère de l'Education nationale et les Régions et doivent se conformer à ceux des instituts techniques et professionnels de l'Etat. Afin d'assurer un égal niveau d'instruction entre les deux systèmes éducatifs, les programmes scolaires des Régions ne peuvent pas prévoir l'exercice d'activités dangereuses ou insalubres. D'ailleurs, le Ministère de l'éducation nationale ne peut pas permettre l'exercice d'activités nocives à la santé et à la sécurité des adolescents dans les cours de formation professionnelle des Régions dès lors qu'il les a interdites dans les instituts techniques et professionnels. En considération de tout ce qu'on a expliqué avant, les Directions provinciales du travail n'ont aucune raison d'effectuer d'inspections dans les cours de formation régionaux.

RESC 7§2 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 7§2 of the Charter on the ground that it has not been established that the labour inspectorate supervises work carried out by persons under the age of 18 which might be considered dangerous or unhealthy.

75. The representative of the Republic of Moldova provided the following information in writing relating to article 7§2, 7§4, 7§7, 7§8, 7§9 and 7§10:

> L'activité de l'Inspection du Travail est développée en conformité avec la Loi n° 140-XV du 10 mai 2001, en vertu de laquelle l'Inspection du Travail exerce le contrôle d'Etat sur le respect des actes législatifs et d'autres actes normatifs dans le domaine du travail aux entreprises, institutions et organisations, de tout type de propriété et de forme juridique d'organisation, les personnes physiques qui emploient les salariés, ainsi qu' dans les autorités de l'administration publique centrale et locale.
> Les actions de contrôle entreprises par les inspecteurs de travail sont réalisées en conformité avec l'article 11^2 de la Loi mentionnée.
> En conformité avec cet article le contrôle d'Etat du respect des actes législatifs et d'autres actes normatifs dans le domaine de travail, de la sécurité et la santé au travail est effectué à la base de la disposition de contrôle émise par :
> a) inspecteur général d'Etat (du travail) ;
> b) adjoints de l'inspecteur général d'Etat (du travail) ;
> c) inspecteur-chef de l'inspectorat territorial du travail ;
> d) adjoint de l'inspecteur-chef de l'inspectorat territorial du travail.
> Le contrôle inopiné peut être également effectue à l'initiative de l'inspecteur du travail, sans disposition de contrôle, mais ensuite l'inspecteur doit informer immédiatement l'une des personnes susmentionnées.
> Les dispositions de contrôle sont enregistrées dans les registres d'évidence des dispositions de contrôle qui sont tenus au siège central de l'Inspection du Travail et des inspectorats territoriaux de travail. La disposition de contrôle est garde ensemble avec les documents rédigés suite au contrôle effectué. La disposition de contrôle est enregistrée aussi par l'entreprise soumise au contrôle.
> L'inspecteur de travail informe l'employeur (la personne qui actionne au nom de celui-ci) sur sa présence dans l'entreprise avant de commencer le contrôle. L'exception se fait dans les cas où l'inspecteur est informe par des saisies écrites (y compris en format électronique) des salaries, des partenaires sociaux ou des organisations concernées, qui démontrent que l'employeur :
> a) viole la législation du travail, de la sécurité et la santé au travail ;
> b) ne fait pas liquider les violations de la législation dans le domaine du travail, de la sécurité et la santé au travail dépistées lors des contrôles antérieurs ;
> c) n'informe pas sur les accidents de travail produits dans l'entreprise.
> L'inspecteur de travail peut solliciter à l'employeur ou faute de celui-ci, à la personne qui agit au nom de celui-ci de lui accorder le soutien en vue de :
> a) assurer la présentation des documents nécessaires au contrôle ;
> b) mettre à la disposition un accompagnant pour la durée du contrôle des lieux de travail, dans les locaux de service et de production ;
> c) mettre à la disposition un local de service, des moyens de communication et de transport dans le périmètre de l'entreprise soumise au contrôle.
> Tout cela démontre que les inspecteurs de travail peuvent exercer le contrôle, y compris les actions de monitoring du travail de l'enfant chez n'importe quel employeur. Les enfants qui travaillent dans le cadre de la famille ne tombent pas sous l'incidence des activités d'inspection.

En 2011 l'Inspection du Travail, dans le cadre des activités de contrôle dans les 30 entreprises a dépistée 224 mineurs qui prêtaient différents services, dont 70 avaient l'âge de sous 17 ans. Du nombre total de mineurs dépistées 77 travaillent sans forme légale d'emploi (sans contact individuel de travail, sans ordre d'embauche, sans évidence du temps de travail).
46 personnes sous l'âge de 18 ans ont été dépistées comme entrainées dans les activités interdites aux enfants: serveur dans les locaux d'agrément pendant la nuit, traitement chimique des céréales, activité de récolte du tabac, garde des animaux).
Au cours des premiers six mois de 2012 dans 11 entreprises on a dépisté 38 mineurs qui exerçaient des différents travaux, dont un avait l'âge de 15 ans qui s'occupait des soins des animaux (travail proscrit aux enfants). Du nombre total des mineurs 22 travaillaient sans forme légale d'emploi. Pour assurer l'application correcte de la législation du travail, de la sécurité et de la santé au travail les inspecteurs du travail ont émis des prescriptions de retraite des personnes sous l'âge de 18 ans des travaux exercés en violation de la législation.
En vue de sanctionner les employeurs qui ont violé la législation du travail, de la sécurité et de la santé au travail, ainsi qu'en vue d'assurer la conformité et assurer le respect de la législation en matière, les inspecteurs du travail ont rédigé 18 procès-verbaux de contravention.
Les travaux interdits aux personnes sous l'âge de 18 ans sont prévus dans le Nomenclateur des industries, professions et les travaux dans les conditions nocives et dangereuses proscrites aux personnes sous l'âge de 18 ans, approuvé par la Décision du Gouvernement de la République de Moldova n 562 du 7 septembre 1993.
L'assurance de l'application de cette décision est réalisée par les services internes ou externes de protection et de prévention, ou par les personnes désignées à s'occuper des activités de protection des salariés aux lieux de travail et de prévention des risques professionnels dans les conditions de l'article 11 de la Loi de la sécurité et de la santé au travail n 186 du 10 juillet 2008.
En vertu de cet article l'employeur désigne un ou plusieurs travailleurs qui s'occuperaient des activités de protection et de prévention des risques professionnels dans l'entreprise.
En cas ou les ressources de l'entreprise respective ne sont pas suffisantes pour organiser les activités de protection et de prévention faute de personnel spécialisé, l'employeur est obligé à faire appel aux services externes de protection et de prévention.
Si l'employeur fait appel aux services externes de protection et de prévention, ceux-ci seront informés par l'employeur concernant les facteurs connus ou suspectés avoir effet sur la sécurité et la santé des travailleurs et auront accès aux informations concernant la sécurité et la santé au travail.
En vue de prévenir la violation de la législation du travail, de la sécurité et de la santé au travail en rapport avec les personnes sous l'âge de 8 ans, l'Inspection du Travail entreprend une série d'actions de sensibilisation et d'information. Ce sont les actions réalisées dans les institutions d'enseignement préuniversitaire. On organise des rencontres avec les élèves des classes supérieures, avec les pédagogues, les parents. Au cours de ces rencontres les inspecteurs de travail expliquent les prévisions de la législation en vigueur concernant le travail des enfants les voies efficientes d'application de ces prévisions, les préjudices qui peuvent être causés aux personnes sous l'âge de 18 ans dans le cas où les prévisions légales sont violées. La responsabilité juridique pour la violation de la législation, ainsi que fournissent des informations concernant les autorités compétentes à assurer l'application correcte et univoque de la législation en matière.
En vue de stimuler la responsabilité juridique des employeurs qui violent la législation du travail, de la sécurité et de la santé au travail on a opéré des modifications au Code Contraventionnel. En vertu de ces modifications, l'admission d'un mineur aux lieux de travail qui représentent un danger pour sa vie et sa santé ou l'entrainement du mineur à l'exercice d'un travail interdit par la législation est sanctionnée par une amende de 100 à 150 unités conventionnelles appliquée à la personne physique, une amende de 250 à 400 unités conventionnelles appliquée à la personne détenant une fonction de responsabilité, une

amende de 400 à 500 unités conventionnelles appliquée à la personne juridique avec ou sans privation dans tous les cas du droit d'exercer une certaine activité pour une durée de 6 mois à un an.

Les indicateurs des actions entreprises par l'Inspection du Travail dans les activités de monitoring du travail des personnes sous l'âge de 18 ans en 2011 – juin 2012 sont reflétés dans l'Annexe nr. 1.

RESC 7§2 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 7§2 of the Charter on the grounds that:

- *the minimum age of admission to employment in occupations regarded as dangerous or unhealthy is below 18 years;*
- *the situation in practice does not ensure the effective protection against employment under the age of 18 for dangerous or unhealthy activities.*

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

1) L'âge d'admission à l'emploi pour les travaux dangereux et insalubres

L'opinion de notre Gouvernement contre le motif de non-conformité avancé par le Comité est exprimée comme suit:

Comme on le sait, la Turquie a signé plusieurs conventions internationales en ce qui concerne les droits des enfants et l'emploi des enfants. Elle s'est rapidement soumise à une multitude de résolutions prises en la matière. La Turquie a respectivement ratifié l'une des plus importantes conventions sur le droit de l'homme, la Convention internationale sur les Droits de l'Enfant des Nations Unies en 1994, l'une des conventions essentielles de l'Organisation internationale du Travail (L'OIT), la Convention no138 sur l'Âge minimum d'Admission à l'Emploi en 1998 et une autre convention essentielle de l'OIT, la Convention no 182 sur l'Élimination des pires formes du Travail des Enfants en 2001.

Tout d'abord, l'article 50 de la Constitution qui dispose « Nul ne peut être tenu d'effectuer les tâches inadaptées à son âge, son sexe ou ses capacités » est le premier pas fait pour prévenir la présence des enfants et des jeunes dans le marché du travail et leur emploi à des travaux pénibles et dangereux. En vertu de cet article, il est clairement compréhensible que les enfants et les jeunes ne puissent pas être employés à des travaux n'étant pas appropriés à leur âge et leur force.

La disposition de l'article susmentionné de la constitution est aussi confirmée par l'article 85 intitulée "Travaux pénibles et dangereux" du Code de Travail no 4857 adopté en 2003. Celui-ci signale qu'il est interdit d'employer des enfants et des jeunes de moins de 16 ans aux occupations pénibles et dangereuses. L'alinéa 2 dudit article affirme aussi que c'est la réglementation secondaire qui encadre quels types de travail sont considérés comme pénibles et dangereux et à quels types de travail pénible et dangereux des jeunes de plus 16 ans et de moins 18 ans peuvent être employés.

Dans l'article 4 du règlement relatif aux travaux pénibles et dangereux mis en vigueur conformément à l'article susmentionné, il a été interdit d'employer les jeunes de moins de 16 ans à des travaux pénibles et dangereux. On affirme aussi qu'ils peuvent être employés aux occupations pénibles et dangereuses adaptées à leur profession à condition que l'on garantisse la santé et la sécurité au travail et la protection physique, mentale et morale des jeunes de plus 16 ans ayant la profession du métier qu'ils exercent après avoir achevé la formation professionnelle et d'expertise.

Aux termes de l'article 5 dudit règlement intitulé « Rapport médical », au moment de l'admission à l'emploi des jeunes âgés d'entre 16 et 18 ans, il est obligatoire de prouver qu'ils

sont physiquement robustes et adaptés aux conditions et particularités des travaux à exercer, par un traitement corporel et au cas échéant par un rapport médical basé sur les résultats de laboratoire et que l'exercice du travail ne porte aucune atteinte à leur santé pendant la durée du travail, par un rapport médical du moins 6 mois. Par ailleurs, l'annexe 1ère intitulée « Tableau des travaux dangereux et pénibles » du règlement définit les occupations dangereuses et statue que les jeunes sont autorisés à être employés aux 10 types de travail parmi les 153 en total. Conformément au règlement, les jeunes âgés d'entre 16 et 18 ans peuvent effectuer les travaux considérés comme dangereux comme suit:

1) Les travaux concernant la fabrication des objets en terre cuite tels que la tuile, la Brique, la brique réfractaire, le tube, le tuyau, le tuyau en poterie, coupelle (potasse) ainsi que d'autres travaux pareils sur la construction et l'architecture ;
2) Les travaux concernant la fabrication des céramiques, porcelaine et faïence ;
3) Les travaux concernant la fabrication des verres, bouteille, lentille (optique) et les autres éléments pareils ainsi que les travaux relatifs à leur ciselure (işlemme) ;
4) Les travaux de dessèchement, collage, contreplaqué, contreplaqué latté (contrtabla) et les travaux de fabrication des produits en bois et des planches artificielles et couvertes de polychlorure de vinyle (PVC) et ainsi que les travaux d'imprégner ;
5) Les travaux concernant la fabrication de la graisse végétale et animale et des autres matières produites de celles-ci ;
6) Travaux concernant la fabrication des produits en plastique et de la formation des matières en plastiques ;
7) Travaux de l'égrenage ;
8) Travaux concernant la fabrication de pâte à papier et à bois ;
9) Travaux concernant la fabrication de cellulose ;
10) Travaux concernant la fabrication de toute sorte d'encre.

Comme on voit ci-dessus, même si l'emploi des jeunes de plus de 16 ans à des travaux pénibles et dangereux est autorisé, on a statué en droit qu'ils peuvent effectuer seulement les 10 types de travail pénible et dangereux. Il faut donc signaler que lesdits travaux sont considérés comme dans les catégories de travail plus léger.

L'article 105 du Code de Travail intitulé « Infraction aux Dispositions relatives à la Santé et Sécurité au Travail » dispose qu'une amende de 1250 livres turcs est infligée aux employeurs ou représentants d'employeur mettant en emploi des jeunes de moins de 16 ans ou bien des travailleurs contrairement aux indications des tranches d'âge, pour chaque travailleur employé. C'est ainsi que d'une part les jeunes de plus de 16 ans ne peuvent être employés qu'aux 10 activités fixées et d'autre part, les employeurs employant les travailleurs de façon informelle encourent une sanction administrative.

Comme on le sait, la Présidence du Conseil de l'Inspection relevant du Ministère du Travail et de la Sécurité sociale est une organisation centrale dont le rôle est de procéder à des inspections, interrogations et examens. Lors des inspections de nature générale où l'ensemble de la législation de travail est pris en compte, le conseil veille à tous les sujets requis par la législation, des conditions de travail des enfants et des jeunes et à leur âge d'emploi. Au terme des inspections accomplies en 2011, on a parvenu aux enfants dont leur situation n'est pas adaptée à l'emploi et donc entamé les processus administratifs nécessaires en l'espèce.

Conformément à l'article 10 de la loi no 3308, relative à la formation professionnelle, intitulé « Conditions d'apprentissage », le Ministère du Travail et de la Sécurité sociale détermine le niveau d'instruction et l'âge des apprentis pour l'admission à des occupations pénibles et dangereuses ou ayant de nature particulière après avoir reçu l'avis des autres institutions concernées. En plus, le Ministère prend en considération les conventions internationales au moment de cette détermination. Quant à l'article 19 de ladite loi intitulé « Programmes de formation », elle dispose aussi que le Ministère détermine les programmes de formation professionnelle à organiser pour les travaux pénibles et dangereux exercés dans les entreprises parallèlement à l'avis du Conseil pour le Formation professionnelle.

Pour ce qui est de l'article 196 du règlement no 24804 mis en viguier en 3.7.2002, relatif à la formation professionnelle et technique, intitulé « Obligations et Responsabilités des Entreprises pour la Formation professionnelle », il est interdit d'employer les coursiers et apprentis aux activités contraires au Règlement relatif aux travaux pénibles et dangereux. L'article 293 dudit règlement, intitulé « Ceux qui ne respectent pas à leurs obligations » disposes les amendes pécuniaires administratives infligées à ceux qui emploient les apprentis aux activités pénibles et dangereuses ainsi qu'aux activités de nature particulière contrairement aux conditions fixées par le Ministère.
En conclusion, on a pris des dispositions extensives et détaillées dans le cadre des lois et règlements précités ci-dessus.

2) La non-protection des jeunes de moins de 18 ans contre les travaux dangereux et İnsalubres

L'opinion de notre Gouvernement contre le motif de non-conformité avancé par le Comité est exprimée comme suit:
Les critiques faites dans le rapport de l'an de 2009 des États-Unis ont été appréciées par notre direction générale.
En Turquie les enfants, d'une part, travaillent en zones urbaines, dans les secteurs industriels, commerciaux et du service, ainsi qu'à la rue à cause des effets néfastes de la migration interne. D'autre part, au milieu rural, ils travaillent intensivement comme travailleurs agricoles saisonniers ou travailleurs familiaux non rémunérés dans le secteur agricole.
Dans notre pays, étant donné que les enfants ne travaillent pas officiellement en présence de la législation nationale et des conventions internationales conclues, ils sont plutôt employés dans les travaux informels. Le Ministère du Travail et de la Sécurité sociale prend des dispositions permettant aux enfants d'exercer les travaux qui ne nuisent pas à leur propre développement physique, mental et moral et il prend aussi de diverses mesures pour éliminer les pires formes de travail des enfants en Turquie. À cet égard, en élaborant un cadre de politique et de programme temporaire, on a formulé les stratégies et activités essentielles dans un cadre d'un programme national intégral et participatif à fin d'éradiquer le travail des enfants. Sur le plan de ce programme, les travaux effectués à la rue et dans les petites et moyennes entreprises, les travaux pénibles et dangereux, les travaux agricoles provisoires ambulants rémunérés et non familiaux ont été fixés comme groupes prioritairement ciblés.
Dans le but de prévenir l'emploi des enfants, tous les efforts se poursuivent au niveau des ministres dans les domaines en cause. Par exemple, on a accordé une importance particulière à l'amélioration des conditions de vie des travailleurs agricoles saisonniers ambulants sur le plan du développement rural formulé par le Ministère de l'Agriculture, la Nourriture et l'Élevage pour la période de 2010-2013.
Par ailleurs, le Programme temporaire pour l'Élimination du Travail des Enfants (ÇİÖİZBP) comprend la prise des mesures nécessaires à prévenir le travail des enfants employés ou exposés au risque de travailler dans les zones rurales.
On a pris des mesures pour assurer l'accès et la présence à la scolarité aux enfants des travailleurs agricoles saisonniers ambulants conformément à l'ordonnance du Ministère de l'Éducation nationale publié en 20.04.2011.
Les enfants des travailleurs agricoles saisonniers ambulants ont été choisis comme groupe cible prioritaire aussi bien par ÇİÖİZBP que par le Projet sur l'Amélioration de la Vie sociale et du Travail des Travailleurs agricoles saisonniers ambulants (METIP) élaboré par le Ministère du Travail et la Sécurité sociale et mis en oeuvre conformément à l'ordonnance du Ministère premier no 2010/6 publié le 24.03.2010, relative à l'amélioration de la vie sociale et du travail des travailleurs agricoles saisonniers ambulants. Par conséquent, on a pris des mesures considérables pour prévenir l'emploi de ces enfants aux activités agricoles et accroitre leur accès à la scolarité.

La stratégie et le plan d'action pour l'amélioration de la vie sociale et du travail des travailleurs agricoles saisonniers ambulants visent à assurer l'accès à l'instruction à l'ensemble de leurs enfants en âge de scolarité obligatoire, mais loin de celle-ci.
Par ailleurs, le Ministère du Travail et de la Sécurité sociale planifie aussi la mise en application d'un projet financé par les fonds de l'Union européenne en 2013 dans le but d'éradiquer l'emploi des enfants aux activités agricoles. Dans le cadre dudit projet, dans les villes choisies, on a pour but de rendre les services des réhabilitations, consultations, instructions et orientations aux enfants et de formuler une stratégie qui vise à donner la conscience à l'opinion publique, aux familles, aux employeurs, aux médiateurs et aux médias pour avoir la conscience et qui entamerait un dialogue pour la création d'une politique.
Enfin, pour atteindre l'objectif d'éradiquer les pires formes du travail des enfants jusqu'à 2015, on a besoin de financer les efforts par les sources locales et c'est pour cette raison qu'il faudrait constituer les unités dans les villes. À cet effet, un projet élaboré par le budget du Ministère du Développement a été encadré dans le programme d'investissement propre à l'an de 2012 dans le but d'assurer l'application efficace du cadre du programme de politique temporaire pour l'élimination du travail des enfants. Dans le cadre de ce projet, on a défini comme son groupe cible, les enfants employés aux travaux pénibles et dangereux au sein des petites et moyennes entreprises, ceux qui travaillent à la rue et effectuent les travaux agricoles saisonniers comme travailleurs ambulants non familiaux.

Article 7§3 – Prohibition of employment of children subject to compulsory education

RESC 7§3 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 7§3 of the Charter on the ground that the effective protection against work which would deprive children subject to compulsory schooling of the full benefit of their education is not guaranteed in practice.

77. The representative of Albania provided the following information in writing:

Pursuant to the Government policies, the Ministry of Education and Science has taken measures to increase the quality of service for the education of children and young people in order to develop their full personality and physical and mental abilities.
Ministry of Education and Science has taken measures to create conditions for children and young people to attend free elementary and secondary education, as well as, for the regular attendance of school by students of all categories and tiers, from which they come.
Order of the Minister of Education and Science No. 35, dated 31 August 2011 provided for the conditions and opportunities for all Roma to follow general and vocational secondary education on part-time or short-term basis.
Pursuant to the Decision of the Council of Ministers No. 42, dated 18 January 2012 "On the approval of the pilot project about taking measures to promote learning, attendance and the progress of Roma and Egyptian students, the Ministry of Education and Science provided 335 scholarships/stipends for Roma and Egyptian students of "Naim Frasheri" 9-year school in Korça for the school year of 2011-2012. This school is serving as an experience to be replicated to other schools, which have Roma and Egyptian students.
Upon the Decision of the Council of Ministers No. 107, dated 10 February 2010 "On the publication, printing, distribution and sale of textbooks of the pre-university education system", as amended, about 150, 000 students of the pre-university education received textbooks for free with an average annual cost of 3 million USD.

To enforce its policies and objectives in regard to improving the educational situation of Roma, the Ministry of Education and Science has undertaken the following legislative, administrative

and institutional reforms in the areas, which ensure the inclusion of children and young people in school:

- The implementation of Instruction No. 34, dated 08 December 2004 "On the implementation of the project "Second Opportunity" "On the education of students who have dropped out of school and those who are confined at home due to the blood feud" has continued since 2004. A total of 878 students attend the Second Opportunity during the school year 2011-2012.
- Upon joint Instruction of the Ministry of Finance and Ministry of Education and Science, which is pursuant to Paragraph 6.1 of Decision of the Council of Ministers No. 107, dated 10 February 2010, as amended upon Decision of the Council of Ministers No. 212, dated 16 March 2011, Roma children in pre-university education benefited 100 % budgetary support for textbooks and the obtain them for free at school.
- Pursuant to the Decision of the Council of Ministers No. 107, dated 10 February 2010, all textbooks for the first up to the ninth grade were provided by the Government for free also to the minority children.
- Pursuant to the Decision of the Council of Ministers No. 107, dated 10 February 2010 "On the publication, printing, distribution and sale of textbooks for the pre-university education system", as amended, the following categories including elementary education students (grades I-IX) and secondary education ones, who have the legal status of an orphan and, who come from families, which receive social and unemployment assistance from the employment offices, students, the family breadwinner of whom receives a disability pension and whose family has no employed or self-employed members or, the family breadwinner receives state pension and children, who are without income, are dependent on him students who come from families, which consist of members with disabilities, who were born with disabilities or had become disabled, and who do not have family members employed in the public sector or self-employed in the private sector, will benefit compensation to the extent of 100 %, of the textbooks after purchasing them based on the invoice/purchase tax voucher. Thanks to this reimbursement, about 150, 000 students of the pre-university education will benefit free textbooks with an average annual cost of 3 million USD.

To avoid the direct costs, the cost of transportation for teachers working outside of urban centers, away from their permanent residence at a distance over 5 km, and who return within the day, as well as, costs for transportation of student who attend basic education away from the residence at a distance over 2 km, are covered by public funds under the Council of Ministers No. 709, dated 5 October 2011 "On the use of public funds for transportation of teachers and students who work and study away from the residence". About 29,000 students and 12, 000 teachers benefit from this measure and the annual fund for this is 4.5 million USD. The Ministry of Education and Science is taking, inter alia, the following measures:

- Continuation of the work to identify the Roma children out of the education system, in order to include them into the system by September 2012;
- Creation of the conditions and opportunities so that all Roma young adults, who wish to receive compulsory education, may enroll in schools with part time or accelerated courses for Roma young adults in the vocational schools, so that they get provided with certificates for the labor market, etc.
- A number of issues related to the Article 7 of the Revised European Social Charter will find a fuller legal support with the implementation of the new law on pre-university educational system, which was recently passed by the parliament.

RESC 7§3 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly working time for children subject to compulsory education is excessive.

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

According to the Article 144 of the Labour Code of Armenia overtime work cannot be assigned to persons under 18 years of age. And the Article 139 of the Labour Code prescribes that the daily working hours cannot exceed 8 hours, which means that persons under 18 years of age cannot work more than 8 hours daily.
According to the RA Law "On Amendments to the Labour Code" adopted in 2010, the Article 17 of the Code was amended and according to the Article 17 Part 2.1., the persons at the age of 14 to 16 can be involved only in such temporary works which will not be harmful for their health, security, education and morality.
According to the Article 101 of Labour Code the contract for temporary work can be concluded for the duration of up to 2 months.

RESC 7§3 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 7§3 of the Charter on the grounds that:

- *the prohibition of employment of children subject to compulsory education does not apply to children employed in occasional or short-term domestic work;*
- *the duration of light work during school term for children aged 13-15 is excessive.*

First ground of non-conformity

79. The representative of Cyprus provided information concerning Articles 7§1 and 7§3 (see under RESC 7§1 Cyprus of this report).

80. The Committee congratulated Cyprus for the positive developments in its legislation.

Second ground of non-conformity

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

Regarding the above conclusion of the European Social Charter and European Code of Social Security Governmental Committee, it should be noted that during the procedure of the recent amendment (No.15(I)/2012) of Section 7(4) of the Law for the Protection of Young Persons at Work, (No. 48(I)/2001), the social partners, stakeholders and the governmental departments agreed in respect to the 4 hours light work per day (Section 7(4)(c)), concerning the cultural, artistic, sports or advertising activities.
However the recently implemented Regulations for the Protection of Young Persons at Work of 2012 provide specifically under Regulation 14(c) that subject to subsection (4) of Section 7 of the abovementioned Law, the continual participation of child in cultural or related activities must not exceed one (1) hour for children between aged 13-15.
The Department of Labour is willing to discuss this issue again with all the involved bodies. The amended Section 3 of the Law will not exclude from its scope occasional or short-term work in domestic services.

RESC 7§3 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly working time for children subject to compulsory education is excessive.

82. This situation was in fact in non-conformity for the first time and was therefore to be considered as an A situation.

83. The representative of Estonia provided the following information in writing:

> The Committee bases its decision on the Council Directive 94/33/EC of 22 June 1994 on protection of young people at work. The Committee makes a reference to the article 8 of the directive, which provides as follows:
> Member States which make use of the option in Article 4 (2) (b) or (c) shall adopt the measures necessary to limit the working time of children to:
> (b) two hours on a school day and 12 hours a week for work performed in term-time outside the hours fixed for school attendance, provided that this is not prohibited by national legislation and/or practice;
> It is important to notice that the article 8 of the directive is only applicable in cases where a member state has used option in article 4 (2) (b) or (c). Article 4 (2) states as follows:
> "Taking into account the objectives set out in Article 1, Member States may make legislative or regulatory provision for the prohibition of work by children not to apply to:
> (a) children pursuing the activities set out in Article 5;
> (b) children of at least 14 years of age working under a combined work/training scheme or an in-plant work-experience scheme, provided that such work is done in accordance with the conditions laid down by the competent authority;
> (c) children of at least 14 years of age performing light work other than that covered by Article 5; light work other than covered by Article 5 may, however, be performed by children of 13 years of age for a limited number of hours per week in the case of categories of work determined by national legislation.
> Therefore when reading the aforementioned articles together we come to a conclusion that when a member state has used option in Article 4 (2) (a) the directive does not oblige them to apply article 8 which limits the working time to two hours on a school day and 12 hours in a week.
> Article 4 (2) (a) which is not mentioned in article 8 of the directive also refers to article 5. Article 5 states as follows:
> 1. The employment of children for the purposes of performance in cultural, artistic, sports or advertising activities shall be subject to prior authorization to be given by the competent authority in individual cases.
> 2. Member States shall by legislative or regulatory provision lay down the working conditions for children in the cases referred to in paragraph 1 and the details of the prior authorization procedure, on condition that the activities:
> (i) are not likely to be harmful to the safety, health or development of children, and
> (ii) are not such as to be harmful to their attendance at school, their participation in vocational guidance or training programmes approved by the competent authority or their capacity to benefit from the instruction received.
> According to Employment Contract Act (hereafter ECA) employers in Estonia may enter into employment contracts for light work with 13/14-year-olds. The types of light work which may be done by minors shall be established by a regulation of the Government of the Republic. Light work is work where duties are simple and do not demand extensive physical or intellectual exertion. Young people between the ages of 7 and 12 are only permitted to do light work in the fields of culture, art, sports and advertising (ECA §7). Estonia has therefore used option in article 4 (2) (a) and does not need to apply article 8 of the directive which limits the working time to two hours in a school day and 12 hours in a week.

We would also like to assure you that any work that young people do in Estonia must enable them to pursue their education and must not endanger their health. Such work should be simple and within their capability. In order to protect young people in working relations, their employment is regulated separately and includes restrictions on age and the types of work they can do.

In order to enter into an employment contract with a young person, the employer must obtain the consent of both the young person and one of their parents. In order to enter into an employment contract with a young person between the ages of 7 and 14, employers must obtain the consent of a labour inspector (ECA §8). In their application, employers must describe the working conditions, including the place of work and duties, and the age of the young person and whether they are obliged to attend school. Before giving its consent the labour inspectorate has to be convinced that the work does not potentially hamper children's social development or jeopardize their education.

For the reasons cited above we find that the situation in Estonia is in conformity with the European Social Charter (Revised) Article 7§3.

RESC 7§3 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 7§3 of the Charter on the ground that the rules applying to the employment of children still subject to compulsory education do not apply to children employed by a close relative.

84. The representative of Ireland presented information (see under RESC 7§1 Ireland of this document).

85. The representative of Turkey believed that special circumstances should be taken into account in family businesses, indicating a necessity to find a balance between state control and recognition of parental responsibility.

86. The representative of the ETUC pointed out that the state has to establish safeguards and the Charter seeks to lay down limits in order to protect children.

87. The Committee took note that the situation had not changed and Recommendation CM/RecChS(2007)1 is still in force. It urged the Government to bring the situation into conformity with the Charter.

RESC 7§3 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 7§3 of the Charter on the ground that the effective enjoyment of the right to education is not guaranteed.

88. The representative of Italy referred to her statement in response to the ground of non-conformity under Article 7§1.

89. In reply to a question from the Chair, she confirmed that the legislation on apprenticeships had existed prior to the reform of 2011, but that the system had been revised in full, in particular by enabling young people to choose to follow this path as from the age of 15.

90. The Committee urged the Government of Italy to provide the relevant information, supported by full and recent statistical data, in the next report and asked the Government of Italy to bring the situation into conformity with the European Social Charter.

RESC 7§3 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 7§3 of the Charter on the ground that the legal framework does not limit the period of work during summer holidays for children subject to compulsory education.

91. The representative of Lithuania provided the following information in writing:

> Law on Occupational Safety and Health of Republic of Lithuania (Article 36) provides that during holidays young persons under 15 years of age, who work at least one week, may work up to 7 hours per day and 35 hours a week, young persons who have reached the age of 15 may work up to 8 hours per day and 40 hours per week. Young persons cannot have more than one job if the total working time is longer that prescribed above.
> With regard to young persons between 16 and 18, pursuant to the Labour Code, working time may not exceed in general 40 hours per week and 8 hours per day (Article 144), while a shorter length should be set up for workers under 18 years of age (Article 145).
> Currently Ministry of Social Security and Labour has been preparing the draft amending appropriate laws and securing two weeks of uninterrupted summer holidays for young people subject to compulsory education.

RESC 7§3 NETHERLANDS (KINGDOM IN EUROPE)

The Committee concludes that the situation in the Netherlands is not in conformity with Article 7§3 of the Charter on the following grounds:

- *Children aged 15, still subject to compulsory education, are not guaranteed the benefit of an uninterrupted rest period of at least two weeks during summer holidays;*
- *it is possible for children aged 15, still subject to compulsory education, to deliver newspapers before school from 6 a.m. for up to 2 hours per day, 5 days per week.*

First ground of non-conformity

92. The representative of the Netherlands provided information concerning the first ground of non-conformity. Children in the Netherlands aged 15 may not work more than 8 hours a day or 40 hours per week during school holidays, subject to a maximum of 6 weeks per year. The 6 week period may be spent on paid employment but only for light work. No more than 4 weeks out of the 6 weeks may be worked consecutively. 15 year olds have at least 12 weeks holiday per year (1 week in autumn, 2 weeks at Christmas, 1 week in spring and at least 8 weeks for summer). It follows that 15 year olds may benefit from an uninterrupted rest period of at least 2 weeks during the summer holidays. It also follows that they may not work for more than half of their annual holidays, in compliance with the EU Directive on the protection of young people at work, based on the principle of 15 year olds not working throughout the entire school holiday. Moreover, parents of 15 year olds, schools and Trade Unions in the Netherlands have no objection to the current situation.

93. The Secretariat pointed out that it cannot be excluded that a young person, during the summer holidays, could work for 4 consecutive weeks, then have one week free followed by one more week of work. In such cases, the provision for 2 consecutive weeks of uninterrupted rest would not be respected.

94. The Committee took note of the situation and invited the Dutch authorities to submit a more detailed report on the situation.

Second ground of non-conformity

95. The representative of the Netherlands referred to a general rule that 15 year olds may not work before 7 am which is subject to an exception for newspaper delivery rounds, which may be carried out as from 6 am. However, no exception is made to the rule that the total working hours per day for 15 year olds is subject to a maximum of 2 hours on a school day. A study of working hours and performance at school, carried out in 2003, produced no evidence that delivery of newspapers detracts from school performance of 15 year olds. On the contrary, children with newspaper rounds were discovered to be in better condition physically and mentally than their peers. They felt more rested and were able to concentrate better. Generally, there were also more ambitious and enterprising than other children of their age. Children with newspaper rounds like attending school more than the control group. It was therefore concluded that 15 year olds with a newspaper round were able to derive maximum benefit from their schooling and that their extracurricular activities did not detract from this.

The Netherlands does not share the interpretation of article 7§3 by the ECSR and is convinced that the situation is in compliance with the Charter. Moreover, all parties involved in the Netherlands, including parents, schools and trade unions have no objection to the situation and the country is in compliance with the EU directive.

96. The Secretariat pointed out that the delivery of newspapers cannot necessarily be considered as light work as it involves working outdoors, often in the dark and carrying a heavy weight. Some reassurance concerning conditions would be welcome, such as the weight carried and distances, particularly in winter.

97. The representative of the Netherlands replied that these activities were carefully monitored by the Labour Inspectorate. In reply to comments by the representatives of Lithuania and Iceland concerning conditions of work, he said that the newspapers were delivered mainly by boys who did not have to carry the bags as they were attached to bicycles.

98. The representative of Estonia suggested that the Netherlands provide updated information including details about the working conditions and proposed that their Government representative(s) meet with the ECSR to find an appropriate solution to put an end to the long standing situation of non-conformity.

99. The representative of Belgium said that there are alternative solutions for the delivery of newspapers, however if the population of the Netherlands and the labour inspectorate appear satisfied then it could be considered as not too serious an issue and would not warrant a political mobilisation in the form of a Recommendation.

100. The Committee took note of the elements provided and requested the Government to provide information in the next report showing the results of a survey on actual working conditions as well as information from the labour inspectorate. It asked the Government of the Netherlands to communicate with the ECSR on the situation.

RESC 7§3 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 7§3 of the Charter on the ground that it is possible for children aged 15, still subject to compulsory education, to deliver newspapers before school, from 6 a.m. for up to 2 hours per day, 5 days per week.

101. The representative of Norway provided the following information in writing:

> The Working Environment Act (WEA), section 11-2 first paragraph, states that working hours for persons less than 18 years of age shall be so arranged that they do not interfere with their schooling or prevent them from benefiting from their education. Pursuant to the WEA section 11-3 second paragraph, in the case of children who are under 15 years of age or are attending

compulsory education, working hours shall not exceed 2 hours a day/12 hours a week on days and weeks with teaching.
Any employer who wishes to engage a person who is under 15 years of age or attending compulsory education has to collect a written consent from the child's parent or guardian, cf the regulation relating to Work by Children and Youth of 30 April 1998 no. 551, section 7.
The Labour Inspection Authority informs the Government that it has not registered any inquiries, complaints or orders on this subject.
Pursuant to the regulation relating to Work by Children and Youth of 30 April 1998 n° 551, section 15, an employer employing 20 or more employees, must keep a list of all employees aged 18 and younger where, inter alia, the employee's address and birth date, parents' name and address, daily working hours and daily school hours are listed. The list is to be at the disposal of the Labour Inspection Authority and the safety deputy.
Regarding the practice of allowing children aged 15, still subject to compulsory education, to deliver newspapers before school, from 6 a.m. for up to 2 hours per day, 5 days per week, the Government would like to emphasis the importance of the rules limiting the total work load and regulating the working hours of children aged 15 years who are subject to compulsory education, and the control measures employed to ensure that their work commitments do not interfere with their education, as shown above. The lack of cases reported to, or investigated by, the Labour Inspection Authority indicates that the protection is sufficient.
Consequently, it is the Norwegian opinion that the provisions laid down in the WEA are in compliance with the Charter. Children aged 15 years who are subject to compulsory education arte protected by a set of rules that, in total, ensures that they are not deprived of the full benefit of their education.

RESC 7§3 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly working time for children subject to compulsory education is excessive.

102. No information was received from the Government of Portugal.

RESC 7§3 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 7§3 of the Charter on the ground that it has not been established that permitted working hours during the school year are sufficiently limited so as not to affect the child's school attendance, receptiveness and homework.

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

Ayant établi l'âge minimum d'emploi au niveau de 16 ans l'article 46 du Code du Travail permet la conclusion du contrat individuel de travail avec une personne âgée de 15 ans seulement à condition que suite à celle-ci sa santé, son épanouissement, l'instruction et la formation professionnelle ne seront pas périclités.
La norme respective est soutenue par la disposition de l'article 11 p. (3) de la Loi sur les droits de l'enfant qui stipule que l'Etat protège l'enfant contre l'exploitation économique et contre exécution de tout travail qui représente un danger pour sa santé ou sert en tant qu'obstacle pour le procès d'instruction, ou fait préjuger son développement physique, intellectuel, spirituel et social.

Par conséquent, on ne peut pas considérer que la législation nationale ne contient pas de normes qui limitent le travail des mineurs dans le cas où celui-ci affecte le bon développement du procès d'instruction de l'enfant.
Faisant référence sur le régime de travail des mineurs, nous communiquons que celui-ci est réglementé en général par l'article 96 p. (2) et l'art. 100 p. (2) et (3) du Code du Travail. Ceux-ci établissent pour les mineurs la durée maximale de la journée et de la semaine de travail de façon suivante:
Temps de travail hebdomadaire :
- 24 heures pour les travailleurs âgés de 15-16 ans ;
- 35 heures pour les travailleurs âgés de 16 -18 ans.

Temps de travail journalier :
- 5 heures pour les salariés sous l'âge de 16 ans ;
- 7 heures pour les salariés âgés de 16-18 ans.

Du point de vue de la législation il n'y a aucune différence entre le travail exercé par les mineurs avant ou après les cours. En même temps jusqu'à présent on n'a pas dépisté des cas où les mineurs auraient travaillé avant les cours.
Dans le même contexte, on tient à mentionner que la législation nationale prévoit une série de garanties et de compensations pour les salariés qui étudient qui sont applicables également aux mineurs. Les garanties respectives sont accordées en conformité avec le Code du Travail et de la Décision du Gouvernement n 435 du 23 avril 2007, à toutes les personnes qui combinent le travail avec les études, en cas d'obtention des études de niveau respectif pour la première fois. Ci-dessous on présente les prévisions de la Décision susmentionnée avec la relevance pour les mineurs.

Enseignement secondaire général (gymnase, lycée, écoles secondaires de culture générale)
Pour les personnes qui font leurs études aux gymnases, lycées et écoles secondaires de culture générale, au cours de l'année scolaire, la semaine de travail est réduite avec une journée de travail ou de nombre d'heures correspondant à une journée de travail (du compte de la réduction de la journée de travail au cours de la semaine).
Au cours de l'année d'études les personnes mentionnées sont libérées de travail pour une période d'au moins 36 jours de travail ou pour un nombre d'heures de travail correspondant à ces jours.
Pour le temps de libération de travail ces personnes touchent 50 % du salaire moyen.
Si les personnes qui font leurs études aux gymnases, lycées, écoles secondaire de culture générale ne peuvent pas utiliser de manière régulière les jours libres à cause des conditions de production (caractère saisonnier ou mobil du travail, etc.), l'administration de l'entreprise a le droit d'offrir aux demandeurs des jours libres cumulés pendant ne autre période de l'année, avec une intensité moins important du procès de production.
A cours de l'année d'études, à la demande des salariés qui font leurs études l'administration de l'entreprise peut leur offrir de manière supplémentaire, sans porter préjudice à l'activité de production, une ou deux journées libres par semaine, sans maintenir le salaire.
Pendant la période des examens de promotion les salaries qui font leurs études aux gymnases, lycées et écoles secondaires de culture générale bénéficient d'un congé supplémentaire d'une durée de jusqu'a 30 jours de calendrier, en lui gardant 75 % du salaire moyen du lieu de travail de base.
Pendant la période des examens de promotion les salariés qui étudient aux gymnases, lycées et aux écoles secondaires de culture générale bénéficient de maximum 10 jours libres, en gardant 75 % du salaire moyen du lieu de travail de base, du compte de réduction du nombre total de jours libres, indique ci-dessus.
Les personnes qui étudient individuellement et sont admis aux examens de promotion aux gymnases, lycées ou écoles secondaires de culture générale bénéficient d'un congé

supplémentaire de jusqu'à 30 jours de calendrier, en gardant 75 % du salaire moyen du lieu de travail de base.

Enseignement secondaire professionnel (écoles professionnelles, écoles de métiers)
Les salariés qui combinent le travail avec les études dans les institutions d'enseignement secondaire professionnel (écoles professionnelles, écoles de métiers) bénéficient d'un congé supplémentaire avec une durée de jusqu'à 35 jours de calendrier, pour se préparer et de soutenir les épreuves et les examens, en gardant 75 % du salaire moyen du lieu de travail de base.
Les frais de déplacement aller-retour, une fois par an, par le transport ferroviaire et routier public (sauf les taximètres), des salariés qui combinent le travail avec les études dans les institutions d'enseignement secondaire professionnel vers l'institution d'enseignement ou ils font leurs études, pour soutenir les épreuves et les examens, sont supportés intégralement, par l'entreprise qui les emploie, après la présentation des documents de voyage.

Enseignement supérieur et moyen de spécialité
Pour les salariés qui combinent le travail avec les études dans les institutions d'enseignement supérieur et moyen de spécialité une durée réduite du temps de travail est établit de 35 heures par semaine.
Les salariés inscrits pour l'examen d'admission dans les institutions d'enseignement supérieur et moyen de spécialité bénéficient de congé non-paye d'une durée de jusqu'à 15 jours de calendrier.
Les salaries qui font leurs études dans les institutions d'enseignement supérieur et moyen de spécialité bénéficient des congés supplémentaires payés (en gardant 75 % du salaire moyen du lieu de travail de base) :
a) pour la session de repère, l'exécution des travaux de laboratoire et soutien des épreuves et des examens – jusqu'a 30 jours de calendrier annuellement ;
b) pendant la période des examens de licence et des examens de promotion – jusqu'à 30 jours de calendrier ;
c) pour l'élaboration et le soutien du projet (thèse) de licence, de la thèse de master ou de diplôme – jusqu'à 90 jours de calendrier.
Les frais de déplacement aller-retour, une fois par an, par transport ferroviaire et routier public (sauf les taximètres), des salariés dans l'institution d'enseignement où ils font leurs études pour la session de repère, pour l'exécution des travaux de laboratoire, le soutien des épreuves et des examens, ainsi que dans le cas de déplacement pour le soutien de la thèse de licence et des examens de licence, pour le soutien de la thèse de master ou du projet de diplôme et des examens de promotion sont supportés intégralement par l'entreprise ou ils sont engagés, à la présentation des documents de voyage.

RESC 7§3 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 7§3 of the Charter on the ground that the right of children to fully benefit from compulsory education is not guaranteed due to the ineffective application of the legislation.

104. The representative of Romania informed the Committee that child labour had been the subject of the Campaign on Preventing and Combating Child / Youth through Work conducted by the Ministry of Labour, Family and Social Protection, under which labour inspectors carried out controls from 28 August to 8 September 2012. The purpose was to observe how employers, regardless of employment structure or economic sectors, abided by the law on children at work. The method

employed had been to ask minors to show up at work, to fill in identification papers which were then confronted with individual employment contracts, payrolls, and other documents.

The representative of Romania reported that the results of the campaign were to be published soon. A preliminary assessment showed that 1.370 employers had been controlled; 21 employers were prosecuted for employing people without legal employment forms or accepting at work minors of 15 to 18 years of age without legal employment forms; 35 people were found without legal employment forms; 1.016 sanctions had been applied; 2.861 cases of violation of labour relations, out of which 1.128 of violation of legislation on minors at work, had been reported. Causes of such violations were the lack of written labour contracts and of collective attendance according to the Labour Code; unlawful stipulations; disrespect for the minimum salary for minors and for the supplementary leave for minors; effecting overtime work by minors; miscalculation of wages for part-time work. She emphasized that most employers had been found to employ minors on a contract basis, to feel a sound responsibility towards the youth, and to provide working conditions which were suited to their age and development. It had been noticed that people of 15 to 18 years of age were aware of their rights on working hours and employment conditions.

The representative of Romania informed the Committee that drop-out risks had been identified especially for children from remote rural or disadvantaged areas, for children with special educational needs, and for Roma children. The Ministry of Education offered free school bus transport to help solving difficulties with transportation to school or, alternatively, boarding. She explained that strong schools with good infrastructure had been required to take over children from disadvantaged communities to address the lack of teachers in schools in rural or disadvantaged areas. Special measures such as free meals, kindergarten, improved transportation, school mediation, positions in all education inspectorates for children with special educational needs, were taken to address the particularly high drop out of Roma children. Moreover, specific regulations had been set up to prevent segregation of Roma children at school, and special positions had been created to attract Roma children to high school and university.

The representative of Romania quoted special measures in 2012 to combat the drop-out, such as investment in school infrastructure, rehabilitated equipment, improved educational materials, consolidation of buildings, and the construction of new kindergarten, schools, and campuses.

105. In reply to a question from the Chair, the representative of Romania specified that, in accordance with the Labour Code, children of 15 years of age were entitled to 4 hours of rest per day, and that in situations in which children do not attend school, education inspectors elaborated integration plans in consultation with the parents. She added that, beyond the stated preliminary results, the full outcome of the campaign would be detailed in the next report.

106 The Committee encouraged the Government of Romania to include the information in its next report, and invited it to bring its situation into conformity with the European Social Charter.

RESC 7§3 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 7§3 of the Charter on the ground that it has not been established that the definition of light work and its duration for children subject to compulsory education are sufficiently precise.

107. The representative of the Slovak Republic provided information in writing (see under RESC 7§1 Slovak Republic of this document).

RESC 7§3 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 7§3 of the Charter on the ground that Turkish law and practice do not ensure that children are not deprived of the full benefit of compulsory education.

108. The representative of Turkey referred to Article 4 of the Labour Code 2003 which provides for exceptions in some sectors of work, such as small agricultural undertakings, artisanal family businesses, domestic services and apprenticeships, and the conclusion that children working in these sectors are excluded from its scope of application. However, Article 59 of Law N° 222 on primary education applies without exception to all children regardless of the sector of activity and meets the requirements of the Social Charter although this information had not been included in the national report. In accordance with this article, the employment of children of compulsory school age who are not attending school is prohibited in all workplaces. The work of children of compulsory primary education age is governed by the provisions relative to child labour of Article 71 of the Labour Code 2003. This article provides that:

- employment of persons under 15 years of age is prohibited, however it is possible to entrust minors over 14 years of age with light work if they have completed compulsory schooling;
- tasks carried out by the children must not prevent them from regularly going to school or pursuing vocational training;
- children going to school may work a maximum of 2 hours per day and 10 hours per week, providing that working hours are outside school hours;
- during holidays, the duration of work may not exceed 7 hours a day and 35 hours per week.

Moreover, Article 104 of the Labour Code foresees sanctions for non compliance with these provisions and inspections by the Ministry of Labour, Social Security and the Ministry of Education closely monitor that the legislation is applied as well as checking the regularity of school attendance.

Information was also provided concerning the duration of compulsory schooling which is due to be extended from 8 to 12 years as from the next school year 2012-2013. Tangible results can be seen resulting from efforts and initiatives with figures in 2006 showing a significant reduction of child labour and a rise in school attendance. Turkish legislation guarantees that children of school age fully benefit from compulsory education with provisions which prohibit child labour and the Government is taking the necessary measures to ensure that these apply in practice.

109. The representative of Belgium said that there are clear signs of progress although the Government needs to show further efforts are being deployed in applying the legislation.

110. The representative of Lithuania said that as the report refers to percentages of child labour in a wide age group from 6 to 17 years, the Government should provide clearer statistics which show the number of children working who are of compulsory school age.

111. The representative of Turkey, replying to a question from the representative of Lithuania, said that the compulsory school age had been put up from 12 to 14 years of age in 1997 and a draft law before the national assembly foresees putting it up to 17 or 18 years of age. This represents a major reform with repercussions on legislation and practice concerning the employment of children of school age. Another survey is due to be carried out in 2012 and the next report will show new data which should confirm the trend of a significant decrease in child labour.

112. The Committee took note of efforts made and encouraged the Government to pursue developments in that direction. It asked that results from the 2012 survey, as well as appropriate statistical data relative to working children for whom education is compulsory, be provided in the next report.

Article 7§4 – Working time for young persons under 18

RESC 7§4 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§4 of the Charter on the ground that the limit of 40 hours per week for young workers under the age of 16 is excessive.

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

FEDERATION OF BOSNIA AND HERZEGOVINA (FBIH)

The Federation of Bosnia and Herzegovina (hereinafter: the Federation) is in the process of enactment of a new Labour Law. Namely, a Draft Labour Law, which was discussed and espoused as a good basis for drafting the Bill by both Houses of FBiH Parliament, was subject to public consultations which lasted 60 days, given the importance of this Law.

Drafting the Bill is in progress and it is expected to be passed in September 2012, having completed the alignment with European legislation and the relevant directives of the Council of Europe and with the provisions of the European Social Charter (revised) in areas where the current law is inconsistent.

De lege ferende provisions exclude minors, i.e. persons between 15 and 18 years of age, from the general rule of weekly working hours, providing for weekly working time of this category of employees of up to 35 hours. Under the new legal rules people younger than 15 years of age cannot conclude any contract of employment or be employed in any type of work with an employer. The provisions relating to the prohibition of overtime for juveniles remained unchanged.

REPUBLIKA SRPSKA (RS)

The Committee's Conclusion regarding Article 7 Paragraph 4 respecting working hours of persons under 18 was reached from the current legislative regulation of such work in the Republika Srpska (hereinafter: RS). Article 40 Paragraph 1 of the Labour Law provides that a full-time employee works 40 hours per week, including workers under 18. However, there is only one exception in Article 47 Paragraph 1 of the Labour Law which prohibits overtime for workers younger than 18 years of age.

BRČKO DISTRIKT (BS)

Working hours of persons under 18 are prescribed by Article 22 of the Labour Law of the Brcko District (hereinafter: BD) and amounts to 40 hours per week and no exception for persons younger than 18 years of age is provided. Article 22 of the Labour Law of Brcko District has not been amended to comply with Article 7 Paragraph 4 of the Charter. Alignment and implementation will be the subject of the first amendments to the Labour Law to come.

RESC 7§4 IRELAND

The Committee concludes that the situation is not in conformity with Article 7§4 of the Charter on the ground that the Committee is unable to assess whether the working hours of the great majority of persons under 18 are limited in accordance with the needs of their development.

114. The representative of Ireland presented information concerning Article 7§4 (see under RESC 7§1 Ireland of this report).

115. The representative of Turkey pointed out that children in family undertakings have a different status than conventional workers and this should be taken into account.

116. The representative of Poland observed that there are limits as to what children may be expected to do and if they are participating in daily work, such as on a farm, there has to be some oversight of this. This view was supported by the representative of the ETUC and the representative of Belgium.

117. The Committee urged the Government to equip itself with the resources to undertake inspections of family undertakings and to take the necessary measures to bring Ireland into conformity with the Charter.

RESC 7§4 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 7§4 of the Charter on the ground that it has not been established whether the working hours of young persons between the ages of 15 and 16 are reasonable.

118. The representative of Italy reminded the Committee that the report indicated that, since 1 September 2007, school had been compulsory up to the age of 16 in accordance with Article 1, paragraph 622 of Law No. 296 of 27 December 2006, supplemented by Law No. 167 of 14 September 2011 amending the apprenticeship system. In connection with this system, she also reiterated that it was now possible to complete one's compulsory education through apprenticeship as from the age of 15. Under Article 3 of the above-mentioned law apprentices were required to spend time in training so as to complete their compulsory schooling and obtain a vocational qualification, and the number of hours of training had to be appropriate, although no maximum was provided for. Time spent in training, including in theoretical education, was regarded as hours of work, and it was for the regions to decide on the trainers and the content.

119. The representative of Italy stated that, following the reform of the education and apprenticeship systems, minors under the age of 16 were prohibited from working, except for apprentices working under the conditions already mentioned. She said that the situation in Italy was in conformity with the requirements of Article 7§4 of the Charter.

120. In answer to a question from the Chair, she confirmed that the compulsory 120 hours of training per year for apprentices could be dispensed within or outside the undertaking concerned and that, although it included these hours of compulsory training, the entire time during which young people were engaged in an apprenticeship was considered as working hours for the purpose of paying wages and levying social contributions.

121. The representative of Austria pointed out that it was possible to divide time spent working and time spent in training.

122. The representative of Belgium proposed that, to deal with the lack of precision of certain reports, the Committee should ask states parties to adhere to a standardised approach, indicating the required information regarding the legislation, the breakdown between time spent in training and working time, and the matters covered by labour inspectors. The representative of the Netherlands concurred with this proposal, in particular so as to facilitate a more abstract analysis of the information obtained.

123. The Chair pointed out that this had been the purpose of the amendments made to the form.

124. The Secretariat pointed out that the form made it possible to provide the information and that a finding of a lack of information could be made, but it was also possible to envisage clarifying the information requirements so as to assist states parties in delivering this information.

125. The representative of Belgium acknowledged that it was not possible to force states parties to report information they did not wish to disclose, but pointed out that any lack of clarity that hindered

the Committee from raising questions of good governance had implications for the Committee's profile and reputation.

126. The representative of Lithuania pointed out that the Committee had already discussed the questions to be included in the form, which asked states parties to answer clear questions, but the situation had not changed for all that. She had concurred with the Secretariat that the reports should be modelled on the digest of matters of interest to the Committee.

127. The Committee called on the Government of Italy to provide the relevant information in its next report and recalled that incompatible legislation must be adapted to bring it into conformity with the European Social Charter.

RESC 7§4 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 7§4 of the Charter on the ground that it has not been established that the Republic of Moldova took sufficient measures to guarantee the limitation of the working hours of persons under 18 years of age in practice.

128. The representative of the Republic of Moldova provided information in writing (see under RESC 7§2 Republic of Moldova in the present document).

RESC 7§4 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 7§4 of the Charter on the ground that the working time for children is manifestly excessive.

129. The representative of Turkey referred to Article 71 of Law N° 4857 which regulates the maximum duration of working hours for children who have completed compulsory education which is fixed at 7 hours per day and 35 hours per week. These limits may be extended to 8 hours per day and 40 hours per week in certain circumstances for children aged 15 and over. The interpretation of the legislation in Turkey in practice, however, applies particularly to children over 15 who are 16 years of age or over. As compulsory education is for a duration of 8 years, children must go to school until 14 or 15 years of age. The provision which was found not to be conformity does not apply to children under 15 years and the conclusion can be considered as ill-founded on this point. Turkish legislation is in conformity with the EU Directive 1994 on the protection of young persons at work. A draft law before the Turkish General Assembly aims to reform, in particular, the duration of compulsory education from 8 years to 12 years. As from the next school year, therefore, children under 18 years of age will come into the category of those for whom schooling is obligatory and their working time will be subject to provisions applicable for children subject to compulsory education.

130. The Chair underlined that the conclusion of non-conformity concerned the category of 15 to 16 year olds who have been authorised to work up to 8 hours per day and 40 hours per week and this situation has not changed.

131. The representative of Turkey confirmed that there was no change to the legislation and the problem remains but it concerns a fairly small number of young persons. In view of the draft law already mentioned, the compulsory school age will be extended to 18 years of age so the problem will be settled with the introduction of this new law.

132. The representative of Lithuania considered it appropriate to wait until the introduction of this new legislation which will completely change the situation concerning the employment of young people.

133. The Committee took note of the information provided and expressed a wish that the draft legislation on extending the age of compulsory education to 18 years is adopted before the submission of the next report.

Article 7§5 – Fair pay

RESC 7§5 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§5 of the Charter on the ground that the minimum wage of young workers is unfair.

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

> The relevant steps were taken in order to bring situation into conformity with European Social Charter (Revised). In particular, the requests to consider an issue of increasing the minimum wage were addressed to Cabinet of Ministers of the Republic of Azerbaijan, Ministry of Finance, Ministry of Economic Development, State Social Protection Fund and State Statistical Committee. This initiative was supported by relevant authorities, except Ministry of Finance which proposed to carry out more in-depth investigation of its impacts and to consider mentioned issue by appropriate commissions during the discussion of state budget for the next year.
>
> According to the Decree of the President of the Republic of Azerbaijan "On increasing amount of minimum monthly wage" dated December 1, 2011, No. 1866, minimum monthly wage was increased by 10 % and since December 1, 2011 it was determined as 93,5 AZN.

RESC 7§5 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 7§5 of the Charter on the ground that the allowances paid to apprentices are inadequate.

135. The representative of Belgium referred to a situation which is constantly changing in a positive sense with a variety of factors involved. A guaranteed minimum monthly inter-professional average wage is regularly indexed which applies to all related allowances. The procedure is based on a system of collective bargaining, subject to indexation and adapted to evolution in prices. There are three regimes all based on the same principles in the three communities, involving allowances which are the result of agreements between a wide range of social partners. The authorities ensure that parents do not lose the right to family allowances and an apprentice with children is still entitled to family allowance. The apprentice is fully covered by social security, with his/her personal contribution taken in charge and the employer also paying a contribution. A range of elements affect the net amount which the person receives and these would need to be taken into account by the ECSR. Allowances are also affected by factors such as the economic strength of the sector, the experience and age of the apprentice. Alternative training courses can involve both work experience and studying, and young people between 16 and 18 years, can undergo integrated vocational training at school as well as in the work environment. The emphasis is on training and not based on productive criteria. A sharp increase in basic allowances is considered by many as detrimental in terms of the number of places offered and quality. There is a very high rate of employment of young people having undergone alternative training.

In addition, many young apprentices receive holiday money and the situation concerning holidays will change to conform to EU requirements providing for annual holidays as from the first year of work. Moreover, the National Council for Work is seeking to unify and streamline the system in Belgium.

136. The Chair said that it would be necessary to have a full table showing minimum salaries, age of apprentices and percentages. The problem seems to concern particularly those in the category of 15 to 18 years.

137. The representative of Belgium underlined that the system of apprenticeship is seen as an integral part of education through the acquisition of skills and the social partners complain of a lack of offer of apprenticeships. There is little risk of exploitation of young people, however, progress can be made in terms of uniformity between sectors.

138. The representatives of Lithuania and Estonia said that more information is required to give a clearer picture of the situation for the ECSR concerning minimum net wages of adult workers and percentages which apply to apprentices.

139. The Secretariat pointed out that the national report contained relevant information, apart from written information concerning the holiday bonus. The ECSR arrived at the conclusion that even including this supplement in the calculations, the amount is insufficient except for the Flemish community for young apprentices over 18 years of age at the beginning of an apprenticeship with all the other situations in Belgium not in conformity.

140. The representative of the Netherlands referred to the poor labour market in recent years and believed that the principle of training should be given priority over material income. The representatives of Estonia and Turkey agreed that economic realities should be taken into consideration.

141. The representative of ETUC agreed that work is a priority but raised caution over putting economic reasons above quality conditions.

142. The Secretariat explained that the comparison is based on the minimum net wage of an adult worker and the actual remuneration of an apprentice which encompasses all that he/she receives, including a holiday bonus if there is one, and amounts for any other advantages which were not previously included in the report. The comparison is therefore based on these two figures and this information should be included in the next report.

143. The Committee took note of the information provided and welcomed improvements that were indicated. It asked the Government to provide more specific information in the next report, in particular with respect to the proportion of income of apprentices compared to the inter-professional wage of workers taking into account the above information by the secretariat.

RESC 7§5 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 7§5 of the Charter on the ground that it has not been established that the right of young workers and apprentices to a fair wage and other appropriate allowances is guaranteed in practice.

144. The representative of Bulgaria informed the Committee of the legislation in force pertaining to the remuneration of young workers and apprentices and of its implementation, as well as of the draft memorandum of co-operation with the ILO concerning child labour.

In apprenticeship contracts, which are governed by the Labour Code, employers undertake to train students in a profession or a speciality and students undertake to learn that profession or speciality. Such a contract cannot last longer than 6 months and the wage received during this time cannot be less than 90 % of the minimum wage paid in Bulgaria. The minimum wage is determined by the Council of Ministers. Once the training has been successfully completed, the employer is obliged either to hire the worker according to his or her qualifications or to pay him or her compensation. Once the apprenticeship contract has expired, the wage paid to the worker may not be less than the minimum wage. The minimum wage rate applies to all employees irrespective of their age.

The minimum wage is currently 270 Bulgarian leva (135 €). The net amount (after taxes and contributions) received by young workers is 220 leva (110 €). Between 2005 and 2011, the minimum wage rose from 150 to 270 leva, and in May 2012 it will rise to 290 leva. The gross minimum wage of people employed on an apprenticeship contract is 243 Bulgarian leva and the net amount is equal to 200 leva.

She also pointed out that, since 2006, monitoring the implementation of the laws governing the employment of minors had become a priority of the labour inspectorate and that, in the context of such monitoring, the labour inspectorate had not found any examples of breaches of the relevant legislation with regard to the remuneration of employees under 18 years of age.

The representative of Bulgaria also pointed out that during the period 2005-2009 an ILO project – Programme on the Elimination of Child Labour – had been implemented in Bulgaria at national and local level. The project had helped to increase the potential of over 300 specialists in monitoring child labour at local and national level.

145. In reply to the Chair's question asking why this information did not appear in the national report, the representative of Bulgaria said that the information submitted was very brief because the approach chosen in the report had been to list the various laws and legislative changes. As a result, some of the information was missing. Her country would endeavour to be more precise in its next report.

146. The Committee took note of the information and invited the Government to provide the detailed information required in the next report so that the ECSR could assess the situation.

RESC 7§5 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 7§5 of the Charter on the grounds that:

- *the rate paid to young workers between 16 and 18 years is too low;*
- *the minimum net wage is manifestly inadequate;*
- *young persons working for close relatives are not covered by the Minimum Wage Act.*

First and second grounds of non-conformity

147. The representative of Ireland provided information concerning the minimum wage for young persons in Ireland. Along with nineteen other countries among the EU's 27 Member States, Ireland has national legislation setting a minimum wage. The current national minimum wage rate for workers under 18 years of age is 6.06 € per hour, ie. 70 per cent of the experienced adult rate. At 8.65 € per hour, Ireland has the second highest gross minimum monthly wage among those EU Member States that have a national minimum wage. When adjusted for differences in purchasing power, Ireland occupies fifth place after Luxembourg, Netherlands, Belgium and France. In fact, one of the first steps taken by the current Irish Government on taking office was to restore the headline rate of 8.65 €, following a reduction by the outgoing Government and in the face of considerable opposition from employers and other groups.

Ireland is experiencing an unemployment crisis, with youth unemployment running at about twice the national rate. Ireland continues to target its active labour market policies at the most vulnerable to minimise their drift into very long term unemployment, including young people with low skills or education levels. The aim remains to keep young people in education for as long as possible but also ensure that those who are available for work are not priced out of the market.

148. The representative of Ireland, in reply to a question by the representative of Lithuania, said that the legislation does not make a distinction between different age categories and the same conditions apply to all persons under the age of 18.

149. The representative of Ireland, replying to a question by the representative of Estonia, said that the level of 70 per cent had been agreed through Statutory Commissions prior to the introduction of the minimum wage and the formula used were agreed with social partners.

150. The representatives of Portugal and the United Kingdom commented that the minimum wage in Ireland is higher than that of many other EU countries including Portugal and the United Kingdom. They also expressed the view that economic difficulties facing the Government should be taken into account.

151. The representative of the Netherlands expressed support for policy motives which give priority to employment over youth wages.

152. The Secretariat explained that the evaluation was based on the gap between the lowest wage and the average wage in the country, which should not be too wide. In Europe, 50 per cent of the average wage is considered as the threshold of poverty. In reply to a question from the representative of Lithuania, the Secretariat said that information was missing in the national report with regard to net remuneration, so the ECSR was unable to establish a precise percentage. The Secretariat drew attention to the fact that the situation in Ireland had not been in conformity prior to the economic crisis.

153. The representative of the ETUC recalled the rise in the number of poor workers today who cannot make a living out of their employment.

154. The Committee, in respect of the first and second grounds of non-conformity, requested Ireland to supply all the specific information in connection to the minimum wage in comparison to the average wage.

Third ground of non-conformity

155. The representative of Ireland provided information concerning the exclusion of family members from the scope of minimum wage, saying that Ireland's position on this issue has not changed. The principle of excluding an employee who is a close relative of an employer from certain employment rights legislation was established prior to the National Minimum Wage Act. By their nature and scope, flexible working arrangements involving close relatives include evening, weekend and summer work, or assistance at critical times, and are a practical option for all concerned in a family situation. Such arrangements reflect national customs and practice in Ireland and the State does not consider it desirable to deem such arrangements as constituting a criminal offence if the minimum wage is not paid for work undertaken by a close relative in such circumstances.

156. The Committee, in respect of the third ground of non-conformity, urged the Government to ensure adequate supervision of children and young people employed in family businesses and take the necessary steps to bring the situation into conformity with the Charter.

RESC 7§5 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 7§5 of the Charter on the grounds that:

- *the minimum wage for young workers is not fair; and*
- *minimum allowance for apprentices is not fair.*

First and second ground of non-conformity

157. The representative of Lithuania provided the following information in writing:

Young employees are entitled to the same wages as adults and apprentices cannot receive less than the minimum monthly wage.
Lithuanian Government makes affords to raise the amount of minimum monthly wage due the financial possibilities. From 1th of August 2012 the minimum wage has been raised till LTL 715 (net) and LTL 850 (gross), the average wage for first quarter of 2012 (the newest available data) was LTL 1661,9 (net) and LTL 2138,1 (gross).

RESC 7§5 MALTA

The Committee concludes that the situation in Malta is not in conformity with Article 7§5 on the ground that it is not established that the allowances paid to apprentices are fair.

158. The representative of Malta provided the following information in writing:

Most of the apprenticeships are based on the dual system of 3 days at the Vocational Education and Training Institute and 2 days at the place of work. This depends on the time table of the particular training program and not all apprenticeships are the same. The average hours that apprentices spend at the Vocational Education and Training Institute are around 20 hours weekly.
Apprentices report for 8 hours per day (excluding break time) at the place of work for on-the-job training. Thus, for those apprentices who are required to attend 3 days at the Vocational Education and Training Institute, and 2 days at the place of work – they spend 16 hours weekly at the place of work during the academic year. When the Vocational Education and Training Institute is closed for the Christmas, Easter and Summer recess, apprentices spend 40 hours at the place of work.
Apprentices are entitled to a Maintenance Grant (stipend) of 86.01 € every 4 weeks throughout the whole year (13 payments) for 2 whole years. If the apprenticeship is of 3 year duration, apprentices do not receive a stipend in the third year.
Apprentices receive 326.11 € for educational material and equipment paid once only in the beginning of the apprenticeship.
In the tables below, one can find the remuneration payable to TAS & ESTS apprentices by the employer in addition to the Maintenance Grant (stipend), and N.I contribution payable by both the employer and the apprentice

Extended Skill Training Scheme

Year	Gross Remuneration payable by the employer	National Insurance contribution to be paid by the employer and the apprentice
1	€ 47.75 per week	Apprentices under 18 - € 4.38 weekly Apprentices over 18 - 10% of the basic weekly wage
2	€ 49.99 per week	Same as above
3	€ 73.61 per week	Same as above

Technician Apprenticeship Scheme

Year	Gross Remuneration payable by the employer	National Insurance contribution to be paid by the employer and the apprentice
1	€ 49.97 per week	Apprentices under 18 - € 4.38 weekly Apprentices over 18 - 10% of the basic weekly wage

2	€ 52.20 per week	Same as above
3	€ 75.87 per week	Same as above

RESC 7§5 NETHERLANDS (KINGDOM IN EUROPE)

The Committee concludes that the situation in the Netherlands is not in conformity with Article 7§5 of the Charter on the grounds that:

- *young workers' wages are not fair;*
- *apprentices' allowances are not fair.*

First and second grounds of non-conformity

159. The representative of the Netherlands referred to the debate hold by the Committee in October 2011 concerning Article 4§1. In the Netherlands, all employees aged between 15 and 65 are entitled to receive the statutory minimum wage and minimum holiday allowance. Concerning the minimum wages for young people under the age of 23, the fact is that in general young people are less productive than adults and require more supervision. Therefore young people are entitled to a given percentage of the minimum wage that ranges from 30 % at the age of 15 to 45,5 % at the age of 18 to 100 % for employees aged 23 or older. This policy has been followed since the nineteen eighties and has proved to be successful on the two objectives pursued: to ensure that young people remain in education for as long as possible and to preserve and create employment for young people who do enter the labour market. At the moment, the youth unemployment in the Netherlands, around 10 %, remains relatively very low, compared with other EU-countries.

160. The representative of the ETUC said that everyone has the right to be properly paid irrespective of age and that as the ECSR stated the gap between the minimum wages of a young worker and an adult is manifestly disproportionate. The representative of the Netherlands replied that this debate does not exist with the Dutch Trade Unions and that high wages lead to more youth unemployment. The representative of United Kingdom strengthens the importance of job creation.

161. According to the representative of Turkey, young workers need special protection and in the Netherlands they seem to be discriminated in relation to adults.

162. In reply to the question raised by the Chair, the representative of the Netherlands said that the Dutch report did not mention apprentices since in the Netherlands there are not different legal provisions for apprentices which are paid for the hours they work and sometimes less for the hours in training. More information could be supplied at the next report.

163. The Chair reminded that, last time, the Committee voted on a recommendation that was not carried and she decided not to go again through the same process.

164. The Committee decided to await the ECSR's next assessment.

RESC 7§5 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 7§5 of the Charter on the grounds that:

- *it has not been established that young workers receive a fair wage;*
- *it has not been established that apprentices receive appropriate allowances.*

First and second grounds of non-conformity

165. The representative of Norway reminded that the situation had been found not to be in conformity because of a lack of information. She indicated that there is no legislation on the statutory minimum wage in Norway which is set by individual or collective agreements negotiated by social partners. The wages for apprentices and/or young workers are stipulated in most of the relevant collective agreements. She further explained that the lack of information regarding the Norwegian tax system could explain some of the Committee concern. Personal income in Norway is taxed according to a dual income tax system, consisting of a low flat rate on capital income and a progressive rate on labour income. Tax on wage income is calculated through a number of mechanisms, including several basic deductions, all with the aim of relieving the tax burden on smaller incomes. As an example, a yearly wage income of 10 000 € would be taxed about 800 €, roughly 8 %; a wage income of 20 000 € would be taxed about 3550 €, roughly 18 % and a wage income of 25 000 € would be taxed about 4800 €, roughly 19 %.

According to Norway's clear understanding the Norwegian tax system is well designed for securing not only apprentices and young workers a fair allowance, but all persons with smaller incomes.

166. In reply to the question raised by the Chair, the representative of Norway indicated that statistics on net wages are not available and that there are no distinctions among groups under 20 years old.

167. The representative of Turkey wondered whether the situation should not be considered under article 4.

168. The Committee took note of the information and invited the Government to provide all the relevant details in its next report.

RESC 7§5 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 7§5 of the Charter on the ground that the right to young workers and apprentices to a fair wage or other appropriate allowances is not guaranteed in practice due to the ineffective application of the legislation.

169. The representative of Romania indicated that according to Article 6 paragraph (2) of Law no. 53/2003 - Labour Code, amended by Government Emergency Ordinance no. 65/2005, all employees who work are given the right to equal pay for equal work. These provisions are also applicable to young workers who perform work under an individual contract. According to Article 162 of Law nr. 53/2003 – Labour Code, republished, minimum wage levels are set by applicable collective agreements.

She informed that in 2011, certain articles of the Law no. 279 of 2005 on apprenticeship at the workplace were amended by Law no. 106/2011. According to Article 5§1 can be qualified as an apprentice at work any natural person of 16 years of age but not more than 25 years. The duration of the apprenticeship contract at workplace can not be more than 3 years and less than 12 months (Article 7§1). Professional training by apprenticeship at workplace includes theoretical and practical training or practical training only (Article 7§3). According to Article 7§5 of the basic monthly salary, set by the contract of apprenticeship at the workplace is at least equal to the minimum gross wage in the country, in force for a program of 8 hours per day, respectively for 40 hours per week. All this information will be included in the next report.

170. The Committee took note of the new enacted law and invited the Government to provide all the relevant information in its next report.

RESC 7§5 SLOVAK REPUBLIC

The Committee concludes that the situation in Slovak Republic is not in conformity with Article 7§5 of the Charter on the ground that it has not been established that young workers receive a fair pay.

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

We would like to state that we believe this case of non-conformity is based on misunderstanding of the Slovak legislation, or that further explanation as far as remuneration of young workers is concerned.
Pursuant to Article 3 of the Labour Code General Principles, “Employees shall have the right to wages for performed work, to the securing of occupational health and safety, to rest and recovery after work. Employers shall be obliged to provide employees with wages and to create working conditions allowing employees the best performance of work according to their skills and knowledge, the advancement of creative initiative and deepening of qualifications.”
Each person carrying out work is entitled to full pay for the work carried out. Legislation of the Slovak Republic does not distinguish wage for a young worker and wage for adult workers. The situation for the minimum wage is the same; there is no separate minimum wage for young workers and for adult workers. Therefore, if a young worker is employed in a full-time employment, they will get wage as set in their employment contract.
As far as provisions of the Act No. 184/2009 on Professional Training and Education go, the 50-100 % amount paid to the student for productive work and services is meant as an motivational scholarship that is governed by §12 of the Act No. 184/2009 when the student participates on production of goods or provision of services as a part of their school curriculum during the educational process:
1) Students of secondary vocational school may be provided with financial evaluation, by which their educational goals are pursued, as stated in 2-6. Financial evaluation is defined as motivational scholarship and reward for productive work.
2) Motivational scholarship may be awarded monthly during the given school year up to the amount of 65 % of subsistence minimum. Subsistence minimum for a minor is set at 86,65 € (June 2012). When considering the final amount, regular participation on education and study results are taken into consideration as well.
3) Motivational scholarship is paid by the individual or company, which prepares the student for future occupation. In case of preparing the student for occupation in the public interest, the scholarship is paid by the related individual or corporate body.
4) Reward for productive work belongs to a student who carries out the productive work during practical classes of the education curriculum. This reward is being paid by the individual or corporate body for which this productive work is carried out.
5) Productive work is defined as creation of products or provision of services corresponding with the activities of the individual or corporate body for which the given student carries out the work concerned. Training received during practical classes, however, is not considered productive work.
6) Reward for productive work is paid for each finished hour of the given work and is set at the level of 50-100 % of the set minimum wage per hour. However, the actual amount can be modified based on the overall behaviour of the student and quality of the work carried out.

RESC 7§5 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 7§5 of the Charter on the grounds that:

- *it has not been established that young workers receive a fair pay; and*
- *it has not been established that apprentices receive a fair allowance.*

First and second grounds of non-conformity

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

In accordance with Article 42 of the Employment Relationships Act (Official Gazette of the Republic of Slovenia, Nos. 42/02 and 103/07, hereinafter referred to as ZDR), employers must ensure workers appropriate payment for work in accordance with the provisions of Articles 126 to 130, 133 to 135, and 137 of this Act: Article 126 of ZDR determines that employers must consider the minimum wage laid down by law or a collective agreement which indirectly imposes an obligation on employers.

Article 6 of ZDR prescribes that employers must ensure equal treatment for workers inter alia in pay and other receipts from the employment relationship irrespective of the worker's age. Article 6 of ZDR determines that employers must ensure for workers during their employment relationship, and in connection with the termination of employment contracts, equal treatment irrespective of ethnicity, race or ethnic origin, national or social background, gender, skin colour, state of health, disability, faith or beliefs, age, sexual orientation, family status, membership of unions, financial standing or other personal circumstances in accordance with this Act, the regulations governing the fulfilment of the principle of equal treatment, and the regulations governing equal opportunities for women and men. Employers must ensure equal treatment in respect of the personal circumstances referred to in the preceding paragraph for candidates for employment and workers, especially in gaining employment, promotion, training, education, retraining, pay and other receipts from the employment relationship, absence from work, working conditions, working hours and the cancellation of employment contracts.

The first paragraph of Article 140 of ZDR states that trainees and workers undergoing training or job induction may be paid less than the basic wage. But the first and second paragraphs of Article 140 of ZDR determine the following limitations: the wage may not be lower than 70 % of the basic wage which they would receive as a worker in the job, or in the type of work for which they are trained, and it may not be lower than the minimum wage laid down by law.

Apprentices

From 1996 until 2006 Slovenia had a legally regulated dual system with a determined mandatory award for apprentices, insurance and years of pensionable service. In 2006, the law was amended so that it determined schools and employers as education programme providers in the field of vocational education, which means that vocational secondary education is performed at schools and with employers. For this purpose, revised educational programmes were prepared. In accordance with these programmes, students perform at least 24 weeks of practical training at work in three years.

The Slovenian education system no longer has apprenticeships. The modernisation of educational programmes (in the last ten years, all educational programmes were modernised – 3 and 4 year programmes) has resulted in all students being equal and all having to complete practical training with an employer. The duration of this training differs and depends on the educational programme (from 4 to 24 weeks).

According to the Vocational Education Act, practical education with an employer is performed as practical training on the basis of a contract which can be either an individual contract (concluded between the employer and parents) or a collective agreement (concluded between a school on behalf of its students and the employer). The individual contract and the collective agreement must include obligations regarding the payment of bonuses and other costs (protective equipment, snack).

The amount of bonus is an obligation of an employer laid down by law by sectoral and general collective agreement. Sectoral collective agreements actually include these provisions, which means that we have been legally and formally in accord with the European Social Charter.

In accordance with Article 1 of the Labour Inspection Act (Official Gazette of the Republic of Slovenia, no. 38/1994, 32/1997 and 36/2000), supervisory inspections of the implementation of laws, other regulations, collective agreements and general acts regulating employment, salaries and other incomes arising from the employment of employees in Slovenia and abroad, employees' participation in management, strikes and safety at work are carried out by the Labour Inspectorate. In accordance with the fourth paragraph of Article 204 of the Employment Relationship Act (Official Gazette of the Republic of Slovenia, nos. 42/02, 79/06, 46/07, 103/07, 45/08 and 83/09; hereinafter referred to as the ZDR), a worker may enforce all pecuniary claims arising from employment, including a bonus for practical education with an employer, which is a right provided by the collective agreement, directly before the competent labour court; the worker is not required to submit a request to the employer beforehand (in all other cases of violation or non-fulfilment of obligations, the worker first has to request in writing that the employer end the violation and/or fulfil its obligations before requesting judicial protection. The worker also has to notify the Labour Inspectorate of any irregularities). The statute of limitations on claims arising from employment relationships is five years (Article 206 of the ZDR).
During practical training at work or during their mandatory training, secondary-school and tertiary students are entitled to a bonus for full-time work in at least the following amounts:

Secondary school students		Non-taxable income under the Decree on the tax treatment of reimbursed work-related expenses and other income from employment (Official Gazette of the Republic of Slovenia, no. 140/06 and 76/08). Income of up to 172 € per month received for mandatory practical work is non-taxable
1st year	€ 90	
2nd year	€ 120	
3rd year	€ 150	
4th year	€ 150	
Tertiary students	€ 170	

In the field of vocational and professional education, the solution is also vertical, i.e. the same applies for 4-year technical schools (secondary technical education), but with the period of practical training as determined in the educational programmes in accordance with the Vocational Education Act being between four and eight weeks in four years.
There are so-called practical education organisers in schools who are responsible for the coordination of practical training with an employer and monitoring the implementation of training, which is largely directed at establishing how the rights of students in practical training are exercised. The provisions of the Vocational Education Act and of the employers' sectoral collective agreement are being realised by employers in various ways. Some employers are having great difficulty paying bonuses to students in this period of economic recession.
An employer can task a secondary school student only with work that is foreseen by an individual educational programme. The employer is obliged to register the student with the Health Insurance Institute of Slovenia and pay the monthly lump sum contribution for insurance against injury at work or occupational disease.
The Ministry of Education, Science, Culture and Sport encourages employers to ensure students on the job training by giving them incentives from the funds of ESS, with 15 % of national funds, for successfully performed practical training. In the tender, we require that they meet all the conditions laid down by law - an appointed mentor meeting the conditions laid down by law, protection of the student - and they must provide separate evidence that they have been paying bonuses to students and higher vocational colleges.

Article 7§6 – Inclusion of time spent on vocational training in the normal working time

RESC 7§6 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 7§6 of the Charter on the ground that it has not been established that the right to have time spent on vocational training considered to be working time and remunerated as such is guaranteed in practice.

173. The representative of Albania provided the following information in writing:

The first draft "On some amendments to Law 7961, dated 12 July 995 "The Labor Code of the Republic of Albania" is drawn up during this year and it includes, among other things, a new paragraph and subparagraph about the obligation of the employer to include the time for vocational training in the working hours.

RESC 7§6 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 7§6 of the Charter on the ground that it has not been established that, in practice, training attended by young workers at their request and with their employers' consent is regarded as working time and remunerated as such.

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

La loi belge du 29 juin 1983 concernant l'obligation scolaire impose à tout mineur en âge une obligation scolaire pendant une période de 12 années commençant à l'année scolaire qui prend cours dans l'année où il atteint l'âge de 6 ans et se terminant à la fin de l'année scolaire, dans l'année au cours de laquelle il atteint l'âge de 18 ans. La période d'obligation scolaire comprend deux parties, une période à temps pleins et une période à temps partiel. La période d'obligation scolaire à temps plein s'étend jusqu'à l'âge de 15 ans comprenant au maximum 7 années d'enseignement primaire et au minimum les 2 premières années de l'enseignement secondaire de plein exercice. Dans tous les cas, l'obligation scolaire à temps partiel s'étend cesse quand l'élève atteint l'âge de 16 ans. La période d'obligation scolaire à temps partiel s'étend quant à elle jusqu'à la fin de la période d'obligation scolaire. Le jeune soumis à l'obligation scolaire à temps partiel peut continuer sa scolarité à temps plein ou s'orienter vers d'autres filières, notamment vers le monde du travail.

Les impacts de législation relative à l'obligation scolaire sur le droit du travail sont nombreux :

1) Le mineur de moins de 15 ans ou qui est encore soumis à l'obligation scolaire à temps plein ne peut en principe être mis au travail (Voy. art. 6 à 7.14 de la loi du 16 mars 1971 sur le travail).

2) La plupart des mineurs soumis à l'obligation scolaire à temps partiel poursuivent leur scolarité à temps plein jusqu'à l'âge de 18 ans. Ces jeunes consacrent un temps important à leur cursus scolaire. Ils ne fréquentent le monde de travail qu'à titre très exceptionnel. C'est ainsi que certains sont occupés en dehors des périodes scolaires dans le cadre de contrats d'occupation d'étudiants. Ces contrats sont strictement encadrés par la réglementation (Voy. art. 120 à 130*ter* de la loi du 3 juillet 1978 relative aux contrats de travail).

3) Seuls les jeunes soumis à l'obligation scolaire à temps partiel qui ne souhaitent pas poursuivre leur scolarité à temps plein jusqu'à l'âge de 18 ans sont susceptibles d'exercer, en marge de leurs études, une activité professionnelle d'une certaine ampleur. Ces jeunes constituent une minorité. Le plus souvent, ils effectuent une activité professionnelle complétant la formation scolaire à temps partiel qu'ils suivent.

En réalité, seuls les mineurs visés au point 3 ci-avant sont susceptibles d'être les bénéficiaires de la protection prévue par l'article 7§6 de la Charte sociale européenne révisée. En effet, pour

les mineurs visés au point 1, le travail est en principe interdit. Pour les mineurs visés au point 2, le travail ponctuel effectué dans le cadre d'un contrat d'occupation d'étudiant. Vu la finalité et les particularités de ce contrat, il n'est pas concevable d'imaginer que, dans le cadre de son exécution, une formation soit demandée à l'initiative du travailleur étudiant.
Pour les matières visées par l'article 7§6 de la Charte sociale européenne révisée, ma réglementation belge octroie aux mineurs visés au point 3 ci-avant les garanties suivantes :
- L'article 19*bis* de la loi du 16 mars 1971 sur le travail énonce que le temps qu'ils consacrent à suivre un enseignement à horaire réduit ou une formation reconnue comme répondant aux exigences de l'obligation scolaire, est compté comme temps de travail.
- Le temps consacré par ces jeunes à une formation professionnelle demandée par l'employeur est considéré comme du temps de travail et rémunéré comme tel. Cette situation a été jugée conforme par le Comité dans ses Conclusions XV-2, p. 85.

Un problème de conformité est soulevé à propos du temps consacré par les jeunes travailleurs (visés au point 3 ci-avant) à une formation professionnelle entamée à leur initiative.
Dans un premier temps, l'Etat belge soulignera le caractère extrêmement théorique d'un tel cas de figure. Dans la mesure où il suit déjà une formation scolaire complétée dans la pratique par l'activité professionnelle exercée, il est fort rare que le jeune concerné formule d'initiative à l'employeur une demande de formation professionnelle ou d'apprentissage.
A supposer que ce soit le cas, l'Etat belge a déjà indiqué dans son dixième rapport (enregistré au Secrétariat le 26/08/2044) qu'il appartenait aux parties de déterminer conventionnellement si ce temps devait être considéré comme du temps de travail et rémunéré comme tel. Vu l'absence de mesures de publicité, l'Etat belge ignore tout de la situation réelle en pratique.
Le deuxième rapport informant aussi le Comité du fait qu'une hypothétique demande de formation professionnelle ou d'apprentissage peut être formulée par le jeune travailleur dans le cadre du congé-éducation payé. Sous certains conditions (Voy. arrêté royal du 23 juillet 1985 d'exécution de la section 6 – octroi du congé-éducation payé dans le cadre de la formation permanente des travailleurs – du chapitre IV de la loi de redressement du 22 janvier 1985 contenant des dispositions sociales), le temps consacré à cette formation constitue du temps de travail ; la rémunération du travailleur est également maintenue.

RESC 7§6 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§6 of the Charter on the ground that the legislative framework does not provide for time spent on training with the consent of the employer, to be counted as a part of the working day.

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

FEDERATION OF BOSNIA AND HERZEGOVINA (FBIH)
The portion of the Labour Law of the Federation, which regulates the right of workers to education, training and professional development, applies to all workers without exception.
The Law provides that, in the event of changes or introduction of new technology, the employer's obligation is to enable a worker to be trained and professionally upgraded under circumstances and manner specified in collective agreement and employment rules.
Training and professional development of young workers can be subsumed under the concept of internship and internship period aimed at training for independent work and gaining work experience. The internship lasts for one year at the most and the actual length is determined by special law or employment rules of the employer.
According to the valid labour legislation an internship is different from employment under an employment contract for an unspecified period of time and an intern exercises only certain labour rights established by law. So, an intern is entitled to some remuneration, the right to rest during the working day, daily rest between two consecutive working days and weekly rest. The

intern is also mandatory insured in case of injuries and occupational diseases at the expense of the employer, while health insurance and the entitlement to health care is exercised through the competent employment service in which he was registered as unemployed person.
The new Labour Law amended provisions respecting interns in a way that an intern has the status of a full-time employee with the employer for a fixed period of time covering the length of internship and exercises all employment rights as other workers do.

REPUBLIKA SRPSKA (RS)
Counting the time spent in vocational training in working hours results from the valid general legislation in the RS, because this matter is not regulated at all in the field of labour and employment in the RS. The labour law regulations in the RS do not ensure the right of young workers to have the time spent in vocational training with the consent of the employer is counted in working day, unless they are trained to meet the job and employer's needs.

BRČKO DISTRIKT (BD)
As for the counting of time spent in vocational training in working hours, Article 18 of the BD Labour Law provides that an employer may provide employee with education, training and development. The employee is obliged to acquire education, training and/or training which the employer considers necessary, at the expense of the employer. This article shall apply to all employees. The Law on Secondary Education of BD does not govern this matter and it will be subject to amendments to the BD Labour Law.

RESC 7§6 NETHERLANDS (KINGDOM IN EUROPE)

The Committee concludes that the situation in the Netherlands is not in conformity with Article 7§6 of the Charter on the ground that it has not been established that the great majority of young workers have a right to remuneration for time spent on vocational training with the consent of the employer.

176. The representative of the Netherlands made the following statement :

The Working Hours Act provides that the work performed by young workers must be arranged in such a way that they are able to participate in education or training as required by law and that any time spent by them in education or training is treated as working time (Working Hours Act, section 4:4, subsections 1 and 2). The aim of the law is to ensure that young workers are able to take a vocational training course insofar as they are obliged to do so by law. As it has now been provided that time spent in education or training is treated as working time, young workers are also protected from stress and an excessive daily or weekly workload. In our view the Netherlands has thus fulfilled the obligation under Article 7§6 of the Charter.

Various collective labour agreements in industries in which many apprentices get their workplace training, contain a supplementary and more general provision that time spent on training should be treated as working time. The training time is not linked to the training days required by law and can therefore also relate to training that goes beyond the statutory minimum.

Current Dutch legislation does not oblige employers to continue paying wages when employees receive vocational training outside the workplace. However, the social partners may agree in the collective agreement for the industry or business concerned that training time will be remunerated.

On a previous occasion the Dutch delegate announced a study. This study was carried out at the end of 2010 by the Ministry of Social Affairs and Employment. It showed that 52 % of the collective labour agreements contain provisions on vocational training under worktime. In 26 % of the large collective labour agreements time spent on vocational training (also outside the work place) was paid as normal working time. This does not necessarily mean that the other workers are not getting paid for their time

spent on vocational training: individual employers can decide to pay this time or part of this time, although the collective labour agreement does not compel them to do so.

Although time spent on vocational training is deemed to be working time, this does not necessarily mean it should also be remunerated as working time. This is not required by Article 7§6 of the Social Charter.

In conclusion, the Netherlands do not share the interpretation of the ECSR that time spent on vocational training should in all cases (also in case of training outside the work place) be paid as normal working time. The Netherlands are therefore convinced that the situation in the Netherlands is in conformity with Article 7§6 of the Charter.

177. In reply to a question from the Chair, the representative of the Netherlands confirmed that in 26 % of the collective labour agreements time spent on vocational training including time spent outside the work place was paid as normal working time. The result is that 30-35 % of the young workers are paid when having vocational training outside the work place.

178. The representative of ETUC was puzzled about the distinction made between training paid when being organised at the work place and training not paid when taking place outside the work place. In such circumstances the term “training” would lose its meaning.

179. In reply to another question from the Chair, the representative of the Netherlands said that employees in the public service were in the privileged position that they were paid when taking part in vocational training – irrespective of the site of the training.

180. The Committee invited the Government of the Netherlands to include all the additional information provided in its next report.

RESC 7§6 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 7§6 of the Charter on the grounds that young workers are not entitled to have their training time paid as working hours.

181. The representative of Norway made the following statement :

Norway wonders whether the information provided to the ECSR in its last report was misleading. Norway underlines that apprentices and trainees are considered as full employees of the relevant company and are therefore paid as stipulated by the collective wage agreements. All time spent in the company is remunerated whether in training or by carrying out value adding activities. The wages of the apprentices increase progressively during the 2-year period of the apprenticeship. The wage in the first year is 30 to 40 % compared to the one of a skilled worker. In the 2nd year the wage goes up to 60 to 80 %. Therefore Norway is of the opinion that it is in conformity with the requirements of Article 7§6 of the Charter.

182. Following a question from the Secretariat, which related to the situation of young workers being neither apprentices nor trainees, the representative of Norway said that in such a situation the collective wage agreements would apply. The Secretariat stressed that in the end it was State responsibility to ensure that all collective wage agreements included provisions that training was considered as paid working time in order to be in conformity with the requirements of the Charter.

183. The Committee invited the Government of Norway to include all the additional clarifying information provided in its next report.

RESC 7§6 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 7§6 of the Charter on the ground that it has not been established that the right to have time spent on vocational training considered to be working time and remunerated as such is guaranteed in practice.

184. The representative of Romania recalled the legislative situation which should demonstrate compliance with the requirements of the Social Charter.

185. The Chair recalled that the main point of the conclusion of non-conformity was that Romania could not demonstrate that the law was effectively applied in practice.

186. The representative of Romania replied that implementation of the legislative situation was controlled by Work Inspectors. She outlined elements of the new Labour Code which stipulated that participation in training programs was ensured at least every two years, when the company had a least 21 employees and at least every three years if the company had less than 21 employees.

187. The Committee invited the Romanian Government to include all the additional information, in particular in relation to the implementation of the new Labour Code, in its next report.

Article 7§7 – Paid annual holidays

RESC 7§7 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 7§7 of the Charter on the ground that it has not been established that young workers do not relinquish annual leave in return for increased remuneration.

188. The representative of Albania provided the following information in writing:

> The phrase "annual vacation shall in no way be replaced by remuneration" is added at the end of Paragraph 5 of Article 94 of the proposed amendments to the draft Labor Code 2012. This rule applies to all categories of workers.

RESC 7§7 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 7§7 of the Charter on the ground that young workers have the option of giving-up the annual holiday for financial compensation.

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

> According to the RA Law “On Amendments to the Labour Code adopted” in 2010, the Article 170 of the Code was amended as follows: “The replacement (giving-up) of annual holiday for financial compensation is not allowed”.
> Only in case of termination of work contract of an employee who is entitled to annual holiday financial compensation is paid if employee refuses to get annual holiday or it is not possible to provide annual holiday.
> Meantime, amendment was made to the Article 159 of the Labour Code according to which the duration of minimum annual leave is 20 working days in case of 5 day working week, and 24 working days in case of 6 day working week.

RESC 7§7 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 7§7 of the Charter on the ground that it has not been established that the Republic of Moldova took sufficient measures for the minimal length of four weeks' annual holiday with pay for employed persons of under 18 years of age to be respected in practice.

190. The representative of the Republic of Moldova provided information in writing (see under RESC 7§2 Republic of Moldova in the present document).

RESC 7§7 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 7§7 of the Charter on the ground that it has not been established that the right to paid annual leave is guaranteed in practice.

191. The representative of Romania gave explanations on the legislative situation in Romania of which its main provision was as follows: "In accordance with Article 139 of Law no. 53/2003, as amended and supplemented, the right to paid annual leave is guaranteed to all employees. The right to annual leave cannot be the subject of any transfer, waiver or limitation."

The representative of Romania gave particularly detailed information with respect to the rights of children and youth regarding paid annual leave. For example, young people under 18 years of age received additional annual leave of at least 3 working days.

192. The representative of ETUC raised the question as for the implementation of the Labour laws and Labour Codes, in particular in relation to domestic work carried out by children.

193. The representative of Romania said that the budget made available to Labour Inspectorates was increasing and consequently also the number of controls carried out. Detailed data and statistics would be provided in the next report.

194. In conclusion, the Committee invited the Romanian Government to include all the additional information in particular with respect of work inspections carried out in relation to domestic work in its next report.

Article 7§8 – Prohibition of night work

RESC 7§8 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 7§8 of the Charter on the ground that it has not been established that the legal prohibition on night work applies to the great majority of persons under the age of 18.

195. The representative of Belgium informed the Committee that in 2011 the employment of approximately 11,700 young workers under the age of 18 had been declared to the social security authorities, with 2,145 in the catering sector and the remainder in other sectors. Within these figures, the social security authorities could not, however, make a distinction between day and night work, as employers were not required to provide the information in their declarations.

In 2011, 13 reports by the social laws inspectorate had concerned young workers, but none had involved night work. The statistics of the inspectorates in Belgium usually concerned breaches identified rather than situations that were compliant, which did mean that there were no statistics

concerning young people and night work. The low number of breaches identified at least suggested that the prohibition of night work was complied with in general.

Moreover, the problem was rare, especially among northern European employers based in Belgium, except, for instance, in the modelling and catering sectors. On the other hand, it was probably not so rare among foreign communities, as it was in line with customs in their countries of origin – however, there would never be any complaints, except perhaps reports by neighbours worried about the plight of the young people concerned. The parents would not lodge complaints, as the families were not lawfully resident. When conducting night-time inspections, the social laws inspectorate always checked whether young people were working and some cases had been identified.

The youth protection departments run by the Communities possibly had information about night work situations although there are no arrangements for co-operation between those departments and the social laws inspectorate. A further possible source may be work regulations as all firms are required to indicate working hours and hence also night work. However, as these are not digitised and there is no standardised model, it is not possible to process them by computer to extract quantitative statistics on night work.

The Belgian authorities did not at all rule out the possibility of young people and children working in illegal jobs and among undocumented families. However, other bodies were responsible for checks in those cases. Nevertheless, labour inspectorates in Belgium are strongly mobilised by a campaign against illegal employment run by a member of the federal Government.

196. In reply to a question by the Chair, the representative of Belgium confirmed that according to legislation, the hours which correspond to night work are 10 pm to 6 am.

197. The Committee took note of the information provided and encouraged the Government to carry out a study on the category of young people working at night, the type of work involved and the number of young people concerned.

RESC 7§8 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 7§8 of the Charter on the grounds that it is unable to assess whether the great majority of persons under 18 are prohibited from working at night.

198. The representative of Ireland presented information concerning Article 7§8, underlining that legislation does prohibit night work for persons under 18 years of age including employees of close relatives (see under RESC 7§1 Ireland of this document).

199. The Committee invited Ireland to provide all the necessary information in the next report.

RESC 7§8 MALTA

The Committee concludes that the situation in Malta is not in conformity with Article 7§8 on the ground that it is not established that the exceptions to the prohibition of night work in some economic sectors are necessary for a proper functioning of the relevant economic sector and that the number of young workers concerned is low.

200. The representative of Malta provided the following information in writing:

> The Maltese Regulations on young persons at work, the Young Persons (Employment) Regulations (SL 452.92), implement directive 94/33/EC on the protection of young people at work. The latter makes it clear that the maximum working time of young people should be

strictly limited and night work by young people should be prohibited, with the exception of certain jobs specified by national legislation or rules. Article 9 is the main article on night work in the directive. This states that MS shall adopt the measures necessary to prohibit work by children between 8 p.m. and 6 a.m. Member States shall adopt the measures necessary to prohibit work by adolescents either between 10 p.m. and 6 a.m. or between 11 p.m. and 7 a.m. However, Member States may, by legislative or regulatory provision, authorize work by adolescents in specific areas of activity during the period in which night work is prohibited. In this case, Member States shall take appropriate measures to ensure that the adolescent is supervised by an adult where such supervision is necessary for the adolescent's protection, and in any case, work shall continue to be prohibited between midnight and 4 a.m.
Member States may, by legislative or regulatory provision, authorize work by adolescents during the period in which night work is prohibited in the following cases, where there are objective grounds for so doing and provided that adolescents are allowed suitable compensatory rest time and that the objectives set out in Article 1 are not called into question:
- work performed in the shipping or fisheries sectors;
- work performed in the context of the armed forces or the police;
- work performed in hospitals or similar establishments;
- cultural, artistic, sports or advertising activities.
Prior to any assignment to night work and at regular intervals thereafter, adolescents shall be entitled to a free assessment of their health and capacities, unless the work they do during the period during which work is prohibited is of an exceptional nature.

RESC 7§8 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 7§8 of the Charter on the ground that it has not been established that the Republic of Moldova took sufficient measures to guarantee the respect of the prohibition of night work for employed persons of under 18 years of age in practice.

201. The representative of the Republic of Moldova provided information in writing (see under RESC 7§2 Republic of Moldova in the present document).

RESC 7§8 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 7§8 on the ground that it has not been established that the prohibition of night work covers the great majority of young workers.

202. The representative of Norway provided the following information in writing:

In its last conclusion the Committee reiterated its request for an estimate of the number of young persons working at night in the occupations concerned. The report states that the Government does not have figures, statistics or any other relevant information that is appropriate in this context.
Since the Government is not in a position to provide an estimate of the number of young persons working during night, the Committee concludes that it cannot be established that the prohibition of night work covers the substantial majority of young workers.
The Government has requested an estimate of the number of young persons aged 18 and younger working at night from Statistics Norway, which has the overall responsibility for meeting the need for statistics on Norwegian society and is responsible for coordinating all

official statistics in Norway. Statistics Norway has provided the Government with the following information:
According to Statistics Norway, 56 000 young persons aged 15-24 years work nights. The figures are based on Statistics Norway's Labour Force Survey. According to Statistics Norway, the waste majority of the persons performing night work is aged 19 and above. Due to the fact that the figures are based on a survey and the number of participants younger than 19 is low, Statistics Norway informs the Government that figures for night work performed by persons aged between 15 and 18 will be inaccurate and that hence, they are not available.
Consequently, the Norwegian Government cannot present relevant figures establishing that the prohibition of night work covers the substantial majority of young workers. It is, however, the Government's opinion that the information provided by Statistics Norway does imply that the substantial majority of young workers are covered by the prohibition of night work.

RESC 7§8 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 7§8 of the Charter on the ground that night work for workers under 18 years of age is prohibited only in industrial undertakings.

203. The representative of Turkey provided information on steps taken to revise the procedures of evaluation, due to negative conclusions related to a repeated lack of information and a poor follow-up to conclusions, with a view to improving the quality of national reporting. The new method, to apply as from this year, aims to involve Ministries concerned at all stages of the reporting procedure.

Two laws concern the prohibition of work for children and young persons under the age of 18 years: Article 73 of Law N° 4857 which prohibits persons under 18 years of age from employment in industrial undertakings, and Article 12 of Law 2559 relative to prerogatives and obligations of the police which prohibits persons under 18 years of age from working in places open to the public offering shows and gambling or in licensed restaurants. Although there is no legislation prohibiting night work for young employees in the commercial sector, there is no such work in practice as shops cannot remain open after midnight by municipal law. It is underlined that the definition of work in industrial undertakings applies in a wide sense of the term under the legislation.

Moreover, Appendix 3 of the Regulations on the principles and procedures of work for children and young persons, provides for prohibition of these categories of employees from night work in sectors indicated in Article 69 of the Labour Code. The list of prohibited night work in the sectors under this article is very long and all the relevant information will be transmitted to the Secretariat.

In addition, by virtue of Article 90 of the Turkish Constitution, international treaties duly in effect through ratification are legally in force. As such, they are directly included into domestic law. Under the terms of the this article, the provisions of international instruments relative to rights and fundamental freedoms have precedence in cases of conflict with national law and this is equally valid for the Charter.

In view of these explanations and the Appendix to the Revised European Social Charter relative to the scope of the Charter, it is considered that Turkey fulfils its obligations with respect to Article 7§8 as the great majority of people under 18 years of age may not be employed in night work.

204. The representative of ETUC drew attention to the issue of young people working in the agricultural sector, in particular for undertakings with fewer than 50 employees. A warning had been voted on the last occasion related to this problem. He asked whether the situation had changed since and if night work of young people in the agricultural sector is now prohibited.

205. The representative of Turkey replied that the information had been provided in Appendix 3 of the Regulations on principles and procedures of work for children and young persons prohibiting child

labour and night work regardless of the sector of activity although Article 4 of the Labour Code excludes the agricultural sector from its scope of application. It is necessary, however, to take into consideration the large number of family businesses spread over a wide geographical area making it difficult to ensure that the prohibition of night work is effectively applied. Details concerning these Regulations had not been provided in 2004 so this constitutes new information.

206. The Secretariat confirmed that this is new information. If it is indeed the case that all children under 18 years of age are covered by this provision then there is a new situation. However, there remains the application of the legislation in practice.

207. The representative of Lithuania suggested that the Turkish Government carry out a survey in order to have a picture of the practical situation.

208. The Committee took note of the information provided and invited Turkey to provide all the new information on this subject.

Article 7§9 – Regular medical examination

RESC 7§9 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 7§9 of the Charter on the ground that there is no requirement for regular medical check-ups for young workers.

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

FEDERATION OF BOSNIA AND HERZEGOVINA (FBIH)

The new Labour Law (Draft Law) will ensure the application of Article 7, paragraph 9 of the European Social Charter. Namely, the new provisions proposed in the Labour Law of the FBiH determines that a person between 15 and 18 years of age (minors)/ may conclude a labour contract with consent of legal representative and provided that an authorized medical institution or an authorized physician issues a medical certificate proving that the minor is fit for work.

Costs of the medical certificate shall be borne by the employer. Further, there is a suggestion that the employer must provide regular medical examinations of juveniles on a yearly basis.

The proposed provisions have been fully espoused at the early stage of consultations about the Labour Law, but at this point it is not possible to precisely specify the number of article that regulates these matters since the final text of the bill has not been prepared yet.

REPUBLIKA SRPSKA (RS)

A regular medical examination is provided for in the valid legislation respecting this field in the RS. Regulations on safety at work set forth an obligation of employers to provide all workers, without any exception when it comes to workers under 18, with statutory medical examinations on the basis of risk assessment and evaluation by occupational health services.

BRČKO DISTRIKT (BD)

In 2011 three juveniles were identified to have not met the requirements under Article 10, paragraph 2 of the Labour Law of BD, neither did they meet any requirements regarding the mandatory medical examination when they were recruited. In cases of employment of minors, which were very rare, the Labour Inspection found a violation of basic provisions in all parts of the recruitment of minors, even including the medical examinations.

The Law on Safety at Work of BD does not provide for employment of minors.

RESC 7§9 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 7§9 of the Charter on the ground that the right of young workers to regular medical examination is not guaranteed due to non-effective enforcement of the legislation.

210. The representative of Bulgaria made the following statement:

Young persons at work under the age of 18, who are employed have to undergo a number of medical examinations. First of all, they are allowed to work only after a medical certificate demonstrates that they are fit to work. This medical examination is part of the national system of public health and is in compliance with EU Directive 89/391. As for the period 2004-2010, work inspectors have not identified any cases of requests for work permits for young persons who have not undergone the necessary medical examinations.

Young persons at work between the age of 15 and 16 have to undergo medical examinations every six months; young persons at work between the age of 16 and 18 once a year. Young workers at work below 15 of age have to undergo a medical examination every three months. If necessary, additional examinations are to be added and be paid by the employers. Data provided by the Work Inspectorate demonstrate that by the end of 2010, 98 % of all employers provided to workers the necessary health services.

In conclusion, the representative of Bulgaria states that Bulgarian law and practice is in conformity with Article 7§9 of the Charter.

211. The representative of Lithuania asked for information on medical checks carried out for children and young persons at work. The representative of Bulgaria said no statistical data were available for the time being.

212. The Secretariat asked whether the phenomenon of underground and black work for children and young persons had been reduced. The representative of Bulgaria recalled a number of legislative amendments implemented and also referred to the 2005-2009 strategy elaborated with assistance of the International Labour Organisation (ILO) with a view to combatting this phenomenon.

213. The Committee invited the Bulgarian Government to include all the additional information provided in its next report.

RESC 7§9 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 7§9 of the Charter on the ground that medical examinations for young workers are not frequent enough.

214. The representative of Estonia made the following statement:

After receiving the non-conformity conclusion from the ECSR for the first time Estonia changed its system.

On the previous occasion, Estonia indicated that as from 1st April 2006 medical examinations for young workers had to be carried out at least every two years. Previously the medical examinations had to be carried out every three years.

However, the ECSR still confirmed its conclusion of non-conformity. This conclusion was a surprise for Estonia because it is a change in the case law. Initially the ECSR considered an interval of three years too long.

Estonia is of the opinion that its system is flexible and protects the minor.

The first medical examination of minors takes place within one month of recruitment, then at regular intervals, which may not exceed two years for young workers. The two years laid down in the law is a maximum interval. The interval may be shortened based on the decision of the occupational health doctor. The occupational health doctor must assess the health status, the suitability of the working environment and the organization at work. If the doctor sees the need and necessity he/she can shorten the intervals between medical examinations (for example to six months).

There are also rules for the type of work minors can and cannot do. For example, 13/14-year-olds and 15/16-year-olds who are obliged to attend school are permitted to do light work. So they can do work where duties are simple and do not demand extensive physical or intellectual exertion (for example work connected to culture, sports and advertising, office assistant).

When entering into employment contracts, employers must be sure that the young people they are employing are capable of doing the work in question and that the work does not endanger their health. Employers must not allow them to do work which is beyond their physical or intellectual capacity, involves risks which they are unable to recognize or avoid or involves health hazards due to the nature of the work or working environment.

In order to enter into an employment contract with a young person, the employer must obtain the consent of both the young person and one of their parents. And the employer shall notify the minor and the parent of a minor under 15 years of age of risks related to the work of the minor and the measures implemented for the protection of their safety and health.

To conclude it should be stressed that Estonia sees the necessity to protect the minor workers from health risks. The laws and regulations are created bearing in mind that this group is more vulnerable than others. Estonia guarantees a good protection to its minors and does not see the need to change its legislation.

215. During the discussion, the representative of Estonia stressed the importance of looking at the whole system. It was considered important for a country to have more flexibility in this matter. It was stressed that for some occupations shorter intervals between medical examinations were necessary, for example seafarers would have to attend medical examinations every year (the same is true for firefighters, police force etc.).

216. The representative of the Netherlands said it he had no understanding for the ECSR conclusion requesting medical controls for young workers every two years. According to him, this age group had a particular good health status.

217. Several representatives took the floor saying that young workers were part of an age group which was to be particularly protected. However, referring to the Estonian situation, it was considered unfortunate that the ECSR case law did give no indication as to which interval between medical examinations was considered appropriate.

218. The Committee took note of the efforts made by the Estonian Government in this respect. It invited the Estonian Government to include the justifications provided in its next report.

RESC 7§9 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 7§9 of the Charter on the ground that it has not been established that the Republic of Moldova took sufficient measures to ensure that employed persons of under 18 years of age undergo regular medical control in practice.

219. The representative of the Republic of Moldova provided information in writing (see under RESC 7§2 Republic of Moldova in the present document).

RESC 7§9 NETHERLANDS (KINGDOM IN EUROPE)

The Committee concludes that the situation in the Netherlands is not in conformity with Article 7§9 of the Charter on the grounds that:

- *there is no general mandatory medical examination for workers under 18 years of age;*
- *it has not been established that regular medical examination of young workers is guaranteed in practice.*

First and second grounds of non-conformity

220. The representative of Netherlands provided the following information in writing:

> In addition to the Dutch text in the 23rd Report we can be very brief.
> The Dutch policy on occupational health and safety requires employers to make a risk assessment and to take care in this respect of younger workers specifically. By doing so, also the need for medical examination may result. If this is the case, the employer has to offer an occupational medical examination.
> In 2011, 20 collective labour agreements mentioned an age for regular periodical medical examination. In 4 (of these 20) also young workers under 18 years of age are mentioned as an age category for medical examination.
> Of these 4 collective labour agreements, 3 are agreements in the construction sector, together covering 210.000 employees (all age categories). The fourth agreement deals with horticulture in glass houses, covering 44.000 employees (all age categories).
> There are no data available on the actual use of the regular medical examination by young workers under 18 years of age.
> Looking at the question in a broader perspective: the accessibility of general health care for younger people including younger workers is well arranged by the collective system of (health) insurance and by the public health system (GGD, openbare gezondheidszorg).
> In some sectors, like construction, the social partners have an agreement for regular medical control for all workers.

RESC 7§9 SWEDEN

The Committee concludes that the situation in Sweden is not in conformity with Article 7§9 of the Charter on the ground that a regular medical examination for all young workers is not guaranteed by legislation.

221. The representative of Sweden informed the Committee that her Government maintained its previous position in the matter and wished to provide some new information on the legislation in force. She specified that, under the Swedish Work Authority´s provisions on occupational medical supervision, employers shall arrange medical checks for employees involved in specific types of work, which were then mandatory irrespective of age. Under the same Authority´s provisions about minors at work, employers shall make investigations and risk assessments with regard to each individual minor's special needs, and in cases in which it was concluded that medical checks were needed, medical examination was mandatory as well. She affirmed that the situation should be considered in conformity in those cases.

The representative of Sweden reported that provisions on minors at work featured a list of hazardous types of work which were allowed for minors only under special circumstances. She explained that the relevant group was small, considering that minors of 13 to 15 years or age may only perform light and non-hazardous work; that minors of 16 to 17 years of age may have normal and non-hazardous work

although the tasks must not involve any risks; that some tasks may never be performed by anyone under 18 years of age; and that tasks which may be hazardous could be performed by minors under 18 years of age only in exceptional cases and with authorisation by the Work Authority. Only two cases were exempt from the prohibition of hazardous work, i.e. tasks performed by students as part of training under the supervision of a teacher and on special training premises, and tasks which were part of a student´s professional training.

222. The representative of Sweden assured the Committee that the Work Authority continuously monitored the health situation for minors at work. She affirmed that all minors in the described situations were guaranteed health checks, not through one specific law, but as a result of the combination of laws and regulations designed to protect all workers irrespective of age, and of special provisions on minors at work.

223. In reply to a question from the Chair, the representative of Sweden explained that she had no statistical data on the amount of medical checks undertaken in practice, but that she could provide some figures in the next report.

224. In reply to questions from the representative of Turkey, the representative of Sweden admitted that there was still no specific law, but affirmed that the given information was new in the sense that it clarified the existing situation. She specified that, to her knowledge, her Government had no intention to change the legislation, since the actual system provided as much protection of minors as in other countries.

225. In reply to a question from the representative of Estonia, the representative of Sweden confirmed that labour inspectors controlled all workers, irrespective of age.

226. In reply to a question from the Chair, who expressed concern about the continuing of the situation of non-conformity, the representative of Sweden assured that statistical data on the protection of minors at work was available, but regretted that she had none to offer.

227. The Chair encouraged the representative of Sweden to contact the ECSR if she was convinced that the situation was in conformity with the Charter.

228. The representative of Lithuania, reflecting on a possible misunderstanding between Sweden and the ECSR, stressed that the problem was the lack of specific rules for medical checks.

229. The representative of Sweden reiterated that, even if there were no specific rules, there were provisions on minors at work, and each country had a margin to choose its means of regulation. She added that she would provide statistical data in the next report.

230. In reply to a question by the representative of Estonia, the representative of Sweden reported that social partners were not involved in rule-making generally, but in agreements as part of the legislative procedure on labour-market regulation.

231. The representative of Belgium supported the proposal for dialogue between Sweden and the ECSR and recalled that the wording of Article 7§9 allowed some margin of appreciation.

232. The Chair added that the Charter did not require an equivalent legislation in each State party, but that the purpose was to eradicate risks for minor workers.

233. The Secretariat explained that the ECSR had a clear view of the situation in Sweden, but that its assessment of the situation was different than that of the Swedish Government. He reminded the Committee that, having regard to the list, the ECSR considered it very narrow, and generally it held that the margin of appreciation left to the employer was too wide. He said that the ESCR would certainly be willing to have a direct and detailed discussion on this point with Sweden.

234. The Committee urged the Government of Sweden to provide more specific information and data on the legislation to protect minor workers and recommended the Government of Sweden to

contact the ECSR. The Committee invited the Government of Sweden to bring its situation into conformity with the European Social Charter.

Article 7§10 – Special protection against physical and moral dangers

RESC 7§10 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 7§10 of the Charter on the grounds that:

- *simple possession of child pornography is not a criminal offence;*
- *measures taken to combat trafficking in children are not sufficient;*
- *measures taken to assist and protect street children are not sufficient.*

First ground of non-conformity

235. The representative of Albania informed the Commitee that the Penal Code had not been amended in 2012. Hence Article 117 of that Code on pornography did not define the possession of child pornography as a criminal offence. She added that any amendment to the law was not within the jurisdiction of the Directorate General of State Police, but within that of the Ministry of Justice, as part of its mandate to align national legislation with ratified international legislation.

236. In reply to a question from the representative of Estonia, the representative of Albania specified she was not aware of any drafted amendment or of any intention for amendment.

237. The representative of ETUC qualified such inaction as serious. The representative of Lithuania concurred and proposed that the Committee urge Albania to incriminate the possession of child pornography.

238. The Committee regretted the lack of change in the current situation as well as of the lack of political will for change, qualified the situation as serious, and expressed its great concern. The Committee urged the Government of Albania to amend the Penal Code so as to bring its situation into conformity with the European Social Charter.

Second ground of non-conformity

239. The representative of Albania provided oral information as to the progress made in the legislative and organisational fields as undertaken by the Albanian Government in the meantime. In particular reference was made to the implementation of the National Plans against Trafficking of Human Beings of 2008, 2010 and 2011. Measures had specifically been taken to ensure social inclusion and re-integration of victims of trafficking focusing on children. A National Task Force had been set up to protect risk groups. An electronic data base established in 2008 now existed to monitor developments with regard to trafficking of human beings.

240. In reply to a question from the representative of Lithuania, the delegate of Albania confirmed that the National Plans against Trafficking of Human Beings included special measures with respect of the protection of children.

241. The Chair noted with satisfaction that Albania was one of the first countries which ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which came into force on 1st July 2010.

242. The Committee invited the Albanian Government to continue its efforts in particular with respect to prevention measures.

Third ground of non-conformity

243. The representative of Albania, emphasizing that the Department for the Protection of Minors and Domestic Violence had continuously cooperated with other public agencies to protect and assist street children, informed the Committee that protection of children from violence was part of the Action Plan for Children 2012-2015. Given that unregistered children were most vulnerable to labour exploitation, begging, and crime, the Action Plan for Children 2012-2015 pursued inter alia the registration of all children of Albanian citizenship born inside and outside the territory of Albania in the Civil Registry.

The representative of Albania specified that, to implement this objective, cooperation with the Ministry of the Interior had been intensified in order to tackle difficulties with registration encountered in practice, resulting in the Instruction of the Minister of the Interior, with Protocol No. 7, of 10 January 2012 procedures and records to be filled by the State Police and Municipalities/Municipal Units/Communities in case of abandoned and unregistered children. She also mentioned training of 97 police officers of the crime investigation units, conducted from January to June 2012, on standard operation procedures for identification and referral of victims of trafficking, in cooperation between the National Anti-trafficking Office and the International Organization for Migration (IOM), and training of 18 members of Border Crossing Points staff (interviewers, investigation specialists, service providers, head of shifts) on such standard operation procedures, provided by the Border and Migration Department.

244. In reply to a question from the representative of ETUC, the representative of Albania specified that the Action Plan for Children 2012-2015 referred to all street children, including Roma, and that compulsory school went from 6 to 15 years of age for a duration of 9 years.

245. The Chair expressed her concern that reference was made only to repressive measures, but none to social services. The representative of Albania recalled that in the Action Plan on Combating Trafficking in Human Beings of 2011-2013 and in the National Action Plan on Combating Trafficking of Children and Protection of Children Victims of Trafficking, the National Referral Mechanism included cooperation between the General Prosecution, the Ministry of the Interior, the Ministry of Labour, Social Affairs, and Equal Opportunities, and Reception and Rehabilitation Centres of Victims of Trafficking. She added that social assistance was provided to all persons in need.

246. The representative of Lithuania invited the Government of Albania to persevere in its efforts to change the situation.

247. The Committee took note of efforts by the Government of Albania to register children in the Civil Registry, expressed hope that the efforts would bear fruit, and invited the Government of Albania to bring the situation into conformity with the European Social Charter.

RESC 7§10 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 7§10 of the Charter on the ground that it has not been established that all children under the age of 18 are effectively protected from all forms of child pornography and child prostitution.

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

> Les modifications introduites dans le Code pénal en avril 2009 visaient à modifier le texte de la Section IX – Traite de personnes – par des sanctions plus sévères (la durée de la peine privative de liberté et les montants des amendes) applicables aux diverses figures de traite, y compris les cas de la victime mineure. De plus, un nouveau texte a été inséré – **l'art. 159c relatif à un nouveau type d'infraction.** L'art. 159c **incrimine l'utilisation intentionnelle de la victime de la traite de personnes dans des actes de débauche,** de travail forcé, d'enlèvement d'organes ou de détention sous contrainte en état de soumission indépendamment du consentement de la victime. Cette nouvelle figure d'infraction dans la

législation bulgare a permis l'introduction de la disposition de l'art. 19 « Incrimination de l'utilisation des services d'une victime » de la Convention du Conseil de l'Europe sur la lutte contre la traite de personnes.
Les textes modificatifs adoptés en 2010 dans le Code pénal prévoient une protection judiciaire pénale adéquate pour les enfants soumis à une exploitation sexuelle – l'art. 154a: obtention de profits, actes de fornication/copulation avec des mineurs, exercice de prostitution; incitation de personne mineure de 14 ans à participer/observer des actes réels/virtuels de copulation sexuelle/exhibition d'organes génitales; recrutement/contrainte de mineurs à exercer des actes de copulation sexuelle; actes de fornication; les cas liés à l'obtention de profits patrimoniaux constituent une infraction qualifiée – l'art. 158a.

En plus de ces infractions, conformément aux dispositions du Code pénal sont passibles de peine :
- l'incitation à la prostitution/ entrainement dans des actes de fornication – l'art. 155 (1); quand elle est commise aux fins de tirer un bénéfice ou à l'égard d'un mineur elle constitue une infraction qualifiée (peine plus sévère) ;
- incitation/contrainte à l'usage de substances stupéfiantes dans le but de faire prostituer la victime – art. 154(4); quand elle est commise à l'égard d'une personne mineure l'infraction est qualifiée ;
- présentation d'informations sur une personne mineure sur Internet aux fins d'établir un contact de prostitution avec elle; établissement de contact avec une personne de moins de 14 ans par l'usage de l'information en Internet aux fins de l'exercice d'actes de fornication/ copulation etc. – art. 155a ;
- élaboration, exposition, émission, offre, vente, location, diffusion de matériel pornographique – art. 159(1) ;

Infractions qualifiés sont les cas de diffusion en Internet quand le matériel pornographique concerne une personne de moins de 14 ans ou quand dans l'élaboration du matériel a été utilisée une personne de moins de 18 ans.
- la possession/ la fourniture pour soi ou pour autrui du matériel pornographique dont l'élaboration a fait usage d'une personne de moins de 18 ans ou d'une telle apparence – art. 159(6).

Ces dispositions sont conformes aux dispositions respectives de la Convention du Conseil de l'Europe sur la protection des enfants contre l'exploitation et les abus sexuels.
En décembre 2011 le Parlement a ratifié cette Convention. Dans les préparatifs de la ratification des mesures de mise en conformité des dispositions de la Convention avec la législation bulgare ont été prises – le 2 avril 2009 et le 24 mars 2010 l'Assemblée nationale a voté des textes modifiant et complétant des dispositions du Code pénal. L'actuel Code pénal bulgare ne prévoit pas l'incrimination de tous les actes délictueux visés dans la Convention. Dans ce sens vont les réserves formulées dans la Loi sur la ratification de la Convention, dont une est liée à la non-application en sa totalité de l'infraction prévue dans l'art. 20, § 1.e – « accès intentionnel via les technologies de communication et information à la pornographie enfantine » (Art. 20 §4 sous réserve) ; Autre réserve est liée à l'intention de commettre la même infraction réglementée dans l'art. 24 § 2 (art. 24 § 3 sous réserve).
L'Agence publique de protection de l'enfant a accordé le projet de texte de Loi sur la ratification de la Convention du Conseil de l'Europe sur la protection des enfants contre l'exploitation et les abus sexuels avec la remarque relative à la nécessité d'incriminer les actes délictueux « d'**accès intentionnel via les technologies de communication et information à la pornographie enfantine »** (l'art. 20, § 1.e), ainsi que les actes de tentative de sa commission (art. 24 § 2) – des textes sur lesquels la République de Bulgarie a formulé ses réserves. Les motifs de l'incrimination de l'infraction sont lies à la mise en œuvre de la Conception d'une politique pénale pour la période 2010-2014. La Conception se pose pour objectif dans l'élaboration et l'adoption d'un nouveau Code pénal le réexamen, la

systématisation et la mise à jour des figures des délits dont le sujet et l'objet sont des enfants en conformité avec les documents internationaux en vigueur dans le domaine.

Le mécanisme de coordination de référence et de soins aux enfants non-accompagnés et aux enfants victimes de la traite de personne de retour de l'étranger élaboré et adopté en 2005 a été mis à jour et signé en décembre 1010 par les institutions responsables de son application - le Ministre de l'Intérieur, le Ministre du travail et de la politique sociale, le Ministre des Affaires étrangères, le Président de l'Agence publique pour la protection de l'enfant et le Directeur exécutif de l'Agence d'assistance sociale.
Les points nouveaux dans ce mécanisme de coordination se rapportent notamment à :
1. **Élargissement du système d'organismes à niveau central et local** en y regroupant l'Agence publique pour la protection de l'enfant, le Ministère de l'Intérieur, l'Agence d'assistance sociale auprès du Ministère du travail et de la politique sociale, la Commission nationale de lutte contre la traite de personne et l'Agence publique de sécurité nationale. Le système d'organismes à niveau local dont le focus est centré sur les Directions d'assistance sociale (DAS), les Départements de protection de l'enfant (DPE) comprend la constitution **d'une équipe multidisciplinaire** composée de représentants des Directions régionales du Ministère de l'Intérieur, des Inspectorats régionaux de l'éducation, des centres régionaux de la santé publique (CRSP), des commissions locales de lutte contre les manifestations antisociales de mineurs de quatorze à dix-huit ans (CLLMASM), des commissions locales de lutte contre la traite de personnes (CLLTP), des parquets régionaux, des organes directeurs de centres anticrise, des experts en prestation de services sociaux dans les communes et autres.
2. **Élargissement des options de communication d'avertissement :** par le Ministère des Affaires étrangères via les représentations diplomatiques et consulaires de la République de Bulgarie à l'étranger ; par le Ministère de l'Intérieur via les officiers de la police dans les représentations diplomatiques et consulaires de la République de Bulgarie à l'étranger ; par l'Organisation internationale pour la migration; par le Service social international (SSI) ; par la Commission nationale de lutte contre la traite de personnes ; via le numéro téléphonique unique à niveau national pour information, consultation et aide aux enfants (116-111) ; via le courrier électronique et sous la forme d'avertissement sur le site spécialisé de l'Agence publique pour la protection de l'enfant – www.stopech.sacp.government.bg ; via les ONG bulgares ou étrangères. Directement dans l'Agence publique pour la protection de l'enfant par d'autres sources, y compris par des individus.
3. **Quatre étapes marquées** à suivre dans la référence et les soins dans chaque cas concret – réception de l'avertissement relatif à un enfant non-accompagné ou un enfant victime de la traite de personnes à l'étranger et le rapatriement de cet enfant en Bulgarie ; réception de l'enfant sur le territoire de la République de Bulgarie et prise de la mesure de protection adéquate dans chaque cas particulier (placement dans un centre de crise) ; mise en place d'activités qui visent la protection de l'enfant sur place au niveau local après son placement dans le centre de crise ; suivi du cas au cours d'un an (en tenant compte de la période jusqu'à ce qu'il atteigne l'âge de majorité) aux fins de prévenir une nouvelle implication de l'enfant dans la traite de personnes et sa nouvelle sortie hors du territoire du pays.
4. **Description détaillée des compétences de toutes les institutions engagées.**

Les plus vulnérables aux fins de l'exploitation du travail (mendiants et pickpocket) sont les enfants à l'âge entre 6 à 13 ans, et aux fins de l'exploitation sexuelle – ceux entre 13 et 18 ans. En 2011 l'Agence publique pour la protection de l'enfant a traité **47 dossiers** conformément au Mécanisme de référence et de soins aux enfants non-accompagnés et des enfants victimes de la traite de personnes de retour de l'étranger. 36 filles et 11 garçons ont été victimes de la traite de personnes aux fins de l'exploitation du travail ou de l'exploitation sexuelle.

Dans le cadre de ses compétences en 2011 le Président de l'Agence publique de protection de l'enfant a soumis au Ministre de l'Intérieur des avis concernant l'application de la contrainte administrative prévue dans l'art. 76a de la Loi sur les documents d'identité bulgares à 33 enfants impliqués dans des actes portant préjudice à leur développement. Les dernières modifications dans l'art. 76a postulent que : « la sortie du territoire national ne sera pas autorisée, des passeports ou des documents les substituant ne seront pas délivrés, et ceux qui sont déjà délivrés seront saisis dans les cas des enfants qui n'ont pas atteint l'âge de la majorité et au sujet desquels il y a des renseignements communiqués par une autorité bulgare ou étrangère qu'ils ont été impliqués ou utilisés dans des activités visées dans l'art. 11 de la Loi sur la protection de l'enfant (mendicité, prostitution, violence sexuelle, diffusion de matériel pornographique, gains patrimoniaux illicites) ». La Mesure prévue par l'art. 76a s'applique sur ordonnance motivée du Ministre de l'Intérieur ou des officiers publics mandatés par lui (le directeur et les directeurs adjoints de la Direction générale de la Police de garde et de la Direction des Documents d'identité bulgares) à la proposition et sur avis du Président de l'Agence publique pour la protection de l'enfant. Les mesures visent la protection de l'enfant et s'appliquent pour une durée de jusqu'à deux ans à partir de l'ordonnance relative à leur application.

En application du Mécanisme de référence et de soins aux enfants non-accompagnés et des enfants victimes de la traite de personnes de retour de l'étranger, en 2010 à l'Agence publique pour la protection de l'enfant ont été adressées au total 48 communications d'avertissement relatives à des enfants victimes de violences et d'exploitation sexuelles et 2 cas de trafic et commerce de bébés. Dans le cadre de ses compétences le Président de l'Agence publique pour la protection de l'enfant a soumis au Ministre de l'Intérieur des avis concernant l'application de la mesure administrative aux termes de l'art. 76a de la Loi sur les documents d'identité bulgares à 31 enfants impliqués dans des actes portant préjudice à leur développement.

Vers le 31.12.2010 à l'Agence publique pour la protection de l'enfant ont été adressées des renseignements de 9 centres de crise qui ont travaillé avec 205 enfants au cours de l'année. Vers le 31.12.2010 57 enfants ont été placés dans des centres de crise. Vers le 31.12.2011 10 centres de crise qui ont travaillé avec 266 enfants ont adressé les communications à l'Agence publique pour la protection de l'enfant. Vers le 31.12.2011 les enfants placés dans des centres de crise ont été au nombre de 95.

À l'heure actuelle, la Bulgarie est dans le processus de réorganisation administrative et fonctionnelle du système de protection de l'enfant qui vise à refléter les nouvelles réalités découlant de 10 ans sur la mise en œuvre de Loi sur la protection de l'enfant de 2000.

En 2011 un grand nombre d'analyses, de recherches, d'avis et opinions ont été recueillies et la législation européenne sur les droits des enfants a été étudiée. À la suite de ce travail approfondi, une nouvelle loi pour la protection de l'enfant a été rédigée, qui fait actuellement l'objet d'un vaste débat public.

RESC 7§10 CYPRUS

The ECSR concludes that the situation in Cyprus is not in conformity with Article 7§10 of the Charter on the ground that it has not been established that children are effectively protected against the misuse of information technologies.

249. The representative of Cyprus informed the Committee that Cyprus had signed the Budapest Convention of the Council of Europe against Cybercrime on 23 November 2001, which had been ratified by the Law of Ratification No. 22(III)/2004, to take effect on 1st May 2005. She reported that in accordance with Article 11 of the Law of Ratification, any person who intentionally and without any right produced, offered, distributed, procured, possessed child pornography in a computer system or on a data storage medium, committed an offence punishable by up to 10 years of imprisonment and/or

a fine up to 42.715 €, or both. She specified that in accordance with article 14 of the Law of Ratification, internet service providers faced criminal liability in case they committed any of the above criminal activities by intention or awareness. Moreover, internet service providers were obliged to take down illegal content like child pornography as soon as they were informed by the Police, or became aware, of the existence of such content on their servers.

The representative of Cyprus specified that her Government was currently transposing Council Directive No. 2011/92/EU of 13 December 2011, which referred in Article 25§2 to measures to block access to webpages containing or disseminating child pornography, into national law. The deadline for compliance with the EU Directive is 18 December 2013.

The representative of Cyprus then reported that, in order to increase the awareness of young people, parents and teachers on Internet safety measures, an integrated Safer Internet Centre (Cyber Ethics) had been set up by the Cyprus Neuroscience and Technology Institute (coordinator), the Cyprus Pedagogical Institute of the Ministry of Education, the public-owned telecommunications company (CYTA) (in charge of the Hotline), the Pancyprian Coordinating Committee for the Protection and Welfare of Children (in charge of the Helpline), and the Youth Board Cyprus (in charge of organizing parent-children workshops). She explained that Cyber Ethics had been designed to operate as a combined Awareness Nod, Helpline, and Hotline, to raise awareness using the most appropriate media. The Safer Internet Helpline provided children, teenagers, and adults with the means to talk anonymously to a professional who would support them psychologically when dealing with complex Internet risks, and assisted in reporting illegal web content, solving technical issues, or advising on how to best use the internet. The Safer Internet Hotline addressed illegal content on the Internet (namely child pornography and racism/xenophobia) and accepted anonymous reports for analysis and report to Police authorities.

When a report is submitted to the Safer Internet Hotline, the analysts are tracing the content to determine its location. If the content is hosted in another country, then the report is forwarded to the hotline of the hosting country. If the content is hosted in Cyprus, then the report is forwarded to the police for further investigation. Several overseas countries are also allowed to inform directly the Internet Service Providers (ISPs) for the removal of some content hosted on their servers.

The representative of Cyprus specified that CYTA provided Safe Internet Service to all CYTAnet subscribers, which filtered online content, organized seminars and presentations on the issue in cooperation with the Ministry of Education and Culture, parents' associations and head teachers, and took part in media discussions on Internet safety issues. In February 2012, CYTA had introduced a special protection system known as Cleanfeed, which blocked access to websites with content which was illegal under Cypriot legislation (including child pornography).

250. In reply to a question from the Chair, the representative of Cyprus confirmed that, to her knowledge, the information she had provided was not included in the report.

251. The Committee invited the Government of Cyprus to include all the additional information provided in its next report and to bring the situation into conformity with the European Social Charter.

RESC 7§10 MALTA

The Committee concludes that the situation in Malta is not in conformity with Article 7§10 of the Charter on the following grounds:

- *it has not been established that children are protected from sexual exploitation;*
- *it has not been established that children are protected against the misuse of information technologies.*

First and second grounds of non-conformity

252. The representative of Malta provided the following information in writing:

Protection against sexual exploitation

On 6 September 2010 Malta ratified the Council of Europe Convention on the Protection of Children against Sexual exploitation and Sexual abuse. Prior to Malta's ratification, amendments were made to Maltese Criminal law to bring Malta in line with this Convention by taking various necessary legislative measures.

Protection against sexual abuse, child prostitution and child pornography is specifically provided for under articles of the Criminal Code, Chapter 9 of the Laws of Malta. Article 204C (1) provides for the offence of participation in sexual activities with persons under age and article 204 D provides for the protection of children from unlawful sexual activities by a perpetrator, which include:

(a) compelling a person under age to perform sexual activities with another person, or

(b) knowingly causes, for sexual purposes, a person under age to witness sexual abuse or sexual activities, even without causing the said person to participate in the activities, or

(c) knowingly causes, for sexual purposes, a person under age to participate in real or simulated sexually explicit conduct or exhibition of sexual organs, including through information and communication technologies, or

(d) participates in sexual activities with a person under age, where recourse is made to child prostitution, or

(*e*) knowingly attends a pornographic performance involving the participation of a person under age.

Article 248D of the Criminal Code provides for protection against the trafficking of children for the purpose of exploiting that child in prostitution or in pornographic performances or in the production of pornographic material. Moreover, the White Slave Traffic (Suppression) Ordinance, Chapter 63 of the Laws of Malta provides for the inducing of a person under the age of twenty-one years, thus including children, to leave Malta for purposes of prostitution in article 3.

A very recent measure to combat child exploitation and abuse came into force legally in January 2012 to provide for a public register through the enactment of The Protection of Minors (Registration) Act, Chapter 518 Laws of Malta. The Public Register is a major step forward in ensuring further transparency to the general public with regard to crimes which attack the well-being of children.

Protection against the misuse of information technologies

Article 208A of the Criminal Code of Malta provides for the offence of the production of any indecent material and makes it an offence for anyone to produce, distribute, disseminate, import, export, offer, sell, transmit, make available, procure for oneself or for another, or show such indecent material. Moreover, punishment is increased in cases where offences in sub-articles (1) and (1B) are committed by any ascendant by consanguinity or affinity, or by the adoptive father or mother, or by the tutor, or by any other person charged, even though temporarily, with the care, education, instruction, control or custody of the person under age shown, depicted or represented in the indecent material, or where such person under age has not completed the age of nine years or where the indecent material shows, depicts or represents a minor involved in acts of bestiality, brutality, sadism or torture.

Amendments were also recently made to the Broadcasting Code for the Protection of Minors, which falls under Chapter 350 of the Laws of Malta. The Code regulates that broadcasts shall not include any programmes which might seriously impair the physical, mental or moral development of minors, and in particular they shall not include programmes that involve pornography or gratuitous violence. Advertisements shall not encourage anti-social behaviour or depict minors behaving in an anti-social manner. Vindictiveness, bullying and certain facial expressions and body movements can all be defined as anti-social. Advertisements shall also

not portray minors in a sexually provocative manner and treatments in which minors appear naked or in a state of partial undress require particular care and discretion.
Prior to Malta's ratification, local measures were also introduced to encourage and support the setting up of information services, such as telephone and internet help-lines to provide advice to callers. Moreover, advertisements shall not include any material that may result in harm to minors either physically, mentally or morally.
Malta has a local Hotline that provides a secure and confidential environment where the public can report online child abuse. There is a Hotline Team which has multiple roles, involving awareness campaigns by participating in local media, organising awareness events and carrying out internet safety education programmes in schools.
The Hotline Team works in liaison with the National Cyber Crime Unit within the Malta Police Force which deals with cyber abuse/pornography complaints and concerns, and the Child Protection Services which receives reports of abuse, and provides support to the victim.
Children are further informed and protected through various projects, seminars and initiatives taken locally such as *Be Smart Online- A safer Internet Centre for Malta*, under the EU *Safer Internet Programme*, which serves to inform children, parents and educators and make them aware of the dangers of the internet and other electronic media, and of the tools available to counteract these dangers, such as monitoring and filtering software, and also includes a hotline to fight illegal content and contributing to the European URL database, together with a helpline to reply to online questions and telephone calls from children and parents regarding problems encountered during their use of online technologies.

Protection from other forms of exploitation
The Committee recalls that under Article 7§10 States must prohibit the use of children in other forms of exploitation such as domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs. States must also take measures to prevent and assist street children. They must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that this legislation is effective in practice. The Committee asks what forms of exploitation are known in Malta and what measures are taken to combat them.
Article 248D of the Maltese Criminal Code provides for the protection of children from:
(a) the production of goods or provision of services; or
(b) slavery or practices similar to slavery; or
(c) servitude; or
(d) activities associated with begging, as well as protection from any other unlawful activities not specifically provided for elsewhere.

Furthermore, article 248D of the Maltese Criminal Code specifically provides against the trafficking of a minor, thus a child, for the purpose of exploitation in the removal of organs.
Additionally, article 248 DB of the Maltese Criminal Code protects the child against the offence of child labour which includes the coercion of a person under age into forced or compulsory labour for any purpose whatsoever including the forced or compulsory recruitment of minors to take part in armed conflict.
The forms of exploitation reported in Malta include neglect, physical, emotional as well as sexual abuse[5]. In 2010, the Office of the Commissioner for Children in Malta reported having received a minimal number of complaints on the alleged abuse of minors. All cases were referred to the national social welfare agency and concerns with regards to cyber abuse/pornography are referred to the National Cyber Crime Unit for the necessary action.
Also, other measures are taken with parents who are advised to be more aware of their children's online activity and to guide their children towards positive use of new technologies,

[5] Detailed statistics provided on 'Children 2010', *NSO* available online at http://www.nso.gov.mt/statdoc/document_file.aspx?id=2703.

through various local projects and state campaigns. Additional protection measures are provided through the community, support structures in school, local non-governmental organisations as well as the Church which has a strong presence locally and in a position to detect forms of neglect and exploitation and cases requiring protection.

RESC 7§10 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 7§10 of the Revised Charter on the grounds that:

- *the enforcement of anti-trafficking legislation remains weak;*
- *it has not been established that children are effectively protected against the misuse of information technologies.*

First ground of non-conformity

253. The representative of the Republic of Moldova made the following statement:

The phenomenon of trafficking of Human Beings is diminishing according to information collected nationally and in accordance with information given by organisations such as the International Organisation of Migration. This reduction applies in particular also to children.

This reduction is the result of efforts carried out by the Government of the Republic of Moldova. With regard to legislative measures, EU Directive 2004/81 has been implemented and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse had been ratified entering into force on 1st July 2012.

In addition, a number of prevention measures have been taken. Every two years the Government adopts a National Plan against Trafficking of Human Beings. Various media campaigns are being organised to raise the awareness of the general public to this sensitive issue.

254. The Committee considered the information given insufficient with regard to efforts made by the Government of the Republic of Moldova to combat corruption at the level of senior Government officials.

255. In accordance with its Rules of Procedure, the Committee called for a vote on a Recommendation, which was rejected (15 votes for, 13 against). The Committee then called for a warning, which was rejected too (18 votes for, 14 against).

256. The Committee urged the Government of the Republic of Moldova to take the necessary measures to combat the corruption of senior Government officials.

Second ground of non-conformity

257. The representative of the Republic of Moldova indicated that the Audiovisual Code protected minors in respect of information (in particular material of a pornographic nature, material portraying excessive violence or material containing indecent language) posing risks for their physical, mental or moral development and that the Criminal Code made it an offence to possess or distribute child pornography. She stipulated that an inter-ministerial working group had formulated an action plan to prevent and combat cybernetic crime, which included measures relating to children's rights.

258. She added that the Ministry of the Interior had prepared, in consultation with hosting providers, a draft revision of the law on preventing and combating computer crime, which made it obligatory to report to the Ministry of the Interior any information on persons who, by electronic means, distributed, broadcasted, imported or exported images or representations of children involved in sexual activities or of sexual abuse of children. The amendments also included the obligation to block access to all

web-sites distributing child pornography and included on a list prepared and kept up to date by the Ministry of the Interior.

259. She said that the amendment process was currently at the inter-ministerial consultation stage and that the Government hoped it would be completed before the year end.

260. The Committee expressed the wish that the amendment process be successfully completed and encouraged the Government of Republic of Moldova to continue its efforts to bring the situation into conformity with the European Social Charter.

RESC 7§10 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 7§10 of the Charter on the grounds that:

- *the simple possession of child pornography is not a criminal offence;*
- *it has not been established that measures taken to combat trafficking and sexual exploitation of children are sufficient.*

First ground of non-conformity

261. The representative of Romania informed the Committee that the new Criminal Code mentioned in the report had been adopted by Law No. 286/2009 of 2 October 2011, to enter into force on 1st February 2014. It contained a new Article 374 incriminating production, possession for display or distribution, purchase or storage, display, promotion, distribution and simple possession of child pornographic materials, and punished such conduct by 1 to 5 years of imprisonment or, if such conduct was committed through a computer system or other means of data storage, by 2 to 7 years of imprisonment. The access without right of pornographic material involving minors through a computer system or other means of electronic communication was punished with 3 months to 3 years of imprisonment or a fine.

The representative of Romania specified that the new Criminal Code defined pornographic material involving minors as any material with minors involving sexually explicit conduct or, though not representing real persons, stimulating in a credible way a minor with such behaviour, and that the simple attempt was punishable.

The representative of Romania recalled that, until the entry into force of the new Criminal Code, simple possession of child pornography was incriminated by Law No. 196/2003 on preventing and combating pornography, which punished the distribution of materials presenting an image of a minor with sexually explicit conduct by 1 to 5 years of imprisonment; by Law No. 161/2003 on measures to ensure transparency in the exercise of public dignities in public functions and the business environment, which defined child pornography (Article 35§1e), incriminated and punished child pornography through a computer system by 3 to 12 years of imprisonment, and prohibited distribution, offering, transmission or purchase of child pornography through a computer system, or simple possession without right; and by Law No. 678/2001 on preventing and combating trafficking in persons, which also defined child pornography (Article 18§1), incriminated and punished child pornography by 3 to 10 years of imprisonment.

The representative of Romania, recalling that, even without any intent to distribute, simple possession was incriminated, affirmed that Romania was already in conformity with Article 7§10 of the Charter, but admitted that the entry into force of the new Criminal Code as of 1st February 2014 would specify the incrimination of child pornography.

262. The Committee congratulated the Government of Romania of these positive developments and decided to await the next assessment by the ECSR.

Second ground of non-conformity

263. The representative of Romania gave an impressive list of legislative and organisational measures taken with a view to combatting trafficking and sexual exploitation of children.

264. The representative of ETUC wondered whether these measures turned out to be efficient. The representative of Romania replied that initial indication proved the efficiency of the measures taken. However, concrete statistics would be available only when submitting the next report.

265. The representative of Portugal stated that the measures taken by the Romanian Government were very impressive.

266. The Committee took note of the positive developments in the legislative and organisational fields and congratulated the Government of Romania on the progress made.

RESC 7§10 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 7§10 of the Charter on the ground that it has not been established that sufficient measures have been adopted to protect children from trafficking and all forms of sexual exploitation.

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

1 Legislation

1.1 International Conventions

Turkey is one of the first countries which signed United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. As a result, the crime of human trafficking became a part of Turkish Penal Code.

Although in its Report, The Committee stated that “Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse” was not ratified by our country, Turkey signed this Convention on 25/10/2007 in Lanzarote and on 25/11/2010 it’s agreed to be ratified without reservation. The Council of Ministers decided on ratification of the Convention on 18/07/2011. The Convention, which was published in the Official Gazette No: 28050 dated 10/09/2011, came into effect on 01/04/2012 in Turkey.

On the other hand, “Convention on Action against Trafficking in Human Beings” which was signed by Turkey in 2009, is not ratified yet.

1.2 National Legislation

a) Turkish Penal Code

There are regulations including effective sanctions to protect children against sexual assault, harassment actions and sexual abuse within Turkish Penal Code No: 5237 which was published in the Official Gazette on 12/10/2004 and entered into force afterwards. These regulations take part especially in Article 77 titled as “crimes against humanity”, Article 80 titled as “human trafficking”, first paragraph of Article 103, third paragraph of Article 226 and third paragraph of Article 227 of the aforesaid Code.

More effective sanctions were imposed to the crimes related to sexual abuse of children, child pornography and child prostitution with the amendments to Turkish Penal Code No: 5237 in 2005. Abuse of children in prostitution is not incorporated into the scope of the crime “sexual abuse” under Article 103 of Turkish Penal Code and regulated as a distinct crime within Article 227 of the Code. In case of victimizing children in the crime of trafficking, some of the factors that constitute a crime are not required for it to be defined as a crime, in accordance with the third paragraph of Article 80 of the Code. According to first paragraph of Article 227 of the Code encouraging a child to become a prostitute, facilitating prostitution, sheltering a child for

this purpose or taking part in child prostitution is punished with a more severe penalty than mediation in prostitution of adults.
In the third paragraph of Article 226 of the same Code, as well as engaging in import of products including indecent scenes, words or articles in which the children are used, duplication, transportation, storage and export of these products or presenting them to others' use, intentional individual keeping and stocking is counted as crime as reducing demand for these products will provide protection to children.

b) Draft Law on Fighting against Human Trafficking and Protecting the Victims

The draft law is being prepared with contribution and cooperation of the related institutions (Ministry of Interior). Special provisions related to protection of children are given place within the draft law.

c) Statutory Decree on Organization and Functions of Ministry of Family and Social Policies

Coordinating determination of national policies and strategies, undertaking social services and welfare activities for children, providing coordination and cooperation between related state institutions and voluntary agencies on this issue to provide healthy development of children by protecting them from all kinds of neglect and exploitation is counted among functions of Ministry of Family and Social Policies within Statutory Decree No: 633 on Organization and Functions of Ministry of Family and Social Policies

d) The Law No. 5651 on Regulation of Publications on the Internet and Suppression of Crimes Committed By Means of Such Publications

The prohibitive provisions on child abuse crimes committed by use of information technologies are regulated within Articles 8 and 10 of the Law No. 5651.

2 Criminal Offences

a) Offences against sexual impunity

The 6th Section of Turkish Penal Code is titled as "offences against sexual impunity" and penalties that will be imposed to the offences of sexual violation (Article 102), child molestation (sexual abuse of children) (Article 103), sexual intercourse with persons not attained the lawful age (Article 104) and sexual harassment (Article 105) are specified under this section. "Guidebook of Investigation on Offences Against Sexual Impunity" is prepared by Ministry of Internal Affairs with the aim of effectively combating these types of offences and raising awareness of its staff. 5000 of this guidebook is published and distributed to Directorates of Security in 81 provinces, it's planned to organize 4 terms of trainings in 2012 and first term of these trainings was realized with participation of 46 staff members as well.

b) The offence of Human Trafficking

The book "Investigation Techniques on Offence of Human Trafficking" is published in an effort to more effectively combat the offence of human trafficking, protecting and saving the aggrieved which takes place in Article 80 of Turkish Penal Code. It is also planned to train staff through 2 terms of trainings to be organized in 2012. First term of the trainings was realized with participation of 25 staff members.

c) Preventing the incidents of child molestation (sexual abuse of children)

Chiefs of Child Branch Offices in 81 provinces were trained on "Investigation on Child Molestation" in between 9-13 January 2012, 20-24 February 2012 and 7-11 May 2012, with the aim of preventing the incidents of child molestation and raising effectiveness of investigations carried out by these Offices.

d) "Star of Hope Project"

Studies for the "Star of Hope Project" was started within the scope of the protocol signed between Ministry of Internal Affairs, Ministry of Labor and Social Security and Union of Chambers and Commodity Exchanges of Turkey on 13.05.2009. The project was designed for children aged between 16-18 who are at risk and have behaviors towards offence in all provinces. The aim of the project is to determine the children who are supposed to be in risk,

provide them vocational skill trainings and ensure them being away from crime through providing appropriate jobs for them. **14.049** children are determined to be in risk throughout the country since the beginning of the project. **408** of these children are continuing their trainings on various vocational issues currently. **3492** children completed their trainings and received their certificates. **744** of them were employed in jobs relevant to trainings they received. The budget of the project is **7.356.472 TL.**

e) Social Protection and Support Program for Children and Young People for a Secure Life and Future

"Social Protection and Support Program for Children and Young People for a Secure Life and Future" (ÇOGEP) aims to take measures for social protection of children and young people within the frame of providing personal development of them, contribute to their growing as socially beneficial individuals through providing necessary support for them in this context, incorporate groups who migrated from rural and have problems of social adaptation or other disadvantageous groups into urban life and reduce deprivations that indirectly and negatively affect secure life.

ÇOGEP is planned to be a 5-year program that will last in between 2012-2016. This program will be applied in three-steps and extended to countrywide gradually. The program, which will be applied in 17 provinces in 2012 (especially in Eastern and Southeastern provinces), 37 provinces in 2013 and 81 provinces by the end of 2014, will continue until the end of 2016.

A budget of **120.000.000 TL** has been allocated for the above mentioned 5-year program.

19 projects that were approved in this context have been put into effect throughout 5 cities in 2012.

f) Studies Conducted on the Subject of Internet in Our Country

In scope of the Law No. 5651 on "Regulation of Publications on the Internet and Suppression of Crimes Committed By Means of Such Publications", an electronic crime line (www.ihbarweb.org.tr) which enables citizens to report illegal web content through the internet has become available. These reports, evaluated by the Information Technologies and Communication Institution are electronically transferred to a database according to the subject of crime and the situation of the perpetrator. These reports are then analyzed in detail and subsequently are presented to judicial authorities.

Within the context of the Law No. 5651 on "Regulation of Publications on the Internet and Suppression of Crimes Committed By Means of Such Publications" preventive studies are carried out. For this purpose, in order to eliminate and prohibit access to illegal web contents another crime line (www.bim.org.tr) has been created in coordination with Information Technologies and Communication Institute. This line has enabled law enforcement officers to report the detected illegal contents.

Moreover; within the scope of combating child molestation and child pornography through internet, efforts are made in coordination with Information Technologies and Communication Institute (BTK) and Interpol Europe Sirene Unit to prohibit access to web pages including child pornography and apprehend the related perpetrators.

"Secure Internet Service" has been implemented by Information Technologies and Communication Institute on 22/11/2011 with the aim to protect individuals from the harmful contents of internet. The use of this service is up to the user's choice. In the "Secure Internet Service" two options called "child" and "family" are available. In the family profile there are three categories (social networks, gaming sites and chat sites) which may be filtered if wanted. Users can choose the suitable profile for their purposes and they can turn off Secure Internet Service at will.

According to information gathered from Directorate of Telecommunication and Communication there are a total of 25.900 registered internet cafes in Turkey. The inspection of internet cafes is being regulated by the Directorate of Telecommunication and Communication within the framework of Law No. 5651 on "Regulation of Publications on the Internet and Suppression of

Crimes Committed By Means of Such Publications" and this law's regulations (Regulation No. 26687).

The authorization to carry out inspections is given to Governor's Clerical Directorates in city centers and to District Governor's Clerical Directorates in districts. In several cities commissions have been formed by local authorities. Delegates from city hall, police headquarters, universities and Ministry of National Education may participate in these commissions. However in some cities, provisions of the law and its regulations are not in effect and the authorization to inspect internet cafes are given to police forces as these cafes are considered as public place within the provisions of the Law of Police Powers. Due to the related provisions of this above mentioned law police officers always have the authorization to inspect internet cafes.

It can be seen that the authority of police forces to inspect internet cafes are just for the aspects of "public peace and security" (Article 9 of Law of Police Powers). When the law and its regulations are examined, it can be observed that there are no provisions which state that police forces have a right to inspect elements unrelated to "public peace and security" such as warrant controls, filtration, permanent IP, internal IP logs, recording systems etc. However due to the absence of a commission or on account of indifference of Governor's and District Governor's Offices, these elements are also monitored by police officers.

Collaborations between public institutions and establishments are being carried out for studies that aim to secure and knowledgeable use of the internet.

Steps Taken by Department of Public Order (Information Systems Branch Department of Crimes Committed by Information Technologies) on Child Molestation and Child Pornography between 2011 and 2012:

By examining the inquiries of child pornography and child molestation sent from Interpol member countries, victims and suspects who are thought to be in the country are found, crimes are solved and the inquiries are sent to judicial authorities.

Generally in case of solving crimes of child molestation and pornography through the internet, collaborations with National Center for Missing and Exploited Children, USA – FBI, Child Exploitation and Online Protection Centre, USA Immigration Customs Enforcement, Germany Bundeskriminalamt are made.

Through Interpol, in 2011, inquiries of child pornography have been sent from Germany, Austria, USA, England, France, Luxembourg, Canada, Spain, Italy and New Zealand. With technical investigations all of these inquiry files have been sent to related cities detected by the IP addresses.

From these above mentioned cities, it is reported that suspects of some of the inquiry files are determined and procedural acts have been carried out.

For other files, it is mentioned that related research and investigations are being carried out, authorities have been notified and necessary directives are being waited for. Through Interpol, in 2012, inquiries of child pornography have been sent from Germany, Austria, the Netherlands, Canada, Spain, Italy and England and all of these inquiry files have been sent to related cities detected by the IP addresses.

Similar for files from 2011, research and investigations are being carried out for these above mentioned files.

In 2012, as a result of dialogues carried out through Facebook files related to child molestation and child pornography has been sent, with technical studies carried out information related to these suspects has been evaluated and files for suspects whose IP numbers have been detected have been prepared and sent to relevant cities. These cities are continuing the inquiry procedures.

In addition, through Facebook, investigations about files sent from FBI are continuing and efforts are made to complete missing materials.

g) Child Victims of Human Trafficking

Although not very common in our country, it is observed that children can also be victims of human trafficking. In studies that are made for child victims, more sensitivity is shown for the child's benefit.

As a known fact, a child is someone who has not yet reached the age of eighteen. A child whose physical, mental, moral, social or emotional development and personal security is under danger, who has been neglected or abused and who is a victim of a crime is under protection. (Child Protection Law No. 5395)

Procedures carried out for child victims of human trafficking are conducted in line with Child Departments of Provincial Security Directorates.

Single child victims of human trafficking located in our country are lodged in hostels of Ministry of Family and Social Policies while women victims with children are lodged in shelter homes which operate within the frameworks of protocols signed between Ministry of Interior and Women's Solidarity Foundation and Human Resource Development Foundation.

In 2006, 14 (3 Russian, 4 Ukraine, 3 Azerbaijan, 2 Moldova, 1 Uzbekistan and 1 Kazakhstan), in 2007, 7 (2 Russian, 2 Azerbaijan, 1 Romanian), in 2008 12 (3 Moldova, 5 Uzbekistan, 2 Romanian, 1 Bulgarian and 2 Azerbaijan), in 2009 1 (Uzbekistan), in 2010 1 (Nigerian), in 2011 5 (2 Uzbekistan, 1 Syrian, 1 Turkmenistan and 1 Azerbaijan) child victims of human trafficking has been located in our country. Their safe and voluntary returns to homelands have been provided.

h) National Action Plan on Fight against Human Trafficking

The National Action Plan on Fight against Human Trafficking entered into force on March 6, 2003 was published. The so called action plan defines tasks of Ministries in terms of administrative regulations and protection measures for victims. Second National Action Plan targeting to attain international standards on fight against human trafficking was approved on June 18, 2009.

The action plan prepared in the framework of EU Twinning Project aims at attaining minimum standards for elimination of human trafficking, strengthening the capacity of concerned institutions, and adopting a strategy against human trafficking and implementing action plans of sectors. The action plans of sectors include goals such as drawing an institutional framework for aids and support to the victims, improving information and consultancy services together with psychological and social services, providing repatriation and re-adaption of victims, participating non-governmental organizations into protection period.

In line of these goals,

1. The subject of foreign victims' residence permits was regulated under a separate article in "Draft Law on Foreigners and International Protection" sent to Grand National Assembly of Turkey on 3/5/2012. When the draft is legalized, without any condition, 6 month residence permit is envisaged to be provided for foreigners suspected of being human trafficking victims or suspected to become potential human trafficking victims in order to help them to get over the impacts of incidents they experienced.

2. Moreover, with the aim of converting fight against human trafficking and protection of victims into an institutional structure, Ministry of Internal Affairs continues to work in order to prepare Draft law on Fight against Human Trafficking and Protection of Victims. The draft law has been prepared on the basis of Council of Europe Convention on Action against Trafficking in Human Beings and a transparent period is followed taking opinions of all partners.

The main aim of the draft law is to prevent human trafficking, implement an effective combat against it and protect and support human trafficking victims in terms of human rights and gender equality. There are some special provisions for children in draft law. According to these provisions high interest of children will be pursued, the persons encouraging, facilitating, meditating child prostitution or the persons forcing children to prostitute will be punished and their preparation activities directed at this crime will be considered as a committed crime.

Furthermore "forcing children for begging" is considered in the scope of human trafficking. In draft law, protection of victims is set out under a separate part, victim support periods are

defined in details, and institutional structure is constructed. Considered that human trafficking is a dynamic and complex type of crime, it is aimed that a set of amendments in article 80 of Turkish Penal Code, regulating human trafficking thus rendering combat against human trafficking more effective.

3. In October 2002 acting as National Coordinator, a National Task Force on Human Trafficking in the Ministry of Foreign Affairs was established. The task force has ensured coordination among institutions by pursuing human trafficking combat of Turkey to date.

i) Services for Children living and/or working on street

Youth and Child Centers are boarding and day institutions of social services established in order to provide temporary rehabilitation and reintegration services for children and young people facing social risk or living /working on street because of reasons such as disagreement between couples, negligence, illness, bad habit, poverty, abandonment.

Psycho-social support and awareness raising activities have been carried out for families of children working/living on street. Also, families determined to have lived in poverty are provided with social assistance and services. Works on Adaptation of child to live with his/her family have been fulfilled in case of possibility of child's return to family. In the framework of society oriented works, raising social sensitivity and awareness activities have been conducted.

In this context, on 12 June, World Day against Child Labour, in provinces which have Child and Youth Centers, some activities were carried out in order to raise social awareness and sensitivity on risks of working, begging children on street. These activities aimed to introduce related services in institutions, inform on features of children working/living on street, encourage to voluntary contribution in and participation to services.

By "the Model for Service On Children Working/Living On Street" developed by the Department of Child Service and put into practice with the Circular of Prime Ministry in 2005, children working on street, available for all types of abuses because of living on street and drug addicted children have been withdrawn from streets, returned to their families with assistance of social rehabilitation, directed to formal or vocational education, received a treatment and their requirements on housing, dressing, health and education have been met.

Moreover, reintegrating children into society, measures to prevent them to head for streets have been taken. Responsibilities and tasks of all institutions providing related services have been defined and services have been made to be conducted in coordination. The Model for Service has been implemented in provinces, which have widely faced with the problem, such as İzmir, Ankara, Antalya, Diyarbakır, Adana, Mersin and Bursa, but It is foreseen to be implemented country wide.

j) Children in Penitentiaries

Given a particular attention to the quality and quantity of personnel working in Children and Youth closed penitentiaries and education houses, more qualified personnel in a greater number are appointed to work in these institutions. Especially considering developmental features, requirements and interests of young detainees and convicts, new institutions have been established to provide services exclusive to children. In line with this, Child Education Houses are planned to be established in Ankara, İstanbul, Erzurum and Diyarbakır and Child and Youth Closed Penitentiaries are planned to be established in Tarsus, Kayseri and Diyarbakır. In this new institutions children could sleep on their own, they will have an opportunities to shelter in rooms where they can meet their self-care requirements thus risks of exploitation by roommates will be eliminated.

Furthermore, in order to protect young convicts and detainees in penitentiaries, a new execution process has been implemented in which they are enabled to stay in one person room and they are provided with improving activities in common social areas and classrooms during the day. Therefore in each department, rehabilitation staffs are assigned to stand by the detainees and convicts. 7 Psycho-social intervention programmes peculiar to children have been developed and continued to be implemented for children in institutions, their parents and staff of institutions. Sexual Abuse Approach Programme is one of the so-called programmes.

With the technical support of UNICEF and under the coordination of the Ministry of Justice Directorate General of Penitentiaries and Execution of Sentences “Justice for Children Project” will be carried out between the years of 2012-2014. This Project aims to establish and make standards for, interview rooms in courts peculiar to children, make a handbook on approach of staffs to child victims of abuse and train staffs on this issue.

k) Child victims of sexual abuse

Project was initiated to be carried out in May 2010 in Ankara, as a pilot province, in order to minimize secondary disturbance of child victims of sexual abuse during rehabilitation and the judicial period of investigation and prosecution in the framework of the Project on psychological and sociological rehabilitation of child victims of sexual abuse and trafficking, conducted by Ministry of Health with the support of Ministry of Justice.

For the first time Child Monitoring Center became operational within Ankara Dışkapı Hospital in October 1, 2010 and the center was moved in Yenimahalle State Hospital. In scope of this Project such centers are planned to become operational in 12 hospitals.

3 Statistics

Statistical data about Sexual abuse of children, on cases initiated and adjudicated in the scope of articles 77, 103, 104, 226, 227 of Turkish Penal Code between the years of 2006-2007 is enclosed in annex.

RESC 7§10 UKRAINE

The ECSR concludes that the situation in Ukraine is not in conformity with Article 7§10 of the Charter on the grounds that:

- *all children under 18 are not effectively protected against child prostitution;*
- *all children under 18 are not effectively protected against child pornography;*
- *simple possession or production of child pornography is not a criminal offence;*
- *measures taken to address the problem of street children are insufficient and disproportionate in the circumstances.*

First, second, third and fourth grounds of non-conformity

268. The representative of Ukraine, presenting the situation as a whole, declared that her Government had taken action against child prostitution and pornography recently, and informed the Committee that the Law of 20 January 2010 to Amend Legislative Acts on Combating Dissemination of Child Pornography had introduced a definition of child pornography in the Law on the Protection of Public Morality. She reported that the Law on Telecommunications had introduced a duty for telecommunications providers to limit the access of their clients to resources carrying out distribution of child pornography, and that the Law of 20 June 2012 had ratified the Convention on the Protection of Children against Sexual Exploitation and the Prevention of Sexual Abuse. She specified that, implementing the Law on Homeless Citizens and Children, the National Programme for Child Homelessness 2006-2012 had provided prevention and assistance to children in need, such as placement in one of the 54 centres and 63 shelters for social and psychological rehabilitation.

The representative of Ukraine informed the Committee that the number of street children had decreased by 50 % since 2007, from 31.211 children in 2007, to 19.436 children in 2011. She explained that the Ministries of Justice, Social Policy, and the Interior had consulted on all four grounds of non-conformity in 2011, and that a working group was to be established to make proposals. She offered to provide updated information on this initiative in the next report.

269. The representative of ETUC asked what Ukraine had planned to address the most urgent matters.

270. The representative of the Netherlands declared that he was not convinced by the general statement given by the representative of Ukraine, and suggested to vote on a Warning given the seriousness of the situation. The representatives of Belgium and France concurred.

271. The representative of Lithuania reminded the Committee that these findings of non-conformity were discussed for the first time, questioned the ability of any Government to correct situations in such a short period of time, and underlined the progress already made by Ukraine.

272. The Chair concurred that it was the first report of Ukraine and the establishment of a working group showed some awareness, but she recalled that inclusion of the item on the agenda had been motivated by the seriousness of the situation.

273. The representative of Romania affirmed that, because criminal law was complex, any change in the situation involved the amendment of some 200 laws, and asked to allow the Government of Ukraine more time to amend its criminal code and related laws.

274. The representative of Lithuania added that, if the Committee was to express its concern, it should bear in mind the amount of work Governments could handle.

275. The representative of Poland objected that, if the situation was new to the Committee, it had been criticised since 2006 inter alia by the Council of Europe Human Rights Commissioner and UNICEF, and it seemed possible for the Ukrainian Government to make urgent amendments.

276. The representative of Ukraine recalled that all ministries of her Government had undergone an administrative reform in 2011, that Ukraine had just ratified the Convention on the Protection of Children against Sexual Exploitation and the Prevention of Sexual Abuse, that these were the first conclusions of non-conformity, and that her Government had now just established a working group to bring the situation into conformity. She reiterated her request for more time to address the situation.

277. In accordance with its Rules of Procedure, the Committee voted on a Recommendation on the first to third grounds of non-conformity, which was rejected (10 votes in favour, 16 against). The Committee then voted on a Warning on the same grounds, which was adopted (18 votes in favour, 7 against). The Committee then voted on a Recommendation on the fourth ground of non-conformity, which was rejected (2 votes in favour, 21 against). The Committee then voted on a Warning on the last ground, which was rejected, too (15 votes in favour, 9 against).

278. The Committee urged the Government of Ukraine to bring its legislation into conformity with the European Social Charter.

Article 8§1 – Maternity leave

RESC 8§1 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 8§1 of the Charter on the ground that the required period of twelve months of contribution to the social security scheme prior to pregnancy to be entitled to maternity benefits is too long.

279. The representative of Albania provided the following information in writing:

> Law No. 7703, dated 11 May 1993 "On social security in the Republic of Albania" and the amendments as made to this Law have helped in upholding the principle of equal treatment and non-discrimination of persons on the grounds of differences deriving from gender. This law defines the rights and obligations for both genders vis-à-vis social security. In this context, Article 2 of the Law defines that compulsory social security protects "all economically active persons" (employers and self-employed)". Article 6 states that: "Social security shall protect in a mandatory manner all economically active citizens in Albania in the case of reduction of

income due to pregnancy, old age, disability and loss of family breadwinners." The law, therefore, does not establish any division and it handles equally economically active women in both the public and private sectors.
Articles 26, 27, 28, 29 of Law No. 7703, dated 11 May 1993 "On social security in the Republic of Albania" defines the benefits that women receive the case of pregnancy, maternity leave compensation, childbirth:
Article 26 1. "The maternity benefit shall be paid to the woman who is ensured for the pregnancy and childbirth, when she has 12 months of insurance for each case of benefit."
2. The benefit period will be 365 calendar days, including a minimum of 35 days before and 42 days after childbirth. For the woman who will give birth to more than one child, the benefit period will be 390 calendar days, including a minimum of 60 days before and 42 days after childbirth.
3. The maternity benefit for the insured woman is as follows:
- 80 % of the daily average of the assessed basis of last calendar year for the prenatal period and 150 days after birth;
- 50 % of the daily average of the assessed basis of last calendar year for the rest of the period thereafter.
4. The maternity benefit for economically active women is equal to the base rate of old-age pension.
5. Mother who adopts a child of up to 1-year old and, who has been insured for not less than 12 months, is entitled to leave after the birth, which begins as of the day of adoption, but not earlier than after 42 days of the birth of child and still no more than 330 days after childbirth. Minimum leave for the adopter is 28 days.
6. When a child is adopted during maternity leave, the mother who has given birth to the child, will be entitled to a benefit period up to the date of adoption, but not less than 42 days after birth.
Article 28 "Compensation benefit for pregnancy"
1. Insured woman, who, upon the decision of the competent medical commission, changes her job due to pregnancy, is entitled to the right to obtain compensation income to recover the reduction, which she experiences as a result of changing her job. This compensation is given if an insurance contribution has been paid for a time of not less than 12 months.
2. Amount of revenue to be received as compensation is equal to the difference between the salary of the previous job and the salary of the new job. This compensation rate may not be more than 50 percent of the daily average of the assessed basis of the last calendar year.
Article 29 "Childbirth bonus"
1. Childbirth bonus is paid to an insured person, who is the mother or father of a child who is born, provided that each of them have paid contributions for one year before the birth of the child.

RESC 8§1 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 8§1 of the Charter on the ground that unemployment periods are not included in the calculation of the qualifying period for maternity benefits.

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

This situation also contradicts the Article 2.1 of ILO Maternity Protection Convention (No. 183), 2000, ratified by the Republic of Azerbaijan in 2010. In order to bring situation into conformity with European Social Charter (Revised), the Draft Law of the Republic of Azerbaijan “On amendments to Law on Social Insurance” was elaborated and submitted to relevant state agencies. The Draft Law was supported by relevant ministries, except State Social Protection

Fund which is main agency for implementation of social insurance policy. The consultations in this regard continue within Government.

RESC 8§1 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§1 of the Charter on the ground that maternity benefits are not adequate or not regulated in certain parts of the country.

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

BOSNIA AND HERZEGOVINA (BiH)

In accordance with Article 36, paragraph 1 of the Law on Salaries in BiH Institutions (BiH Official Gazette 50/08), during pregnancy, childbirth and child care a women shall be entitled to maternity leave of twelve consecutive (12) months. Based on the findings of a certified doctor, a woman can start maternity leave 28 days before delivery. A woman can use a shorter maternity leave, but not less than 42 days after birth.

Based on the Decision of the Constitutional Court, at 136th session held on 2 November 2010 the Council of Ministers issued the Decision on the Manner and Procedure for Exercising the Right to Maternity Leave in the Institutions of Bosnia and Herzegovina (BiH Official Gazette 95/10). This decision determines that women employed in Bosnia and Herzegovina institution on maternity leave are entitled to a monthly benefit equal to the average net salary which was earned during the last three months prior to the commencement of maternity leave. The Decision makes the right to compensation of salary during maternity leave equal for all employees in Bosnia and Herzegovina institutions and came into effect as of 29 September 2010.

According to this Decision, all employees on maternity leave as of 29 September 2010 are paid as entitled under this Decision, which means they receive a monthly benefit in the amount of average net wages.

The Labour Law in BiH Institutions governs the protection of women and maternity leave in the civil service. Article 36 provides for the duration of maternity leave and the length of compulsory maternity leave in the civil service.

Article 42 of the Law provides that:

1. While on the maternity leave, the employee shall be entitled to maternity leave payment, in accordance with the current laws.
2. While working half time hours as outlined in Article 38 of this law, the employee shall be entitled to receive salary payment for fulltime hours, in accordance with the law.

FEDERATION OF BOSNIA AND HERZEGOVINA (FBIH)

The report states that funding of the rights of families with children from cantonal budgets is linked to serious problems and that some cantons are not able to provide necessary funds for this purpose in their budgets, which is why these benefits are not paid in all cantons or are paid in small and varying amounts. Posavina Canton and Herzegovina-Neretva Canton did not pass legislation to regulate this area.

Starting from the fact that the protection of families with children is an area of special interest, which aims at securing approximately equal conditions for healthy and orderly development of children, as well as assisting in the implementation of reproductive functions of the family, it is necessary to take action to improve the situation in this area.

In this regard, in the context of shared responsibilities and activities of the Federation and the cantons in the area of social welfare, the Federation Ministry of Labour and Social Policy plans with the line cantonal ministries to create a new law on social welfare and families with children. In drafting the new law, provisions of the European Social Charter and the

conclusions of the Committee, as well as other international documents relating to maternity benefits, will be taken into account in order to ensure availability and consistency of these rights throughout the territory of FBiH, regardless of the canton in which a beneficiary resides, in accordance with the financial capabilities of the Federation of Bosnia and Herzegovina.

BRČKO DISTRIKT (BD)

Article 45, paragraph 1 of the Labour Law of BD provides that during pregnancy, birth-giving and child-care, a woman shall be entitled to maternity leave in the duration of twelve (12) months without interruption. During the maternity leave employees shall receive compensation of salary at the expense of BD Budget provided that contributions were paid in pension and health care schemes.

The compensation of salary shall be calculated to be equal to 100 % of the base salary.

The gross compensation of salary shall be calculated in the period of 12 months, which is provided for in the BD Law on Salaries.

Paragraph 2 of the article provides that a woman may start maternity leave twenty-eight (28) days prior to the expected date of the birth of the child based on the findings of a certified medical physician. A woman must start her maternity leave no later than seven (7) days prior to the expected date of the birth of the child based on the findings of a certified medical physician

Paragraph 3 of the article provides that a woman may take shorter maternity leave, but no earlier than forty-two (42) days after her giving birth.

Pursuant to Articles 8 and 9 of the Law on Child Protection of BD – consolidated text, the following are the rights under the children's protection scheme:

1. compensation of salary paid during maternity leave or extended maternity leave and leave of absence of a working parent or adoptive parent to take care of a child;
2. maternity allowance;
3. layette;
4. child allowance;
5. specific psychosocial treatment of spouses who want children and pregnant women.

Compensation of salary shall be paid to a working woman (mother) or father, adoptive parent or guardian of a child during her absence from work due to pregnancy, childbirth and child care in accordance with the regulations on labour relations applicable in the District.

During pregnancy, childbirth and child care, a woman is entitled to uninterrupted twelve (12) months' leave of absence.

According to Article 2, 3, 4 and 5 of the Decision on Conditions and Manner of Payment of Compensation to Employees During Maternity Leave, issued on the basis of Article 45 of the BD Labour Law and BD Child Care Law (consolidated text), an employee (mother or adoptive parent or other person whom the competent authority entrusted with care of the child) is entitled to compensation during maternity leave, for a period as determined in the Labour Law.

In the process of determining this entitlement, the employer shall issue a decision establishing the right to maternity leave, the duration and amount of compensation for salary to be a paid to the employee.

During maternity leave an employee receives an amount of compensation for salary equal to the average net salary which was earned during the last three months prior to the commencement of maternity leave. The calculation of wages, payment of contributions and payment of compensation are done by the employer.

Compensation for salary during maternity leave or extended maternity leave and paid leave of working parent or adoptive parent for child care	2007	2008	2009
Beneficiaries	151	241	331

Source: BD Sub-Department for Social Welfare

RESC 8§1 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 8§1 of the Charter on the ground that the amount of maternity benefit is manifestly too low.

282. The representative of Ireland provided the following information in writing:

The reference to the at-risk-of-poverty threshold in 2009 is based on 60 per cent of median income. The figure is factually correct in that context. For 2010, the comparable threshold is 10,831 € (c 207 € per week). Thus, in 2010, the level of maternity benefit exceeds the at-risk-of-poverty threshold by between 10 € and 55 € per week.

However, we would not consider this to be an appropriate measure of adequacy. It is not usual in social policy to assess adequacy of welfare benefits in relation to the at-risk-of-poverty threshold. The at-risk-of-poverty threshold is based on a normative proportion of median income in society and does not contain any objective measure of adequacy. A fixed (60 per cent) threshold is used to a) compare trends over time and b) compare patterns between countries. However, the value of the threshold varies over time and between countries. The example above of the value of the threshold in 2009 and 2010 illustrates this point well: the fall in the threshold of 44 € (18 per cent) between 2009 and 2010 does not imply that an adequate income was that much lower in 2010 (for example, prices fell by 1 per cent between 2010 and 2009).

It is worth mentioning that Article 11 of EU Council Directive 92/85/EEC required that member states pay an 'adequate allowance' to pregnant workers and workers who have recently given birth or are breastfeeding. Art. 11.3 states that this allowance 'shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation'.

Ireland complies with this minimum standard.

The Programme for Government contains a commitment to maintain social welfare rates at current levels. However, given the scale of the fiscal crisis and because spending on social protection accounts for nearly 40 % of current Government expenditure, savings have to be found in the social welfare system.

In the social protection Budget 2012, the measures introduced sought to minimise the impact of the necessary adjustments in the Department’s welfare expenditure on groups vulnerable to poverty and social exclusion. The Government has endeavoured insofar as it could to limit cuts in social welfare to households where there is some additional income over and above the basic social welfare payment and in that regard, avoided any general reduction in primary weekly welfare payments.

RESC 8§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 8§1 of the Charter on the ground that maternity benefits are not of an adequate level.

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

Since the conclusions of the ECSR, there have been improvements in the legislation of the Slovak Republic concerning the maternity benefit to improve the situation of mothers. According to Act No. 461/2003 Coll. on Social Insurance,), maternity benefits are available to employees covered by social insurance for at least 270 days in the two years preceding birth.

Periods of unemployment are taken into account when calculating the qualifying period provided the person concerned had voluntary social insurance. Period of time during which the maternity benefit is provided has been increased from 28 weeks to:
a) 34 weeks when a mother gave birth to one child;
b) 37 weeks when a lone mother gave birth to one child;
c) 43 weeks when a mother gave birth to two or more children.
There has also been an increase to the actual amount of the benefit from 55 % of the woman´s previous salary to 65 % of her previous salary. This amendment has been made to ensure even greater protection of women who gave birth to children and to improve their financial situation for a longer period of time.
We would also like to state that the same regime applies to women employed in the public and state sector.

RESC 8§1 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 8§1 of the Charter on the ground that the level of maternity benefits provided to women employed in the private sector is not adequate.

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

In accordance with the Social Insurance and Universal Health Insurance Act No. 5510, the period of illness and discomfort between the beginning of the pregnancy and the first 8 weeks after giving birth or 10 weeks in case of multiple pregnancy is regarded as the maternity period. Accordingly, during the period of temporary incapacity due to maternity, the insured women are granted daily temporary incapacity allowance for each non-worked day for 8 weeks prenatal period, and 2 weeks are added to this period. Temporary incapacity allowance is granted to the insured woman in case of preterm labor for the period she cannot work before delivery as well as in case she works for 3 weeks until delivery upon the wish of the insured woman and approval of the physician for the period added to the rest period after delivery.
The daily income limits are taken into account in the calculation of the daily temporary incapacity allowance. In practice, in case of maternity of the insured women, temporary incapacity allowance for outpatient treatment is calculated by taking 2/3 ratio of the gross daily income limit for 10 days.
In accordance with Act No. 5510, the daily income is the basis for the calculation of the premiums collected and the allowances granted. The lower limit of the daily income is 1/30 of the minimum wage and the upper limit is 6.5 times of the lower limit of daily income.
As the gross monthly minimum wage is 886.50 TL for the period between 01/01/2012-30/06/2012 for the workers over 16, lower limit of the daily income (basis for the calculation of the premiums collected and the allowances granted) is 29.55 TL and the upper limit is 6.5 times of the lower limit. (29.55 x 6.5 = 192.07 TL)
The net monthly minimum wage of an insurance holder working with minimum wage is 701.14 / 30 = 23.37 TL after the legal deductions (insurance premium, employee's share, income tax, and stamp tax) are made, in the period mentioned above.
The amount of temporary incapacity allowance for 16 weeks to be paid to the insured women, working with minimum wage and in a state of temporary incapacity due to maternity is calculated over the gross daily minimum wage amount, 29.55 TL.
Accordingly, daily amount of temporary incapacity allowance granted to the insured women during the maternity period is 29.55 x 6.5 = 192.07 TL.
An insured woman whose daily net income is 23.37 TL during this period is paid net 19.07 TL daily in case of temporary incapacity. The difference between the daily income that the insured

women is gaining during work and the daily allowance she gets during the outpatient treatment without working is 4.3 TL (23.3-19.07 = 4.3 TL)
As explained above, the daily allowance amount received by the insured women for outpatient treatment due to maternity is 83 % of the daily income she gets during work. In other words, the working women receives 83 % of the income she earns during work with minimum wage, as temporary incapacity allowance for each day for the time she doesn't work due to maternity.
This situation is in conformity with the provision regarding that the maternity benefits are adequate and at least equal to 70 % of the employee's previous salary according to the Charter. Thus, the situation in Turkey is in conformity with Article 8§1.

Article 8§2 – Illegality of dismissal

RESC 8§2 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 8§2 of the Charter on the ground that reinstatement is not the rule in case of unlawful dismissal based on pregnancy.

285. The representative of Albania provided the following information in writing:

With the amendments to the Labor Code article 60 provided for the right of the employee, in case of unlawful dismissal the employer may choose:
1. to return to the place of work, or
2. if he/she by his free will does not wish to return to his/her previous place of work, he may require indemnity which is provided in the Code.

RESC 8§2 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 8§2 of the Charter on the ground that the exception to the prohibition of dismissal of pregnant women and women on maternity leave based on the employer's loss of trust in the employee is too vague.

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

According to the RA Law "On Amendments to the Labour Code" adopted in 2010 the Article 117 of the Code was considered not valid. The Article 114 was amended according to which the termination of employment contract by initiative of employer during pregnancy and until one month after the end of maternity leave is forbidden, without any exceptions.

RESC 8§2 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 8§1 of the Charter on the ground that exceptions to the prohibition of dismissal of pregnant women are excessively broad.

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

La disposition de l'art. 8§2 de la Charte admet les exceptions suivantes :
- si la femme a commis une faute justifiant la rupture du rapport de travail ;
- si l'entreprise en question cesse son activité ;
- si le terme prévu par le contrat de travail est échu.

En effet, l'art. 333, alinéa 5 du Code du travail admet que l'ouvrière ou l'employée en état de grossesse, ainsi que l'ouvrière ou l'employée en étape avancée d'un traitement in vitro, puisse être licenciée après préavis au cas où elle refuserait de suivre l'entreprise ou la filiale où elle est en exercice au changement de leur localisation dans une autre agglomération ou région.
Dans un tel cas-là nous considérons que cette hypothèse fait partie de l'exception où l'entreprise où la femme travaille cesse son activité – en réalité l'entreprise cesse de fonctionner sur le territoire de l'agglomération où est apparu le rapport de travail. Le texte de la disposition du Code du travail ne régule pas tous les cas de licenciement de la femme en grossesse pour des raisons de déménagement de l'entreprise vers une autre agglomération ou pour une autre région parce que ce n'est pas l'objectif de la disposition. Vu son état personnel il se peut que la femme travailleuse ne voudrait pas déménager ou quitter sa famille. Dans un tel cas il est impératif qu'il y ait un fondement normatif du licenciement avec un tel motif.
De même, l'art. 333, alinéa 5 du Code du travail prévoit que l'ouvrière ou l'employée enceinte, ainsi que l'ouvrière ou l'employée en étape avancée de traitement in vitro pourra être licenciée après préavis si le poste qu'elle occupe doit être libéré pour y restituer un ouvrier ou employé illégalement licencié auparavant.
Danse cette optique nous considérons que le texte garantit pleinement à chaque ouvrier ou employé illégalement licencié le droit, conforme à la décision du juge, à ce qu'il soit restitué par l'employeur au poste qu'il avait occupé avant le licenciement et que cela est également en relation avec la question formulée par le Comité au sujet des conséquences du licenciement illégal au cas d'une restitution impossible. De la question posée nous pouvons déduire que la conséquence la plus voulue en cas de licenciement illégal serait la restitution du travailleur/ de la travailleuse à son poste.

RESC 8§2 FINLAND

The Committee concludes that the situation in Finland is not in conformity with Article 8§2 of the Charter on the ground that no provision is made in law for the reinstatement of women unlawfully dismissed during pregnancy or maternity leave.

288. The representative of Finland said that this statement also applied for the ground of non-conformity found under Article 27§3. She informed the Committee that under legislation in force in Finland, reinstatement into employment for the public sector was only covered for civil servants of the State, Municipalities, and the Evangelical Lutheran Church of Finland in cases in which a court found a dismissal to be unlawful.

289. The representative of Finland confirmed that, except for the remedies to claim compensation she had explained in detail, labour law for the private sector did not include any provisions on the reinstatement in the case of unlawful dismissal, but that, if a dismissal was unlawful, reinstatement could be part of a solution to end the dispute between parties. Social partners had come to an agreement on employment protection during the legislative consultation process, but, since reinstatement had not been a tradition in Finland, had not been able to reach agreement on this issue. Reinstatement into the employment relationship had been a part of discussions on flexi-security within the EU. Cases were rare in practice because there was a good level of social protection.

290. The representative of Finland also confirmed that there was no intention to change legislation on this issue at the present time.

291. The representative of ETUC pointed to the debate on reinstatement or compensation held in other cases, and insisted that an alternative to compensation was important in a difficult employment context.

292. In reply to a question from the Chair, the representative of Finland confirmed that reinstatement had never been part of labour legislation, but that it had always been left to the parties to agree on reinstatement.

293. The Chair recalled that the report stated that legislation including reinstatement had been existent. She enquired why the possibility had been envisaged for the public, but not for the private sector.

294. The representative of Greece enquired whether there were any statistic figures available, if unlawful dismissal was not common during pregnancy, family leave, or on grounds of family responsibilities, there were any statistic figures available.

295. The representative of Finland declared that she had none to provide.

296. In reply to a question from the Chair, the representative of Finland explained that in practice, a court had no legal basis to order reinstatement.

297. In reply to a question from the representative of Turkey, the representative of Finland reported that compensation related to all grounds of dismissal, and that inclusion into the Criminal Code had been made to prevent dismissal during pregnancy, family leave, or on grounds of family responsibilities.

298. The representative of Belgium suggested not to dwell on the question, since the current legislation declared dismissal during pregnancy or maternity leave or on grounds of family responsibilities unlawful, and allowed the parties to agree on reinstatement. The representative of Estonia concurred.

299. The representative of ETUC objected that in Belgium, there was a right to reinstatement at the employee's choice, whereas in Finland, such possibility was available to some employees only, and he saw no rationale for such discrimination.

300. The representative of Estonia expressed understanding for the ground of non-conformity. Reinstatement involved satisfaction for the employee, punishment for the employer, and discouragement for other employers. She reminded the Committee that reinstatement was an important measure in several provisions of the Charter. She suggested, since it did not seem to be a problem in practice, that the Committee takes note of the current situation.

301. The representative of Armenia recalled that the ECSR had referred to a lack of relevant legislation, that the representative of Finland did not provide statistical data in support of the view that it was no problem in practice, that the finding of non-conformity had been long-standing, and that Finland expressed no will to any change. She requested to vote for a Warning.

302. In accordance with its Rules of Procedure, the Committee voted on a Recommendation, which was rejected (0 votes in favour, 29 against). The Committee then voted on a Warning on the same grounds, which was also rejected (10 votes in favour, 19 against).

303. The Committee urged the Government of Finland to terminate the difference in treatment between the public and the private sectors, and invited the Government of Finland to bring its situation into conformity with the European Social Charter.

RESC 8§2 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 8§2 of the Charter on the grounds that:

- *it has not been established that there is adequate protection against unlawful dismissals during pregnancy or maternity leave;*

- *it has not been established that reinstatement or adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave.*

First and second grounds of non-confirmity

304. The representative of Ireland provided the following information in writing:

The European Committee of Social Rights of the Council of Europe has raised a number of queries with regard to Ireland's compliance with Article 8 (2) of the Revised European Social Charter. These issues are dealt with in detail below.

Redress Options

Under Irish law an individual who considers that they have been unfairly dismissed from their employment because they are pregnant or on maternity leave or other associated leave may choose to have the matter examined under either of the following types of legislation:

(1) the Unfair Dismissals Acts 1977 to 2007, or

(2) the Employment Equality Acts 1998 and 2004

In addition, Section 23 of the Maternity Protection Act 1994 prescribes that any purported termination of an employee's employment, while the employee is absent from work on either maternity leave, additional maternity leave, health and safety leave or leave to which a father is entitled under Section 16 of the Act, is void.

These provisions were further improved by the provisions of section 15 of the Maternity Protection (Amendment) Act 2004 which added absences due to the exercise of new entitlements to attend ante-natal classes or in relation to breastfeeding (as provided in Sections 8 and 9 of the 2004 Act). Either the employee or the employer can refer a dispute that relates to rights or entitlements under the Maternity Protection Acts to a Rights Commissioner except disputes which relate to dismissal must be referred under the Unfair Dismissals Acts 1977-2007.

(1) Unfair Dismissals Acts 1977 to 2007

Legality of dismissal

Unfair dismissal can occur where an employer terminates a contract of employment, with or without notice, or when an employee terminates their contract of employment, with or without notice, due to the conduct of the employer. This latter situation is known as "constructive unfair dismissal". The unfair dismissals legislation provides a system of appeal whereby an individual can question the fairness of their dismissal after it has occurred. Among the reasons dismissal is considered to be automatically unfair under the Unfair Dismissals legislation are:

- Pregnancy, giving birth or breastfeeding or any matters connected with pregnancy or birth;
- Availing of rights under legislation to maternity leave, adoptive leave, carer's leave, parental or force majeure leave.

The time limit for taking a claim for unfair dismissal is 6 months from the date of the dismissal. However, if there are *exceptional circumstances*, this period may be extended up to 12 months from the date of dismissal.

In general, the Unfair Dismissals Acts apply to all employees (include Public Service employees) over age 16 with at least 12 months' continuous service with the main exceptions of:

- Close relatives of the employer who live and work in the same private house/farm;
- Members of the Defence Forces or the Police Force.

Normally an employee must have at least 12 months' continuous service with an employer in order to bring a claim for unfair dismissal. However there are important exceptions to this general rule and these include:

- Pregnancy, giving birth or breastfeeding or any matters connected with pregnancy or birth;
- Availing of rights granted by the Maternity Protection Acts 1994 and 2004.

Remedies Available under the Unfair Dismissals Acts
The remedy applied in any particular case is at the discretion of the adjudicating body (whether a Rights Commissioner, the Employment Appeals Tribunal or the Circuit Court) having regard to all the circumstances of the case. The following redress options are available under the legislation:

Reinstatement
This means that an individual is treated as if they had never been dismissed. Not only are they entitled to loss of earnings from the date of the dismissal to the date of the hearing, they are also entitled to any favourable changes in the terms of employment during that period, for example, pay rises.

Re-engagement
This means that an individual will be given their job back but only from a particular date, for example, the date of the decision in their favour. This means that the employee will not be entitled to compensation for any loss of earnings. Often this remedy is used where it is felt that the employee contributed to the dismissal, even though the actual dismissal was unfair.

Compensation
This is the most common remedy. Compensation is only awarded in respect of financial loss. The maximum amount of compensation is 104 weeks' pay. Where the employee has not incurred financial loss, maximum compensation of 4 weeks' pay can be awarded.

The calculation of compensation may take the following matters into account:
- Present loss – a calculation of loss of earnings from the date of the dismissal to the hearing of the claim. Any money earned by the employee during this period will be deducted, as well as any payment in lieu of notice received when dismissed. The employee is also obliged to lessen the losses during the period from the dismissal to the hearing by being available for and seeking alternative employment. If it transpires that there is no actual financial loss, because, for example, the employee took up other employment immediately after the dismissal, there is a maximum compensation of 4 weeks' pay.
- Future loss – a calculation will be made of future loss, based on a consideration of how long it is likely before alternative work can be got.
- Pension loss – a calculation that will try to assess what impact the unfair dismissal has had on entitlements.
- Any contributory conduct.

Examples of cases relating to pregnancy under the Unfair Dismissals legislation (on the Employment Appeals Tribunal website www.eatribunal.ie) are as follows:
Case No. UD 2254/2009
http://www.eatribunal.ie/determinationAttachments/330aa0d3-7ca5-42c9-95dd-8493315df056.pdf
Case No. UD 2507/2009
http://www.eatribunal.ie/determinationAttachments/1d7a5f75-0858-4ae1-9be2-ef8fa6888e58.pdf

Position regarding Rights of employees on fixed-term contracts
Generally speaking, individuals employed under such contracts have the same rights as other employees including protection under maternity leave legislation.

The Protection of Employees (Fixed-Term Work) Act 2003 applies to most employees on fixed-term contracts including public sector employees. The Act provides that fixed-term employees may not be treated less favourably than comparable permanent employees unless the employer can objectively justify the different treatment. Any justification offered cannot be connected with the fact that the employee is on a fixed-term contract.

Written statement
An employer must provide a fixed-term employee with a written statement as soon as possible outlining what will trigger the end of the contract. That is, whether the contract will end on a specific date, following completion of a specific task or a specific event. In addition, where an employer intends to renew a fixed-term contract, a written statement must be supplied to the fixed-term employee not later than the date of renewal, setting out the objective grounds justifying the renewal and the failure to offer an open-ended contract.

Dismissal
A fixed-term contract may include a clause that the Unfair Dismissals legislation does not apply in circumstances where the term of the contract has expired. To avail of that provision, the contract must be in writing and must include a clause stating that the Unfair Dismissals Acts 1977-2007 will not apply where the only reason for ending the contract is the expiry of the fixed term, or the completion of the specific purpose of the contract. Also, both the employer and the employee must sign the contract. Of course, the Unfair Dismissals Acts will apply to employees on fixed-term contracts in circumstances where an employee is dismissed before the contract has expired.

(2) The Employment Equality Legislation
Discrimination at work is covered by the Employment Equality Acts. The Acts apply to public and private sector employment and include full-time, part-time and temporary employees. The legislation covers all aspects of work including recruitment and promotion, the right to equal pay, conditions of employment, training or experience. This protection against discrimination applies to all nine grounds on which discrimination is prohibited under the equality legislation. These grounds include gender (including pregnancy and maternity leave) and family status. Where a complaint of discrimination is upheld, redress must be awarded.
Section 6(2) of the Employment Equality Act 1998 as amended by section 4(b) of Equality Act 2004, states that discrimination on the gender ground shall be taken to have occurred where on a ground related to her pregnancy or maternity leave a women employee is treated less favourably. Therefore, an employee who considers that they have been discriminated against under Equality Legislation (including gender or family status) may have their case considered by the Equality Tribunal. All cases, other than those involving gender discrimination, must be referred in first instance to the Director of the Equality tribunal. As an alternative, the person who considers that he/she has been discriminated against on the gender ground may apply directly to the Circuit Court for redress. The Equality Act 2004 also provides for a shift of the burden of proof in favour of a plaintiff in discrimination cases.
The Equality Tribunal's principal role is the investigation and mediation of complaints of discrimination in relation to employment and in relation to access to goods and services, disposal of property and certain aspects of education. The Equality Tribunal was established under the equality legislation and it is an accessible and impartial forum to remedy unlawful discrimination. It is an independent statutory office which investigates or mediates complaints of unlawful discrimination. It operates in accordance with the principles of natural justice and its core values are impartiality and professionalism, accessibility and timeliness. Complaints of discrimination in relation to employment must normally be referred to the Equality Tribunal within six months.

Redress
Under section 82 of the Employment Equality Acts, a decision which finds in favour of a complainant will provide for one or more of the following as appropriate:
- equal pay, from the date of the referral of the claim;
- arrears of the shortfall necessary to make up the equal pay, for a maximum of three years before that date;
- compensation for the acts of discrimination or victimisation which occurred;
- an order for equal treatment in whatever respect is relevant to the case;
- an order that a person or persons take a specified course of action;
- an order for re-instatement or re-engagement (in dismissal cases), with or without an order for compensation;
- in cases of dismissal where the Director or Equality Officer has found no discriminatory dismissal, that the matter be referred to the Employment Appeals Tribunal to determine if there has been an unfair dismissal;
- in cases of gender discrimination, the decision can also order payment of interest under the Courts Act 1981 on all or part of the compensation or the arrears of equal pay.

The complaints may relate to any aspect of employment, job advertising, or vocational training, including access to employment, equal pay cases, complaints of direct or indirect discrimination, harassment, sexual harassment, or failure to provide appropriate measures for a person with a disability. The complaints may also relate to employment agencies, partnerships, membership of professional bodies and trade union membership.

Victimisation
The Employment Equality Acts also specifically protect a person against being penalised in any way by their employer because they have made a complaint about possible discrimination under the Equality legislation, represented or supported a complainant, were named as a comparator or indicated an intention to do any of the above. Penalising a person for any of these reasons is defined as victimisation. The Acts provide for complaints about victimisation to be made to the Equality Tribunal, in the same way as for complaints of discrimination, and with the same provision for redress. It is not necessary that a victimised complainant was successful in their original complaint.

Right to Information
A person who believes that s/he may have experienced discrimination is entitled under Section 76 of the Acts to write to the person they believe may have discriminated against them, asking for certain information.

Time limits for referring a case to the Equality Tribunal
The Employment Equality Acts provide that a claim may not be referred to the Tribunal after six months from the date when the discrimination or victimisation has occurred unless the complainant applies for an extension of time.

Mediation
If the Director considers that a case could be resolved by mediation the Tribunal will arrange a mutually convenient appointment with both parties as soon as practicable and it will be referred to the Mediator.
Either party may withdraw from mediation at any stage of the process, or the Mediator may decide that the case cannot be resolved through mediation. In either case the Mediator will send a notice known as a non-resolution notice to both parties, indicating that the case cannot be resolved by mediation.

The Acts allow for the investigation to be resumed provided that within 42 days of the date of the non-resolution notice the Director receives in writing an application for the investigation to resume.

Breakdown of Cases under Employment Equality Acts before the Equality Tribunal in 2010 and 2011 under the gender and family status grounds

Ground	2010	2011	Increase/Decrease
Gender	43	64	+49 %
Family Status	15	23	+53 %
Total Cases on all 9 grounds	714	571	-28 %

Examples of recent cases on the issue of maternity leave in Equality Tribunal Cases on the Equality Tribunals website www.equalitytribunal.ie:
DEC – E2011-002
http://www.equalitytribunal.ie/Database-of-Decisions/2011/Employment-Equality-Decisions/DEC-E2011-002-Full-Case-Report.html
DEC – E2012-010
http://www.equalitytribunal.ie/Database-of-Decisions/2012/Employment-Equality-Decisions/DEC-E2012-010-Full-Case-Report.html
DEC – E2012-051
http://www.equalitytribunal.ie/Database-of-Decisions/2012/Employment-Equality-Decisions/DEC-E2012-051-Full-Case-Report.html
DEC – E2012-087
http://www.equalitytribunal.ie/Database-of-Decisions/2012/Employment-Equality-Decisions/DEC-E2012-087-Full-Case-Report.html

RESC 8§2 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 8§2 of the Charter on the ground that the dismissal of pregnant women and women on maternity leave can be justified by the relocation of activities of the undertaking where they are employed.

305. The representative of the Slovak Republic informed that the ECSR´s conclusion is referring to the Section 63 paragraph 1 subparagraph a) of the Labour Code which says the employer may give notice to employees when he closes part of his activities or relocates them.

However, this provision of the Labour Code does not state that a pregnant woman or a woman on maternity leave (or any employee, actually) can be dismissed from work based just on the relocation itself. If an employer decides to relocate its activities, each employee is given an opportunity to continue their work for the employer in the new location or start carrying out other work in the original place of work based on the respective change of the employment contract, or terminate the employment. This is governed by Section 43 paragraph 1 subparagraph b) (which defines the place of work performance, as specified in the employment contract) and Section 54 of the Labour Code (which governs Agreement on changes of working conditions listed in employment contracts between the employer and employees).

The possibility to terminate employment of pregnant women, women on maternity leave, or any other employee actually, as stated in Section 63 paragraph 1 subparagraph a) of the Labour Code is therefore formulated as an exception and is based either on:

a) A refusal of the pregnant woman to work in the new place of work (where the employer has relocated to), or
b) A refusal of the pregnant woman to carry out other suitable work in the original place of work (if only a part of the employer's business is relocated).

It is therefore up to the woman to choose whether she wishes to continue to carry out the original work for her employer in a new place of work, to carry out other suitable work in the original place of work or to terminate her employment after agreement with her employer, as stated in Section 63, paragraph 1, subparagraph a).

To avoid any further misunderstanding in the future, a proposal to amend the respective provision of the Labour Code to directly refer to Section 43 and 54 of the Labour Code will be submitted to explicitly state that this reason for termination of employment can be used only when the employee does not agree with the place of work change".

306. The Committee took note of the information and invited the Government to provide all relevant information in its next report.

RESC 8§2 TURKEY

The Committee concludes that the situation in turkey is not in conformity with Article 8§2 of the Charter on the ground that not all employed women are entitled to reinstatement in case of unlawful dismissal during pregnancy or maternity leave.

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

> Le Comité européen des Droits sociaux (CEDS) a trouvé contraire et jugée incompatible la situation du pays avec la Charte 8§2, sur les motifs que toutes les femmes employés injustement licenciés pendant la grossesse et le congé de maternité qui n'ont pas le droit à la réintégration.
> Il n'y a pas eu de changement dans notre législation nationale sur le sujet. Toutefois, les évaluations sont en cour pour déterminer si les dispositions concernées de la Charte sociale, qui est un traité international fondamental sur les droits et les libertés de l'Homme, sont directement applicables conformément à l'article 90 de notre Constitution.

Article 8§3 – Time off for nursing mothers

RESC 8§3 FRANCE

The Committee concludes that the situation is not in conformity with Article 8§3 of the Charter on the grounds that:

- *the remuneration of breastfeeding breaks is not guaranteed for employed women covered by the Labour Code;*
- *women working in the civil service are not entitled to breastfeeding breaks.*

First and second grounds of non-conformity

308. The representative of France provided the following information in writing:

> **I. Réglementation relative aux pauses d'allaitement dans la fonction publique**
> La Charte sociale européenne, dans son article 8§3, met en avant un droit à des pauses d'allaitement pour les femmes en situation d'emploi professionnel, sans précision cependant sur leur durée, et indique par ailleurs que ces pauses doivent être rémunérées. Suite aux

conclusions du Comité européen des droits sociaux sur le 10ème rapport d'application de la Charte sociale européenne révisée, nous précisons la réglementation applicable aux femmes travaillant dans la fonction publique en matière de pauses d'allaitement.
Les textes réglementaires interministériels sont les suivants :
- l'Instruction n°7 du 23 mars 1950 (application des dispositions des articles 86 et suivants du statut général relatives aux congés annuels et autorisations exceptionnelles d'absence) indique qu' « (...) il n'est pas possible, en l'absence de dispositions particulières, d'accorder d'autorisations spéciales aux mères allaitant leurs enfants, tant en raison de la durée de la période d'allaitement que de la fréquence des absences nécessaires. Toutefois, les administrations possédant une organisation matérielle appropriée à la garde des enfants devront accorder aux mères la possibilité d'allaiter leur enfant. A l'instar de la pratique suivie dans certaines entreprises, les intéressées bénéficieront d'autorisations d'absence, dans la limite d'une heure par jour à prendre en deux fois ».
- la circulaire FP/4nº 1864 du 9 août 1995 relative au congé de maternité ou d'adoption et autorisations d'absence liées à la naissance pour les fonctionnaires et agents de l'État, dans sa partie « AUTORISATIONS D'ABSENCES », précise que « restent applicables en ce domaine les dispositions de l'instruction nº 7 du 23 mars 1950 JO des 26 mars, 7 et 29 avril 1950 », dont les termes sont rappelés ci-dessous :
« Il n'est pas possible, en l'absence de dispositions particulières, d'accorder d'autorisations spéciales aux mères allaitant leurs enfants, tant en raison de la durée de la période d'allaitement que de la fréquence des absences nécessaires. Toutefois, les administrations possédant une organisation matérielle appropriée à la garde des enfants devront accorder aux mères la possibilité d'allaiter leur enfant. A l'instar de la pratique suivie dans certaines entreprises, les intéressées bénéficieront d'autorisations d'absence, dans la limite d'une heure par jour à prendre en deux fois.
Des facilités de service peuvent être accordées aux mères en raison de la proximité du lieu où se trouve l'enfant (crèche ou domicile voisin, etc.) ».
Ainsi, l'instruction de 1950 et la circulaire de 1995, en ouvrant une possibilité générale d'allaitement pour les mères fonctionnaires, pose un droit à l'allaitement.
Cette possibilité est obligatoire : le texte de l'instruction de 1950, rappelé par la circulaire de 1995, pose clairement que les administrations « devront accorder ».
Cette possibilité est aussi générale, tant du pont de vue du lieu de garde de l'enfant (il est seulement précisé que l'allaitement sera facilité si le lieu de garde se trouve à proximité du travail de la mère) que du point de vue de l'âge du nourrisson puisqu'aucun âge limite n'est précisé dans les textes, ou encore du point de vue du niveau de fonctions ou des taches professionnelles à effectuer par la mère : aucune exclusion n'est spécifiée.
Cette possibilité est en outre précise : si le lieu de garde de l'enfant est intégré dans la structure de travail ou à proximité, c'est une absence d'une heure à prendre en deux fois qui est accordée.
En ce qui concerne la rémunération du temps d'allaitement, le texte de l'instruction de 1950, rappelé par la circulaire de 1995, indique clairement que ce ne sont pas des autorisations d'absence qui sont ainsi accordées, mais des « facilités de service ». Elles sont donc rémunérées, leur survenance est neutre vis-à-vis du traitement de l'agent.
Au-delà, sur le plan pratique, j'attire l'attention de la Délégation sur le fait que le texte de 1950, et la circulaire de 1995, ne font pas état d'une avancée technologique qui permet à toute femme allaitante le souhaitant de maintenir une lactation soutenue malgré une présence continue sur son lieu de travail sans son enfant et de restituer à ce dernier, en début et/ou en fin de journée le lait maternel » l'usage d'un tire-lait.
En conclusion, il n'est pas envisagé de préciser la réglementation existante, qui offre actuellement un droit à l'allaitement rémunéré pour les femmes qui le souhaitent.

II. Pauses d'allaitement dans le secteur privé

Le Comité a conclu que la situation de la France n'est pas conforme à l'article 8§3 de la charte sociale européenne révisée au motif que la rémunération des pauses d'allaitement n'est pas garantie aux salariées couvertes par le code du travail.

1. Les dispositions du code du travail

Les dispositions du code du travail prévoient des dispositions particulières afin de favoriser la conciliation de l'allaitement et de la poursuite de l'activité professionnelle.

Ainsi, les dispositions de l'article L.1225-30 du code du travail prévoient que pendant l'année qui suit la naissance d'un enfant, la mère qui désire l'allaiter dispose d'une heure par jour pendant les heures de travail ; l'article R.1255-5 du code précité précise que cette heure est répartie en deux périodes de trente minutes, l'une pendant le travail du matin, l'autre pendant l'après-midi ; la période de la pause est déterminée par accord entre la salariée et l'employeur. A défaut d'accord, cette période est placée au milieu de chaque demi-journée de travail. En plus l'article L.1225-32 du code du travail dispose que, dans les entreprises de plus de cent salariés, l'employeur peut être mis en demeure d'installer des locaux dédiés à l'allaitement dans l'établissement ou à proximité.

Une entrave à l'heure d'allaitement de la part de l'employeur :- soit qu'il la refuserait,- soit qu'il la rendrait de fait impossible,- soit qu'il interdirait à un tiers d'amener l'enfant sur le lieu du travail,- soit qu'il ne prévoirait pas les chambres ou locaux d'allaitement réglementaires, constitue une contravention dite de cinquième classe, qui expose son auteur à une amende de 1500 euros, sanction portée à 3000 euros en cas de récidive dans un délai d'un an (art. R.1227-5 CT).

Ce temps associé à l'allaitement ne constitue pas au sens de l'article 3121-1 du code du travail du temps de travail effectif, ce dernier étant le temps pendant lequel le salarié est à la disposition de l'employeur et doit se conformer à ses directives sans pouvoir vaquer librement à ses occupations personnelles. A contrario, et conformément à l'article L. 3121-2 du code du travail, les temps consacrés aux pauses peuvent être considérés comme du temps de travail effectif lorsque les critères cumulatifs du temps de travail effectif sont précisément réunis : le salarié doit être à la disposition de l'employeur et se conformer à ses directives sans pouvoir vaquer librement à des occupations personnelles. Ces critères ne sont pas réunis lors de la pause d'allaitement, c'est pourquoi elle ne peut être rémunérée.

En vertu des dispositions de l'article L.3121-33 du code du travail : « Dès que le temps de travail quotidien atteint six heures, le salarié bénéficie d'un temps de pause d'une durée minimale de vingt minutes ». De la même façon que la pause d'allaitement, cette pause n'est pas rémunérée sauf en cas d'assimilation à du temps de travail effectif ou dispositions conventionnelles plus favorables.

Il convient de préciser que contrairement à d'autres Etats, la pause d'allaitement est un droit accordé aux femmes allaitantes qui ne peut être refusé par l'employeur et qu'elle est accordée indépendamment de la durée du travail (comme c'est le cas en Italie et en Belgique) ou de la prise d'autres congés (ex : congé parental d'éducation ou congé de maternité ; ainsi en Norvège, les pauses d'allaitement ne sont pas rémunérées). En outre, la période de pause est déterminée par accord entre la salariée et l'employeur de manière à concilier au mieux les intérêts de la salariée et ceux de l'entreprise.

La pause d'allaitement peut être rémunérée si les conventions collectives le prévoient.

Toutefois, il convient de préciser, que la rémunération des temps de pause en application de la convention collective est insuffisante pour valoir assimilation à du temps de travail effectif (*Cass. Soc. 30 mars 1994, n° 91-44.877*).

2. Les conventions collectives

De nombreuses conventions collectives viennent compléter le dispositif légal. Elles sont à la disposition des salariés dans toutes les entreprises ou disponibles dans les unités territoriales des directions régionales des entreprises, de la concurrence, de la consommation, du travail et

de l’emploi ainsi que sur le site légifrance. Toutes ces dispositions peuvent être améliorées par accord d'entreprise.
Certaines conventions collectives prévoient la rémunération de cette pause, en général sur la base du salaire habituel, comme dans les conventions suivantes :
- Industries du pétrole (brochure J.O. n' 3001), art. 514,f) ;
- Fabriques d'articles de papeterie (3019), art. 57 ;
- Caoutchouc (3046), art. 24, ne concerne que les femmes dont les enfants sont confiés à la pouponnière de l'entreprise ;
- Fabrication et commerce de la pharmacie (3063), art. 27 ;
- Blanchisserie, laverie (3074), art. 7.7 ;
- Fabrication mécanique du verre (3079), art. 43 ;
- Industries de l'habillement (3098), art. 34. S'il existe une chambre d'allaitement, la pause est payée à condition que la mère ne quitte pas l'entreprise ;
- Parfumerie-esthétique (3123), art. 10. Régime particulier : pause autorisée pendant un an (comme la loi), mais rémunération maintenue pendant les trois premiers mois seulement ;
- Production des papiers-cartons et celluloses - Ouv., employ., techn. et agents de mait. (3242), art. 25 ;
- Transformation des papiers-cartons (3250), art. 25 ;
- Distribution et commerce de gros des papiers-cartons (3158), art. 0 15 (ouvriers), M 21 (techniciens, agents de maîtrise) ;
- Porcelaine (3164), annexe Ouvriers art. 0 10 ;
- Vitrail (3172), art. 31 ;
- Répartition pharmaceutique (3262), art. 62 ;
- Fabrication du verre à la main, semi-automatique et mixte (3281) art 23 ;
- Conserveries : coopératives agricoles et SICA (3607), art. 52.

D'autres conventions prévoient le paiement de ces heures non plus au salaire réellement perçu, mais sur la base de la rémunération minimale garantie du poste occupé par l'intéressée :
- Industrie textile (3106), art. 68, Temps payé au vu d'un certificat médical renouvelable mensuellement. Les autres avenants catégoriels de tette convention ne prévoient rien sur la rémunération des temps d'allaitement ;
- Industries chimiques (3108), art. 14, Paiement du salaire de base + ancienneté, à l'exclusion de tous autres éléments de salaire ;
- Camping (3176), art. 32 ;,
- Rouissage-teillage du lin (3264), art. 48.

Une seule convention, à notre connaissance, prévoit un temps d'allaitement supérieur à la loi :
-la convention nationale du commerce de l'électronique (3076), art. 31, avec une absence autorisée d'une heure le matin et une heure l'après-midi jusqu'aux 6 mois de l'enfant (au-delà, application du droit commun). Mais cette pause pour l'allaitement n'est pas payée.

Certaines conventions collectives prévoient pour les mères allaitant la possibilité de bénéficier d'un congé d'allaitement non rémunéré. Des modalités particulières d'information et de délais peuvent être prévues par les textes conventionnels. Pour bénéficier de ces congés, il faut en général avoir au moins un an d'ancienneté.
Un congé d'un an maximum est par exemple prévu dans les conventions suivantes :
- Travail mécanique, négoce et importation des bois et scieries (3041), art. 14, « Après un minimum d'un an de présence dans l'entreprise, au moment de leur départ, des facilités pourront être accordées aux femmes allaitant leur enfant, soit sous forme de congé sans solde d'une durée de douze mois au maximum, soit sous forme d'aménagement de l'horaire personnel de l'intéressée » ;

- Industries de l'habillement (3098), art. 33,
- Activités de déchets (3156), Empl. AM, art. 40, Dans la limite du 1/5ème de l'effectif féminin employé dans l'entreprise.
- Cinéma : distribution de films (3174), art. 25(l). Deux ans d'ancienneté sont exigés.

Dans certaines conventions collectives, la durée maximale du congé est plus courte :
- Commerce de l'ameublement (3056), avenant ETAM + dessinateurs art. 10, 10,5 mois maximum, après le congé de maternité.
- Transports routiers (3085), annexe Ouviers art. 9, annexe Employés art. 18, annexe TAM art. 22, annexe Ingénieurs et cadres art. 22, Pas de condition d'ancienneté. Au plus tard jusqu'à sept mois après l'accouchement.
- Caves coopératives vinicoles (3604), art. 44. Pas de condition d'ancienneté. Droit ouvert pendant six mois à compter de la naissance.
- Coopératives agricoles de céréales, de meunerie, d'approvisionnement, d'alimentation du bétail et d'oléagineux (3616) art.37 Pas de condition d'ancienneté. Droit ouvert pendant six mois à compter de la naissance.

La convention collective des banques (3161) prévoit dans son art. 51 la possibilité de bénéficier, après le congé de maternité, d'un congé rémunéré de 45 jours à taux plein ou 90 jours à mi-salaire, au choix de l'intéressée. Cette possibilité est ouverte à toutes les mères allaitantes ou non par contre elle permet à la mère prenant un congé parental à l'issue de cette prolongation de voire son **APE complétée à la hauteur de son salaire pendant 45 jours si elle allaite.**
Selon l'article 53 de cette convention, « dans le cadre de ce congé parental, la salariée qui allaite et souhaite prolonger son allaitement au-delà du congé supplémentaire visé à l'article 51.1 bénéficie pendant 45 jours d'une indemnisation versée par l'employeur laquelle, cumulée le cas échéant avec le montant de l'allocation parentale d'éducation ne pourra en aucun cas être supérieure à 100 % du salaire mensuel net qu'elle aurait perçu au titre du salaire de base ».
En complément de ces réponses, il me semble utile de vous faire part de la position du bureau de l'égalité entre les femmes et les hommes dans la vie professionnelle.
Le principe même de la pause allaitement tombe en désuétude car il est considéré comme peu pratique à mettre en œuvre.
Des formules alternatives se sont développées pour permettre aux femmes qui le souhaitent de continuer à allaiter au-delà de leur congé maternité :
- Le congé parental a été consacré au niveau de l'Union européenne.
En France il peut être pris pour une durée de 6 mois renouvelable, il ne permet certes pas le maintien de la rémunération mais ouvre droit à une indemnisation, la relation de travail avec l'employeur est suspendue la salariée retrouvant son emploi à l'issue de ce congé.
- Du fait des nouvelles technologies de l'information et de la communication, le télétravail se développe et permet de concilier vie professionnelle et vie familiale et de continuer à travailler et d'allaiter le cas échéant pour les femmes qui le souhaitent.
Les dispositions de la Charte sociale européenne ouvrant droit à des pauses allaitement rémunérées ont été érigées par mesure de protection de la maternité mais peuvent en pratique constituer un frein à l'embauche des femmes, au développement de leur carrière et à leur progression salariale ; les problèmes d'organisation et le coût générés pouvant conduire à **privilégier** l'emploi d'un homme. Il y a des effets pervers à **inciter** les femmes à prendre ces pauses en prévoyant **le maintien de** leur rémunération.

RESC 8§3 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 8§3 of the Charter on the ground that domestic workers and home workers are not entitled to paid breaks for the purposes of breastfeeding their infants.

309. The representative of Italy, drawing a distinction between the situations of home-based workers and domestic employees, indicated that home-based work was governed by Law No. 877/1973 of 18 December 1973, as amended by Law No. 850/1980, and by Legislative Decree No. 112/2008. Article 8 of the law provided that payment should be based on piece rates, without reference to an hourly or monthly wage, and Article 11 specified that a home-based worker could not work for a number of employers where a single employer's demand corresponded to a number of hours of work equivalent to that mentioned in the branch collective agreement. She explained that, since remuneration was based not on hours worked but on piece rates, it was impossible to calculate the share of working time corresponding to breaks and the legislation on time off for nursing accordingly could not apply to this category of workers. She added that the law, however, forbade workers from exceeding the legal and contractual number of working hours and made their activity subject to the scrutiny of the labour inspectorate. The fact that there was no specific mention of maternity in Legislative Decree No. 151/2001 was linked to the specific characteristics of the type of activity performed, not to a lack of protection of female home-based workers.

The representative of Italy said that, regarding the situation of domestic employees, a distinction must be drawn as to whether the employee worked full-time within the employer's family or part-time for a number of employers. In the first case, the fact that the employee cohabited with the employer's family entailed that she should take time off for nursing in the context of the organisation of her working time and that this time off should be remunerated. In the second case, it was hard to determine which of the employers should bear the cost of remunerating time off for nursing. When an employee worked for several employers, with no cohabitation, time off for nursing was left to the discretion of the parties concerned, who were free to reach an agreement in the light of the relationship of trust inherent in this type of work.

The representative of Italy said that this second hypothesis was not the most widespread form of work for domestic employees and that she considered the situation in Italy to be in conformity with the requirements of Article 8§3 of the Charter.

310. In reply to a question from the Chair, she said the explanations were new insofar as they drew a clearer distinction between home-based workers and domestic employees.

311. In answer to the ETUC representative, she said that the remuneration of home-based workers at piece rates was calculated not on a time basis but on a quantitative output basis. To prevent abuse, the legislation referred to the collective agreement in force, which stipulated a maximum output per 8-hour period. The labour inspectorate kept a register of home-based workers and employers for inspection purposes. A collective agreement, similar to those existing in other branches, was in force for home-based workers.

312. The representative of Poland said she considered it possible to grant home-based workers protection via legislation.

313. Underlining that such legislation was lacking, the Chair asked whether home-based workers were remunerated during time off for nursing and what practice was followed. After reiterating that piece work was difficult to deal with, the representative of Italy indicated that the maternity legislation, which was extensive, provided for five months' compulsory maternity leave. She also confirmed that ordinary employment law provided for time off for nursing of 2 hours per day, left to the employer's choice.

314. In reply to a question from the ETUC representative, the representative of Italy indicated that the 23 weeks of maternity leave were in principle divided into two months before and three months after the birth (or one month before and four months after subject to a doctor's opinion) and that

maternity leave applied to domestic employees. She confirmed that this leave was not covered by social security and represented a significant burden on small employers.

315. In reply to a question from the representative of Belgium, the representative of Italy confirmed that the law established the principle that all employees had an individual right to time off for nursing, without discrimination, but provided for two exceptions to this principle due to the difficulty of calculating the remuneration due for such time off in two cases: home-based working and domestic employment.

316. The representative of the Netherlands called for a vote to ensure that the situation was not unreasonably prolonged, drew attention to the Committee's interest in settling longstanding situations of non-conformity and invited Italy to contact the Committee without delay.

317. Noting that a recommendation had already been made in 1994, without subsequently being renewed, the Chair recommended that the Committee ensure consistency in the sanctions it imposed.

318. In accordance with its Rules of Procedure, the Committee voted on a proposal for a recommendation, which was rejected (by 0 votes in favor and 23 against). The Committee then voted on adopting a Warning, which was approved (by 23 votes in favour and 6 against).

RESC 8§3 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 8§3 of the Charter on the ground that breastfeeding breaks are not remunerated.

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

> Considering the fact that the Parental Protection and Family Benefit Act (Official Gazette of the Republic of Slovenia, Nos. 110/06–Official Consolidated Text 2, 114/06–ZUTPG, hereinafter referred to as ZSDP) determines that in Slovenia parental leave is for twelve months (in cases of an extension for health reasons, for 15 months), the child is at least eleven months old by the end of parental leave and his or her nutrition cannot depend solely on breastfeeding. In addition, immediately after the end of the childcare leave of one of the parents, many children receive institutional care, where the actual exercise of the right would not be possible.
> The Family Affairs Directorate has obtained the opinion of Assist. Dr. Borut Bratanič, PhD, who states in his memo that professional paediatric societies around the world and the World Health Organization – with minor sector-specific adjustments – recommend "exclusive breastfeeding up to six months of age, followed by breastfeeding alongside an adequate supplementary diet until the age of two or even longer if desired (WHO, 2011)". He further states that after sixth months, it is recommended to gradually introduce a supplementary diet alongside breastfeeding for the benefits of the child, mother and society (among other things, breastfeeding is ecologically the most suitable manner of feeding). The health benefits of a suitable supplementary diet are important for the child as well (for the intake of iron and other microelements into the body of the child). Around the age of one year, the child usually consumes a bottle of milk or breastfeeds in the morning and evening, rarely during the day or at night. The child eats more often with the rest of the family, and gradually adopts the eating habits and tastes of the parents and siblings. The question of when is it appropriate to stop breastfeeding has various answers, depending on the opinions and recommendations of the experts considered. Breastfeeding advocates recommend breastfeeding according to the desire of the child and mother until the age of two or more. Psychologists favour the cessation of breastfeeding when the child begins to show an interest in the surroundings and is capable of greater independence (e.g. 10-12 months).
> This year, the Family Affairs Directorate will prepare an amendment to ZSDP (because of non-compliance with Council Directive 2010/18/EU of 8 March 2010 implementing the revised

Framework Agreement on parental leave). This amendment will regulate the right to breaks for nursing mothers as well. However, it is our opinion that the right should be sensibly determined according to the age of the child. We will propose the right to two half-hour breaks until the child is six months old, and to one half-hour break until the child is nine months old.

Article 8§4 – Regulation of night work

RESC 8§4 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 8§4 of the Charter on the ground that it has not been established that regulations on night work afford sufficient protection for pregnant women, women having recently given birth and women breastfeeding their child.

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

According to the RA Law "On Amendments to the Labour Code" adopted in 2010, the Article 148 of the Code was amended according to which the pregnant women and women taking care of children up to 3 years of age can be involved in night works only in case they agree for that. Otherwise, the employer should shift their night work to day work.

RESC 8§4 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§4 of the Charter on the ground that night work of pregnant women, women having recently given birth and women who are breastfeeding is not adequately regulated in the District of Brčko.

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

BOSNIA AND HERZEGOVINA (BIH)
Protection of women employed in the public sector is the same as in the private sector when it comes to night work.
Article 45 of the Law on Civil Service of BiH (BiH Official Gazette 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10) refers to the Labour Law in BiH Institutions and other laws respecting employment-related rights and duties.
Although there is no ban on night work for pregnant women and breastfeeding mothers, Article 35 of the Labour Law of Bosnia and Herzegovina institutions provides:
1. During pregnancy or breast-feeding of a child, a woman may be assigned to other jobs if this is in the interest of her health condition as established by the certified doctor.
2. If an employer is not able to ensure assignment of a woman in accordance with Paragraph 1 of this Article, the woman shall be entitled to paid absence from work.
3. The temporary assignment from Paragraph 1 of this Article may not result in reduction of the woman's salary.
4. The employer may transfer the woman from Paragraph 1 of this Article to another place of work only with her written consent.

FEDERATION OF BOSNIA AND HERZEGOVINA (FBiH)
Article 47 of the Law on Civil Service of FBIH (FBiH Official Gazette 29/03, 23/04, 39/04, 54/04, 67/05, 8/06) refers to the Labour Law and other laws and collective agreements governing employment-related rights and duties.

REPUBLIKA SRPSKA (RS)

Article 9 of the RS Law on Civil Servants (RS Official Gazette 118/08) determines that general rules of labour law shall be applied. In case of night work the provisions of Labour Law (RS Official Gazette 38/00) shall be therefore applied.

Article 52 of the RS Labour Law bans night work by pregnant women and mothers with a child up to one year of age.

For women employed in the public sector, applicable provisions of the Labour Law which prohibits night work for pregnant women and women who have a child under one year of age. Furthermore, some branch agreements increase this minimum of protection, so Article 12 of the specific collective agreement for employees in the internal affairs of the RS (RS Official Gazette 72/06) defines night work as work between 10 p.m. and 6 a.m. next day, while Article 13 bans night work by workers under 18 years of age, pregnant women and mothers with children under three years of age.

BRČKO DISTRIKT (BD)

Night work by pregnant women, women who have given birth and women breast-feeding their children is not regulated by the Labour Law of BD.

The Committee's Conclusions (2011) respecting night work of pregnant women, women having recently given birth and women who are breastfeeding in BD will be the subject of the next amendments to the Labour Law of BD.

With regard to the part of the Charter respecting night work, the Committee asks about the protection of women in the public sector. To ensure safety at work and special safety measures to workers/employees, provisions of the Labour Law and other laws governing this area are applied, if not otherwise provided by law.

Article 134 of the Law on Public Servants in the BD Administration (BD Official Gazette 28/06, 29/06, 19/07) determines that, in order to ensure safety at work and special safety measures to workers/employees (including night work), the Labour Law and other laws governing this area are applied.

Article 8§5 – Prohibition of dangerous, unhealthy or arduous work

RESC 8§5 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§5 of the Charter on the ground that there are no adequate regulations on dangerous, unhealthy and arduous work in respect of pregnant women, women who have recently given birth and who are breastfeeding their child.

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

BOSNIA AND HERZEGOVINA (BiH)

Although there are no adequate regulations on dangerous, unhealthy and arduous work in respect of pregnant women, women who have recently given birth and who are breastfeeding their child, Article 35 of the Law on Employment in BiH Institutions provides that:

1. During pregnancy or breast-feeding of a child, a woman may be assigned to other jobs if this is in the interest of her health condition as established by the certified doctor.
2. If an employer is not able to ensure assignment of a woman in accordance with Paragraph 1 of this Article, the woman shall be entitled to paid absence from work.
3. The temporary assignment from Paragraph 1 of this Article may not result in reduction of the woman’s salary.
4. The employer may transfer the woman from Paragraph 1 of this Article to another place of work only with her written consent.

FEDERATION OF BOSNIA AND HERZEGOVINA (FBIH)

In order to enhance protection of motherhood and to further harmonize provisions of the Labour Law of the Federation with the European Social Charter, the proposed new legislative solutions determine that the employer shall (the valid law determines that the employer can) place a woman during pregnancy or breastfeeding in another job if it is in the interest of her health condition as determined by a certified physician. Other provisions respecting pay and the right to absence from work with compensation for salary in the event that the employer is unable to ensure placement in another job are unchanged.

In our opinion, bearing in mind that the Labour Law is a general law, this new solution and the proposed ban on night work for pregnant women starting from the sixth month of pregnancy and mothers with children under one year provide adequate protection for women's health.

However, a special law, i.e. the Law on Safety and Health at Work, which has also been prepared and whose passage is planned together with the Labour Law, will ensure a greater degree of protection against risks to health and safety of women at work, in the part that regulates special protection of certain categories of employees.

REPUBLIKA SRPSKA (RS)

The Conclusion of the Committee about Article 8§5 respecting prohibition of dangerous, unhealthy or arduous work does not apply to the RS where the matter is regulated in accordance with the article above, so, for an answer, we reiterate the following provisions:

„Article 76 of the RS Labour Law provides that a woman (whether she is pregnant or not) may not be employed on underground work in mines, unless the woman is employed in a position of management not requiring manual work or in health and welfare services.

Article 78, paragraph 1 of the RS Labour Law provides that, during pregnancy or breast-feeding of a child, a woman may be assigned to other jobs if this is in the interest of her or her child’s health condition as established by the certified doctor.

Article 78, paragraph 2 of the RS Labour Law provides that, if an employer is not able to ensure assignment of a woman in accordance with Paragraph 1 of this Article, the woman shall be entitled to paid absence from work. The compensation for salary shall not be less than the salary the woman would have earned if she had been working.

Article 1, paragraph 3 of the Law on Safety at Work (RS Official Gazette 1/08) determines that special protection shall be provided for to safeguard psychophysical development of underage workers, to protect women against risks that could jeopardize their future motherhood, to protect workers with disabilities or occupational diseases from further damage and impairment of their ability to work and to preserve the working ability of elderly workers within the limits appropriate to their age.

Article 30, paragraph 3 of the Law on Safety at Work provides that an employer shall ensure that, in addition to training for safe and healthy work, a working pregnant woman, a worker under 18 years of age and workers with reduced working capacity be informed in writing of the results of risk assessment of workplace and measures to eliminate the risks with a view to improving safety and health at work. This provision enshrines special protection for workers under 18 years of age“.

BRČKO DISTRIKT (BD)

Protecting employees, including minors and women, and protection of women on maternity leave is regulated in Chapter VI of the Labour BD (" Official Gazette" of the Brcko District of BiH 19/06, 19/07, 25/08).

Article 39 of the Law provides that employers shall be required

- to ensure that, so far as is reasonably practicable and in accordance with technical regulations, the workplaces, machinery, equipment and processes under their control are safe and without risk to health.

- to ensure that, so far as is reasonably practicable and in accordance with technical regulations, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.
- to provide employees, where necessary, with adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health.
- to provide, where necessary, for measures to deal with emergencies and accidents, including adequate first-aid arrangements.
- to allow an employee the opportunity to familiarize himself with the labour regulations and work protection regulations within thirty (30) days from the day of the employee's start of employment.

Article 42 of the Law provides that a woman may not be employed in underground work in any mine unless the woman is employed in a position of management that does not require manual work, in a health and welfare service position, or unless the woman must spend a period of training underground in a mine or must occasionally enter the underground part of a mine for the purpose of a non-manual occupation.

Article 43 of the Law provides that an employer may not refuse to employ a woman because of her pregnancy, and may not cancel her employment contract because of her pregnancy or maternity leave.

Article 43 of the Labour Law regulates recruitment and dismissal of pregnant women and women who gave birth and Article 42 regulates who can work in mines. More detailed provisions about employment of pregnant women and mothers, who work in mines and in harsh conditions, is not regulated by this Law. Article 44, paragraph 1 provides that during pregnancy or breast-feeding of a child, a woman must be assigned to other jobs if this is in the interest of her health condition as established by a certified medical physician.

Paragraph 2 of this article provides that, if an employer is not able to ensure assignment of a woman in accordance with Paragraph 1 of this Article, the woman shall be entitled to paid absence from work, in accordance with a collective agreement or a Book of Rules.

Paragraphs 3 and 4 determine that the temporary assignment from Paragraph 1 of this Article may not result in reduction of the woman's salary and that a woman who has been reassigned to another job in accordance with Paragraph 1 of this Article may be transferred to another position that accommodates her medical condition only with her written consent.

Article 25 of the Law on Safety at Work of BD (BD Official Gazette 31/05, 35/05) provides for an obligation of the employer to identify particularly heavy or unhealthy jobs, so-called jobs under specific conditions.

The jobs under specific working conditions are defined in accordance with the Law on Safety at Work of BD.

Article 33, paragraph 1 of the Law on Safety at Work of BD provides that night work by a worker under 18 years of age and a working pregnant woman or a woman with a child of up to two years of age and workers with disabilities shall not be ordered.

We emphasize that the protection of pregnant women and mothers is provided in the sense that they must be assigned to appropriate jobs for health reasons, if so established by a certified doctor. However, protection of pregnant women and mothers is regulated only by the articles above while dangerous, unhealthy and arduous work is specifically and precisely defined only in Article 42 and it is work of women in underground mines, while other jobs are not specified clearly and specifically as arduous, dangerous and unhealthy or not.

The Labour Law of BD does not specify other jobs that are dangerous, unhealthy and arduous for pregnant and breast-feeding mothers. The Committee underlines that dangerous activities such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents, must be prohibited or strictly regulated for the group of women concerned depending on the risks posed by work.

However, Labour Law of BD does not ensure the protection of women in such a way, nor does it define these jobs as jobs under dangerous, unhealthy and arduous working conditions for pregnant women, mothers and breast-feeding mothers, which may come into play in occupations such as in healthcare, in jobs associated with viral agents, such as for example, microbiological, radiology, radiation and X-ray laboratories etc., so these jobs are not specifically regulated and identified as jobs under dangerous, unhealthy and arduous working conditions for pregnant women, mothers and breast-feeding mothers. From all this we can conclude that the BD does not define precisely and clearly jobs that can be considered jobs under dangerous, unhealthy and arduous working conditions for pregnant women, mothers and breast-feeding mothers.

RESC 8§5 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 8§5 of the Charter on the ground that women having recently given birth, who are not breastfeeding, do not benefit from the possibility of adjustments of their working conditions or temporary reassignment to an adequate post.

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

Conformément aux Art. 45, alinéa 1 du Décret relatif aux horaires du travail, les vacances et les congés, dont nous avons fait référence dans nos rapports précédents, le congé pour grossesse et naissance est de 135 jours pour chaque enfant, dont 45 jours avant la naissance de l'enfant justifié par un acte respectif (feuille médicale) établi par les autorités sanitaires, ce qui signifie que pendant cette période la femme est considérée en incapacité de travailler. Il en découle que dans les trois mois après la naissance, la mère, qu'elle allaite ou non le nouveau-né, ne pourra pas exercer une activité quelles que soient les conditions de travail et, par conséquent, il n'y a pas besoin d'une amélioration de ces conditions de travail ou d'une réorientation de la jeune mère vers un poste de travail plus approprié.
Dans nos rapports précédents nous avons sollicité une interprétation supplémentaire par le Comité de la notion de la période de protection requise pour la catégorie de femmes exerçant une activité de travail dans des conditions dangereuses, nocives pour la santé ou pénibles à leur retour au travail après le congé de maternité, laquelle sollicitude n'est pas encore satisfaite.
Vu l'exposé ci-dessus et avant qu'une interprétation supplémentaire par le Comité européen des droits sociaux nous soit parvenue au sujet de la période de protection requise pour la catégorie de femmes exerçant une activité de travail dans des conditions dangereuses, nocives pour la santé ou pénibles après leur retour au travail, il est à considérer que la situation actuelle en Bulgarie est en conformité avec la Charte révisée.

RESC 8§5 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 8§5 of the Charter on the ground that pregnant women, women who have recently given birth or who are breastfeeding are granted only unpaid leave when they cannot be reassigned to another post because of the dangerousness of their usual work.

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

Le Comité européen des Droits sociaux (CEDS) a trouvé contraire et jugée incompatible la situation du pays avec la Charte 8§5 sur les motifs que toutes les femmes enceintes, qui ont

donné naissance ou allaitantes qui travaillent et qui présente un risque pour leur santé, qui ne peuvent changer de travail, ont seulement le droit d'utiliser des congés payés.
Il n'y a pas eu de changement dans notre législation nationale sur le sujet. Toutefois, une évaluation et un examen sont en cours pour déterminer si les dispositions concernées de la Charte sociale, qui est un traité international fondamental sur les droits et les libertés de l'Homme sont directement applicables conformément à l'article 90 de notre Constitution.

Article 16 – Right of the family to social, legal and economic protection

RESC 16 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 16 of the Charter on the ground that it has not been established that the living conditions of Roma families and other vulnerable families in housing are adequate.

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

BOSNIA AND HERZEGOVINA (BiH)
Roma housing
Bearing in mind that BiH is a country in transition and faces even a large number of unsolved housing problems of internally displaced people accommodated in collective centres, Bosnia and Herzegovina has made considerable progress in solving the housing problems of Roma, and thus improving the overall socio-economic situation of the Roma population.
The Law on the Protection of National Minorities ("BiH Official Gazette" 12/03, 76/05) guarantees rights of national minorities, in accordance with the highest international standards of human rights and fundamental freedoms.
Entity laws, i.e. the Law on the Protection of Members of National Minorities (BiH Official Gazette 56/08) and the Law on Protection of Rights of Members of National Minorities (Republika Srpska Official Gazette 2/05), have aligned and confirm obligations in the protection of national minorities.
Bosnia and Herzegovina ratified the Council of Europe Framework Convention for the Protection of National Minorities on 24 February 2000 and the European Charter for Regional or Minority Languages on 25 August 2010, which are an integral part of the legal system in BiH.
In order to enforce the legislation and improve living conditions of Roma people, BiH adopted the following documents:
- BiH Strategy for Resolving the Problems of Roma (Roma Strategy, 2005);
- Roma Action Plan of Bosnia and Herzegovina in Housing, Employment, Health Care (2008);
- Declaration on Joining the Decade of Roma Inclusion 2005-2015, signed in September 2008.
The adopted documents were the basis for resolution of housing problems of Roma people in a quicker fashion.
After joining the Decade of Roma Inclusion in September 2008, the biggest progress was made in planning the budget for the Roma on a yearly basis and in establishing a methodology and a system to solve primarily housing problems of Roma.
Based on the established system, the best results were achieved in the last three years.
In these documents, which are enforced throughout the country, the authorities have committed themselves to improve overall socio-economic situation of the Roma national minority, including housing of Roma.
Taking into account that about 50 % of Roma families in BiH have difficulties in providing housing and in order to provide adequate exercise of the right to housing to one of the most numerous national minorities in BiH, i.e. Roma, a great progress has been made and following activities were undertaken especially in 2009:

BiH has included more than 100 experts and representatives of Roma in the preparation of Action Plan and 2009 was the first year of implementation of this plan.
In the first year of implementation of Action Plan, the Council of Ministers earmarked in the budget BAM 3 million for the Roma, of which BAM 2,175,800.00, including funds provided by the Federation, were spent for housing.
The Project Selection Committee in the field of Roma housing in BiH determined the basis of selection and evaluated project proposals received. A total of 34 project proposals were submitted in 2009 and the Project Selection Committee decided to fund 9 housing projects from 11 municipalities.
Funds for housing construction and reconstruction of facilities and infrastructure amounted in this way to about BAM 4 million in 2009. The implementation of projects is underway.
All these positive developments in addressing Roma housing generally occurred in the last two years and 2009 was a key year in the construction and reconstruction of housing for Roma.
Construction and reconstruction of Roma housing involved international organizations present in BiH (Swedish organization - SIDA, Hilsfwerk, Swiss CARITAS and others). In 2009, SIDA Sweden built 33 Roma houses in Sarajevo, in cooperation with local authorities.
The Ministry of Human Rights and Refugees has no data on the number of constructed housing units, because there was no system of data collection in a single database. Therefore, the MHRR introduced a single national database to collect data as of 2009 and all constructed and reconstructed Roma housing units will be entered into the database. In this way, reliable statistics will be obtained and double dipping into donations will be avoided.

Although 2009 was the first year when the Action Plan for Housing was implemented, a great progress was made in developing the methodology for spending the funds by taking the following actions:

- a decision on appropriation of budgetary funds for Roma employment, housing, health care;
- the implementation of registration programme and development of a database on Roma in Bosnia and Herzegovina was prepared and adopted at the 55th meeting of the Council of Ministers of Bosnia and Herzegovina in 2009;
- the Minister for Human Rights and Refugees issued a decision on the criteria for the use of funds intended for Roma housing.

The decision determined that budgetary funds to be earmarked for Roma housing would amount to BAM 1,863,000.00:

- Roma housing in the Federation of Bosnia and Herzegovina BAM 1,167,000.00
- Roma housing in the Republika Srpska BAM 583,000.00
- Roma housing in the Brcko District of Bosnia and Herzegovina BAM 113,000.00

The total amount of funds available for projects co-funding Roma housing was provided from:

- the budget of the Ministry of Human Rights and Refugees	BAM 1,863,000.00
- Pooled Funds of the FBiH	BAM 312,800.00
- Swedish SIDA	BAM 1,885,714.00
- pooled funds of Hilsfwerk Austria and Caritas implementing organizations and municipalities that implemented selected and qualified projects	BAM 1.822.200,00
Total	BAM 5,882,914.50

The funds were to be used exclusively for the following purposes:

- for the construction of apartments and houses;
- to improve housing conditions;

- rehabilitation and urbanization of Roma settlements.

The established database and projects for Roma housing in 2009 provided the following information:
- Projects were completed in the following 17 municipalities: Kiseljak, Zenica, Jajce, Ključ, Maglaj, Sanski Most, Kladanj, Bijeljina, Teslić, Kozarska Dubica, Brčko, Sarajevo Canton, Banja Luka, Zenica, Vitez , Bihać and Travnik;
- 86 new residential units were constructed;
- 125 residential units were reconstructed/repaired/.

TOTAL number of reconstructed/repaired residential units was 211.
TOTAL number of families-beneficiaries of infrastructure projects was 182.

Based on this intended distribution of funds, the Ministry of Human Rights and Refugees of Bosnia and Herzegovina announced a public call for project proposals for Roma housing on 23 June 2009. The proposals were to be submitted within a month and the deadline was 23 July 2009.
Eligible candidates were municipalities, cities, cantons, entities, domestic and foreign governmental and non-governmental organizations and institutions and donors, in cooperation with the municipality on whose territory the project was implemented.
It is important to note that the Ministry of Human Rights and Refugees of BiH, together with the Roma and Centres for Social Work, implemented the Roma Needs Registration Program in Bosnia and Herzegovina in 2009. The data aggregated after the process of recoding showed that in Bosnia and Herzegovina 16,771 Roma or 4,308 households were recorded at the time. The data shows that in BiH there are about 25,000-30,000 of Roma and that there are 19,500 Roma in 4,500 households that will require a form of assistance under the Strategy and Action Plan. According to the last, 1991 census, the only 8,864 Roma lived in BiH. The next census in BiH is expected in 2013. OSCE argues that the number of Roma in Bosnia and Herzegovina is between 30,000 and 60,000, while Roma NGOs argue that there are between 75,000 and 100,000 Roma in Bosnia and Herzegovina.
With a support by CARE International and EC funds, the Ministry of Human Rights and Refugees hired a Roma coordinator at the BiH level and 4 Roma coordinators at the regional level, in order to speed up implementation of the Action Plan for Addressing Roma Problems, who give significant support to the implementation of housing projects in Roma communities and achieve cooperation with the Roma communities.
We are aware that there are still Roma families who are waiting for housing, although positive steps have been visible and identifiable for the last three years.
We particularly point out that in 2010 the Decade Watch Team made a research and evaluated the findings of the 12 member countries of the Decade of Roma Inclusion 2005-2015 (Albania, Bulgaria, Bosnia and Herzegovina, the Czech Republic, Hungary, Macedonia, Montenegro, Romania, Serbia, Slovakia, Spain and Croatia) and found that Bosnia and Herzegovina was on the first place in providing housing to Roma in 2009.

Preschool establishments

BOSNIA AND HERZEGOVINA (BiH)

TABULAR OVERVIEW OF
BiH PRE-SCHOOL EDUCATION

School year	Number of pre-school	Number of children	Employees	Number of children per

	institutions			Total		Educators		**educator**
		All	Girls	All	Female	All	Female	
2008/2009								
RS	69	6,342	2,982	918	828	402	394	16
FBiH	125	9,608	4,621	1,311	1206	690	666	14
DB	2	310	160	43	39	25	25	12
BiH	**196**	**16,260**	**7,763**	**2,272**	**2,073**	**1,117**	**1,085**	**15**
2009/2010								
RS	78	6,583	3,079	981	902	449	442	15
FBiH	129	9,839	4,822	1,395	1,293	720	703	14
DB	2	367	182	48	45	27	27	14
BiH	**209**	**16,789**	**8,083**	**2,424**	**2,240**	**1,196**	**1,172**	**14**

Source: BiH Statistics Agency

Preschool institutions provide day-care of children and achieve upbringing, educational, preventive health care and social functions, implementing full day, half day, minimum, shortened, casual, five-days' and other forms of programmes of work with children until they start school.

The Framework Law on Pre-School Upbringing and Education of Bosnia and Herzegovina (Official Gazette 88/07) governs the matter of pre-school upbringing and education.

Article 12 of the Law provides that children with special needs shall be included in preschool institutions in accordance with programs adjusted to their individual needs. Individual programs adjusted to their abilities and capabilities shall be developed for each child individually.

Article 16 provides that in year prior to primary school, preschool care and education shall be obligatory for all children at preschool age and that conditions and ways of funding, curricula and duration of preschool care and education shall be regulated by relevant law passed by Competent Educational Bodies.

Article 25 determines that preschool upbringing and education in public and private preschool institutions shall be implemented on the basis of pedagogical standards and norms which shall be determined by competent educational bodies and that the standards and norms in preschool upbringing and education shall ensure consistent and effective implementation of common core curricula in all preschool institutions in Bosnia and Herzegovina.

Article 29 defines the profile for the job of educator that is defined by common core curriculum for preschool care and education, level of education while other requirements which should be met by any person to work as an educator shall be more thoroughly defined by standards and norms of preschool care and education.

Different programs of preschool care and education in public and private sector shall be implemented by educators, specialized experts (pedagogues, specialized pedagogues, speech therapists, psychologists, doctors, social workers) with university degree.

Children' s health care and health improvement at the age between six months and pre-school age shall be performed by medical staff with university degree, two-year college degree or secondary medical school.

Article 44 provides for obligations of social welfare authority, pursuant to relevant laws of Republika Srpska, cantons in the Federation of Bosnia and Herzegovina and Brčko District, and co-financing of costs of: children without parental care, children with special needs, children of disabled persons, children civilian victims of war, children of unemployed parents,

children of single parents, children of beneficiaries of social welfare and children of full-time students.
Article 54 provides that educators working with children in the upbringing and education process shall have university degree in the field of preschool education and that educators with over 20 years work experience and two-year college degree or secondary school degree may continue with their service in care and education process until their retirement.
According to the statistics of the BiH Statistics Agency, in 2011/2012 school year, there were 223 pre-school establishments (173 public and 50 privately owned) with 17,293 children in Bosnia and Herzegovina. There were 2,513 employees altogether (2,200 in public and 313 in privately owned establishments) in pre-school education in this school year. Of the total number of children, 463 children were with special needs. Owing to capacity restrictions 1,753 children (1,685 in public and 68 in privately owned establishments) were not admitted this year. Compared to the previous school year, the number of preschool establishments is higher by 1.8 %, the number of children in preschool establishments increased by 1, 5 % and the number of employees increased by 1.2 %.

FEDERATION OF BOSNIA AND HERZEGOVINA (FBiH)
The Federation Law on Preschool Upbringing and Education has been brought in line with the above-mentioned BiH Framework Law in all cantons except Western Herzegovina Canton, Herzegovina-Neretva Canton and Middle Bosnia Canton.
The percentage of children included in preschool establishments in FBiH ranges from 6 to 13 %.
There are 139 (106 public and 33 private) preschool establishments in the Federation.
157 children have not been admitted due to capacity restrictions.
As regards requiring parents to pay part of costs of preschool education, except for the mandatory pre-school classes, some parents may be required to do so by the competent educational authorities depending on their social status and this practice is different from canton to canton.
All cantons in FBiH have child care facilities.
The Law on Fundamentals of Social Welfare, Protection of Civilian War Victims and Families with Children does not establish the conditions of child care in preschool education establishments, as stated in the Conclusions, but the Law provides for an entitlement to have part of expenses for children in preschool establishments exempt or subsidized, families with children being eligible in certain cases. Cantonal regulations govern in more details conditions, method, procedure and funding of this entitlement exercising. However, as is the case with the exercise of other entitlements of families with children, owing to a lack of funds in the budgets of cantons, there are problems in exercising this entitlement, too.

REPUBLIKA SRPSKA (RS)
Preschool education is an area that includes upbringing and education, care and protection of children aged six months until enrolment in primary school and it is performed in public and private establishments.
Educational groups may be: a nursery catering for babies and toddlers aged six months to three years, kindergarten catering for children from three years until enrolment in school and mixed groups catering for children of different ages.
Pursuant to the RS Law on Preschool Upbringing and Education, preschool establishments implement, besides others, the programme for children immediately before starting school, if the children have not been included in some or other form of preschool upbringing and education.
Article 38 of the RS Law on Social Welfare provides for facilities for children which can be public, private or with mixed ownership. The Ministry of Health and Social Welfare determines

the criteria for registration, fees paid by users of services and curriculum. There are five establishments for children in this Entity.
In RS, preschool upbringing and education of children of six months until starting school are governed by the Law on Preschool Upbringing and Education (RS Official Gazette 119/08, 1/12). Preschool upbringing and education is an inherent part of the RS unified education system, which is the basis for lifelong learning and whole child development. Preschool upbringing and education are conducted in kindergartens, social welfare institutions in which children of preschool age are permanently placed and other institutions that implement programs for preschool education. The preschool upbringing and education system provides equal conditions and opportunities in the exercise of children's right to upbringing and education for the benefit of their physical and mental health and safety, regardless of gender, ability, socio-economic status and lifestyle of the family, cultural, ethnic, national and religious heritage, as well as the implementation of other programs, depending on the needs and interests of children of preschool age. Each preschool child is provided with equal access to upbringing and education.
Upbringing and educational are carried out in the languages of the constituent peoples living in the RS and official alphabets are Latin and Cyrillic. Children belonging to national minorities are raised and educated in the native language or bilingually. A preschool education program can be implemented in a foreign language in whole or in part.
Children with mental and physical disabilities are raised and educated by tailor-made or special programs, depending on the needs and abilities of children. In 2010/2011, 64 children with special needs were enrolled in preschool institutions.
A preschool establishment can be organized as a public or private facility. Public and private facilities are established under equal conditions.

For the purpose of upbringing and education, care, child protection, encouragement and interests and development of children's abilities and quality leisure activities, the following can be established:
a) ''Children's Clubs'' with a variety of program contents: sports, music, art, drama, folklore, language and communication, information technology, recreation etc.;
b) ''Children's Groups'' – playrooms and playgrounds that are established in urban and rural areas for socializing and playing games by children younger than five years; and
c) ''Nature Nurseries'' for rest and recreation of preschool children.
For the purposes of playing games and socializing of children, centres for peer play and socializing can be opened outdoors and indoors, such as in shopping centres, parks and other public areas.
In 2011/2012 school year the RS had 82 preschool establishments (of which 66 are public).

Preschool establishments operate in different periods (depending on the needs of children, parents and the local community and founder, as well as the substance of preschool program):
a) full day kindergarten - up to 12 hours a day,
b) half-day kindergarten - up to six hours a day and
c) multi-day kindergarten - more than 24 hours.

The preschool establishments use the following programs:
a) comprehensive velopment programs;
b) specialized development programs;
c) intervention, compensation and rehabilitation programs;
d) programs to strengthen the parenting knowledge, protection and upbringing of children; and
e) programs for children before starting school unless they are covered by some form of preschool education.

A comprehensive development program is an open program of preschool upbringing and education, adaptable to different conditions and duration in all preschool establishments in the RS.
A preschool establishment can implement specialized development programs for gifted children, meeting interests, needs and abilities of children.
A compensation program can be implemented exclusively in less stimulating - underdeveloped communities. Activities and measures are determined on the basis of real needs of children and their families in their natural environment, covering a variety of activities from prevention to suppression factors that lead to deprivation.
A rehabilitation program can be implemented in specialized institutions that implement programs of preschool upbringing and education to support optimal functioning of children with disabilities in daily activities.
The preschool establishments work with children in educational groups. The educational groups are established according to the age of children, the type and duration of the program, abilities, needs and interests of children and parents. They can be nurseries for children of six months to three years and kindergarten groups for children of three years until starting school. The educational groups may be formed of children of the same or different ages, so-called mixed groups. The mixed educational groups are formed only in cases where the same age groups cannot be formed.
In the 2009/2010 academic year, 1,536 were not admitted in preschool establishments due to capacity constraints. In the 2010/2011 academic year, 1,261 were not admitted in preschool establishments due to capacity constraints. In 2011/2012 school year, 1,596 were not admitted in preschool establishments due to capacity constraints.
The activity of preschool upbringing and education includes upbringing and education, care, social welfare, preventive health care, which are all carried out by educational professionals: teachers, professional associates and inclusion assistants. Other jobs in the activity of preschool establishments are performed by assistants.
Upbringing and education in the nursery or kindergarten groups are performed by teachers and special education teacher for children with disabilities included in regular groups and children placed in groups under development program.
Professional associates include the following professionals: educator, psychologist, special education teacher, social worker, dietician and physician, specialist in paediatrics.
An educational group attended by a child with special needs has an inclusion assistant.
For training and professional development, teachers, professional associates and preschool establishment directors are covered by mandatory training programs, professional development programs and testing.

BRČKO DISTRIKT (BD)

All children were admitted to kindergarten till 2011/12 academic year, because there were enough space and staff capacities. In 2011/12 academic year, 83 requests were refused due to a lack of personnel. A competition is underway for the 2012/13 academic year and a larger number of children are expected to be admitted because conditions for it have been created (full-time employees and trainees).

Measures taken to monitor the quality of services are:

- Actively working with the Parents' Council giving their suggestions as users for improving services;
- Regularly analysing of services by the Management Board of the establishment;
- Professional pedagogical supervision by the Pedagogical Institute;
- Training of staff.

Legal protection of families
Family benefits
The Committee considers that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of median equalized income. The report does not indicate the level of family benefits in Bosnia and Herzegovina. The Committee therefore asks for the next report to contain sufficient information to assess the adequacy of those benefits**.**

FEDERATION OF BOSNIA AND HERZEGOVINA (FBIH)
Child allowance is one of basic rights of families with children prescribed by the Law on the Fundamentals of Social Welfare, Protection of Civilian War Victims and Families with Children (FBiH Official Gazette 36/99, 54/04, 39/06, 14/09).
Cantonal regulations govern in more details conditions, method, procedure, authorities and funding of this entitlement exercise (Article 90, paragraph 2 of the Law).
Right to child allowance belongs to family whose aggregate monthly income earned through all means, except the income realized from social welfare scheme and protection of families with children, per member of the household do not exceed the amount determined by the cantonal legislation as the lowest income sufficient for sustenance (Article 91 of the Law).
Given child allowance is funded from the Canton's budget, there is the same problem in practice as with the exercise of other rights of families with children, conditioned by financial abilities of each individual canton. In 2009 and 2010 the right to child allowance was exercised in five cantons (Tuzla, Zenica-Doboj, Bosnia-Podrinje, Middle Bosnia and Sarajevo Canton). Amounts of the child allowance varied and ranged from BAM 9.75 to BAM 50.00.

Overview – Payments of children allowances by cantons in the FBiH and the monthly amount per child in BAM for the period 2009-2010

Canton	Year	
	2009	**2010**
Una-Sana	-	-
Posavina	-	-
Tuzla	30.00/38.00 and 50.00	20.00/40.00 and 50.00
Zenica-Doboj	11.10 and 16.60	9.75 and 14.65
Bosnia-Drina	29.00 and 43.50	29.00 and 43.50
Middle Bosnia	28.00	29.00
Herzegovina-Neretva	-	-
Western Herzegovina	-	-
Sarajevo	33.00 and 49.50	33.00 and 49.50
Canton 10	-	-

Note: (-) child allowances were not paid
Source: Federation Ministry of Labour and Social Policy

REPUBLIKA SRPSKA (RS)
In accordance with the Child Protection Law, any citizen of Republika Srpska, primarily unemployed soldiers, veterans of the first to the third group of disability, family allowance beneficiaries, i.e. citizens who reside in the territory of Republika Srpska, are entitled to child allowance.
The right to child allowance is exercised for the second, third and fourth child in the family depending on the financial position of the family, birth order distribution and age of children,

based on the submitted application, but no later than 15 years of age if they are full-time students. Regardless of the means testing, this right can be exercised by children of fallen soldiers, children of civilian war victims and war veterans of the first and second category, children civilian victims of war, children without parental care, children whom the competent body declared classified in a group due to retardation in development, if he/she is not placed in a social care institution, a child whose family is entitled to financial assistance under the Law on Social Welfare and children suffering from celiac disease and chronic diseases, which in the opinion of the competent Commission cause or have resulted in physical disability. The right to child allowance for the vulnerable categories will be exercised for all new-born children regardless of birth order, until they attain 19 years of age or until they are included in an upbringing and education program and regardless of the limits prescribed for exercising the right.

According to valid legislation, child allowance as a form of financial assistance has primarily social welfare and protective nature when it is given to vulnerable groups of children, regardless of birth order, and the second and fourth child (and the first child in exceptional circumstances), because the right is acquired on the basis of specific social welfare criteria and requirements, and when it is given to the third child in the family it is aimed at boosting birth rate since the amount is higher for the third child by birth order (but he/she previously had to qualify under the financial criteria).

Overview – Nominal amount and threshold for exercising the right to CA for the period 2010-2011

Year	nominal amount per child in BAM				threshold for exercising the right					
					total monthly income per family member does not exceed				total cadastral income per family member is up to	catalogue estimated value of movable property does not exceed
	Second child	Third child	Fourth child	Vulnerable categories of children	Second child	Third child	Fourth child	Vulnerable categories of children		
2010	45.00	100.00	45.00	100.00	95.00	100.00	100.00	-	10 % (3 %)	6,000.00
2011	35.00	70.00	35.00	90.00	75.00	80.00	80.00	-	10 % (3 %)	5,000.00

(-) the right is exercised independently of the financial condition of family
Source: Public Fund for Child Protection of RS

BRČKO DISTRIKT (BD)

In BD, family benefits are given to parents no matter where their children, minors under 18 and adult children under 26, study.

Vulnerable families

FEDERATION OF BOSNIA AND HERZEGOVINA (FBIH)

For the purpose of the Law on Social Welfare, Protection of Civilian War Victims and Families with Children (FBiH Official Gazette 36/99, 54/04, 39/06, 14/09) (Article 19, paragraph 1 of the Law), social welfare entitlements are as follows:

1) financial and other material assistance;
2) training or work and living;
3) placement to another family/household;
4) placement to a social care institution;
5) social and other professional services;
6) home care and assistance in the house.

Cantonal legislation determines the exact value of financial and other kinds of assistance under paragraph 1 of this Article, conditions and procedure of acquiring these entitlements and their exercise, unless otherwise stipulated by this Law (Article 19, paragraph 2 of the Law).
Cantonal legislation may determine other social welfare entitlements in accordance with the program of development of social welfare scheme and its capabilities (Article 19. paragraph 3 of the Law).
Persons and families in need, which fulfil requirements for acquiring and exercising social welfare entitlements set forth in Article 19 of this Law, are entitled to certain forms of health care and meeting housing and other needs in accordance with the law (Article 20 of the Law).
When it comes to social welfare entitlements set forth in cantonal laws in FBiH, it should be noted that the cantons largely provide for the same entitlements as the Federation law do and that a majority of cantons further provide for subsidizing of rents, heating, electricity, funeral costs and the like to the most vulnerable groups.
Roma families in the Federation are entitled to social assistance as all other families in need in Bosnia and Herzegovina are, as applications for the exercise of entitlements do not state or require any national or other affiliation.
Article 48, paragraph 1 of the Law on Social Welfare, Protection of Civilian War Victims and Families with Children provides that the social welfare institutions provide services which wholly or partly meet social security and other needs of beneficiaries. The institutions meant in this particular case are Centres of Social Welfare/Work.
While performing activities the institutions cannot establish any restrictions regarding the territorial, ethnic, religious, political or any other affiliation of beneficiaries, including the race, colour, gender, language, social status etc.

BRČKO DISTRIKT (BD)
Pursuant to Article 4 of the Law on Social Welfare of BiH BD, social care shall be granted to residents of the District who are incapable to work; who have neither means for maintenance nor relatives who are responsible by law and able to provide them with maintenance; and to inhabitants and families who are not able to earn means for maintenance through work, income from their property or in any other way, and to meet their basic needs.
Roma families are citizens of the BD and subject to all criteria and standards equally with other citizens of BD.
Special benefits organized by the BD Government:
A soup kitchen, one-time financial assistance for pensioners and subsidies for utilities.

Soup kitchen
A BD-funded and run soup kitchen was set up in 2008.
The following persons are eligible for meals in the soup kitchen: beneficiaries of the permanent basic financial support, beneficiaries of allowances for care and assistance by third party, families with children with special needs or particularly difficult cases of individuals and families in need, bearing in mind their health condition.
The number of meals is conditional on the funds allocated for this purpose. The meals are delivered at the address of bedridden and semi-mobile persons and mobile beneficiaries have in or take away the meals from the kitchen.
In 2010, due to the rules of the Public Procurement Law (tender procedures) cooked meals were not delivered to beneficiaries.
Cash was paid to the beneficiaries in monthly instalments instead.

Soup kitchen	December 2008	2009	2010	2011
Beneficiaries	162	158	114	169

Source: Sub-Department for Social Welfare of BD

Subsidies for electricity consumed

The Decision on Approval of the 2011 Program for Spending Funds for Subsidizing Electricity Bills to Persons In Need Who Reside in BD approved a program of spending of these funds. The decision is made on an annual basis.

The following persons residing in the BD were eligible for subsidizing electricity bills in 2011:

a. pensioners with a pension not exceeding BAM 310.74, who have been registered with the Sub-Department for Social Welfare in 2011 and who were entitled to one-time financial assistance for pensioners in 2011;

b. unemployed persons registered at the Employment Office of Brcko District, as follows: women who turned 55 years of age and men who turned 60 years of age on 30 April 2011 and older;

c. beneficiaries of permanent basic financial assistance who were granted the entitlement in August 2011 and children without parental care, registered in the Sub-Department for Social Welfare;

d. children with mental and physical disabilities, registered in the Sub-Department for Social Welfare;

e. war veterans registered in the Office of Veterans whose disability benefit does not exceed the amount of BAM 310.74.

Proceedings for determining the entitlement to have electricity bills subsidized are carried out by the Department of Health and Other Services to BD, Sub-Department for Social Welfare. A final list of beneficiaries of subsidies is submitted to the local Public Utility Company that reduces the beneficiaries' electricity bills by the amount of subsidy established in the program. The amount of subsidy is conditional on the number of payments on the lowest scale.

Subsidies for utilities	2008	2009	2010	2011
Beneficiaries	8314	8620	9101	9692

Source: Sub-Department for Social Welfare of BD

One-time financial assistance for pensioners

Since 2005 funds have been appropriated for the purpose of financial assistance to pensioners in the current year.

The Program of Spending Funds for One-Time Financial Assistance for Pensioners Who Reside in BD is made annually.

The criteria for allocation of funds in 2011 were:

- that a pensioner has a residence in BD by 1 October 2009;
- that a pensioner is a beneficiary of one of the following pension schemes: FBiH, RS, neighbouring countries, countries in Europe;
- that he/she was registered as a pensioner of the RS Pension Fund and / or Federation Pension Fund in 2010 and his/her data and the amount of pension were checked in the April lists provided by branch offices of RS and Federation Pension Funds;
- that he/she was registered as a pensioner of funds of neighbouring countries and the countries of Europe in 2010 and provided pension checks for the period April – August 2011 and / or a statement from the bank in the territory of the Brcko District of BiH on the amount of retirement or the average amount of pensions;
- that he/she was registered as a pensioner in the period 16 April to 2 September 2011 in the relevant Sub-Department, providing a copy of ID card, pension check and bank account.

Based on a final list of beneficiaries – pensioners the relevant Sub-Department pays funds to pensioners.

Payments are classified by the amount of pensions in the three scales, pensions to the amount of BAM 310.74 – the amount of BAM 135.00 is paid; pensions of BAM 310.74 to BAM 414.30 – the amount of BAM 80.00 is paid; pensions of BAM 414.30 to BAM 813.55 – the amount of BAM 30.00 is paid.

One-time financial assistance for pensioners	2008	2009	2010	2011
Beneficiaries	8314	8731	9079	8921

Source: Sub-Department for Social Welfare of BD

Equal treatment of foreign nationals and stateless persons with regard to family benefits

BOSNIA AND HERZEGOVINA (BiH)

Article 51, paragraph 5) of the Law on Movement and Stay of Aliens and Asylum provides that: "Permanent residence is the right of stay of aliens in BiH for an indefinite period of time".

Article 59, paragraph 1) of the Law provides that a permanent residence permit shall be issued to an alien on the following conditions:

a) That he/she has resided in the territory of BiH on the basis of a temporary residence permit for at least five years uninterruptedly;
b) prior to submitting the application for issuance of a permanent residence permit;
c) That he/she has sufficient and regular funds in order to support himself/herself;
d) That he/she has confirmed adequate accommodation;
e) That he/she has confirmed health insurance.

Paragraph 2) of this Article provides that any stay for a period of up to 90 days outside of BiH during the same year shall not be considered as an interruption of residence, in the sense of paragraph (1), item a) of this Article.

An alien who meets the conditions referred to in paragraph (1) of this Article shall not be granted permanent residence if he/she: resides in BiH for the purpose of education, on the basis of temporary protection, or he/she has submitted a request for approval of temporary protection and is waiting for a decision on his/her status, on the basis of an international protection or has filed a request for international protection and is waiting for a decision on his/her status, on the basis of a legal status as per the 1961 Vienna Convention on Diplomatic Relations; the 1963 Vienna Convention on Consular Relations; the 1969 Convention on Special Missions; or the Vienna Convention on State Representatives and their relationship with international organizations from the 1975 Universal Charter, on the basis of volunteer work, on the basis of temporary residence on humanitarian reasons, under Article 54, for the purpose of serving a prison sentence or serving another criminal sanction or other commitment on the basis of a Court decision or decision of another competent authority, on the basis of medical treatment, on the basis of the implementation of projects relevant for BiH that are implemented by an international or local institution or humanitarian organization, association, foundation or other organization.

An alien who has been granted permanent residence shall be issued an ID card for aliens for a period of five years by the competent administrative body in the place of his/her permanent residence.

When an alien has a permanent residence permit, the right of residence shall be cancelled if:

1. An alien does not comply with the legal order of BiH or takes activities of undermining security of BiH or is a member of an organization which has taken such activities;
2. An alien has endangered BiH national interests by his/her actions in a way that he/she has been engaged in the smuggling of weapons and military equipment, radioactive and other dangerous materials or narcotics substances or in the unauthorized transport and trade of

materials for the production of weapons or other means of mass destruction or who has produced or possessed narcotic substances intended for sale, or has been a member of an organization involved in the above mentioned activities;
3. An alien has organized or has been connected to organizing illegal entry to, stay in or exit from BiH of individuals or groups or has participated in the trafficking in human beings in any way;
4. The Service determines that a marriage or common law marriage was entered into or adoption carried out, exclusively for the purpose of entry and/or stay of an alien in the territory of BiH, or if the Service determines that an alien who issued a letter of invitation has not fulfil the commitments from the letter of invitation and has reissued the letter of invitation, or issues the letters of invitation for fraudulent purposes or abuses them differently;
5. An alien has intentionally provided incorrect data or has intentionally concealed circumstances relevant to the issuance of a residence permit;
6. An alien entered and/or resided, with forged travel documents.
Article 69 of the Law provides for special reasons for cancellation of permanent residence, citing two cases: if it has been determined that the alien has not resided in BiH for more than one year or that the alien has resided outside of BiH for less than one year, while based on circumstances it can be explicitly determined that he/she has no intention to return and take up permanent residence in BiH.
It is widely known that BiH is among countries with the most difficult problem of refugees and displaced persons in Europe. Nevertheless, our country accepted large numbers of refugees, mainly from neighbouring countries in the region. There is no precise data, given that there are significant differences in the legal and factual understanding of the numbers depending on the sources (Ministry of Security, UNHCR).
Currently, the refugee status in BiH is enjoyed by about 145 refugees. According to the Ministry of Security of BiH, about 250 refugee IDs was issued, while the Division issued a total of 37 IDs in 2010 and 2011 and additional nine refugee IDs in 2012 (as of 31 March 2012). The number of refugees resettled to third countries through UNHCR programs, whose refugee status have never been terminated in BiH, makes the difference in the number of issued refugee IDs and the number of people who currently reside in BiH.
The largest number of refugees in Bosnia and Herzegovina comes from Serbia and Montenegro, but there is a number of refugees from other countries (Palestine, Syria, Tunisia, Macedonia, Algeria, Albania, Croatia, Moldova, Saudi Arabia etc.).
In accordance with the Law on Movement and Stay of Aliens and Asylum, the Ministry of Security is responsible for determining the status while the Ministry of Human Rights and Refugees is responsible for providing the persons with refugee status and subsidiary protection status with access to the right to work, education, health care and social welfare under the same conditions as nationals in BiH.

In this regard, the Ministry of Human Rights and Refugees has passed six laws which ensure access to those guaranteed rights to persons with refugee status:
1. Rulebook on the Manner of Joining the Health Insurance and Health Care Schemes by Persons with Recognized Refugee Status or Another Form of International Legal Protection in Bosnia and Herzegovina;
2. Rulebook on Person's Status and Registration of Birth, Marriage and Death of Refugees and Persons under International Protection in Bosnia and Herzegovina;
3. Rulebook on Exercise of the Right to Work of Persons Granted International Protection in Bosnia and Herzegovina;
4. Rulebook on Exercise of the Right to Education of Persons Granted International Protection in Bosnia and Herzegovina;
5. Rulebook on Exercise of the Right to Social Security of People Granted International Protection in Bosnia and Herzegovina; and

6. Rulebook on the Identification Documents of Persons Granted International Protection in Bosnia and Herzegovina.

In accordance with these regulations the Ministry of Human Rights and Refugees, pays directly for health insurance of recognized refugees in Bosnia and Herzegovina, so BAM 39,806.60 from 2011 budget were paid for 50 insurance holders, covering 131 persons granted international protection in BiH or family members of the insurance holders.
Through the centres for social work the Ministry for Human Rights and Refugees pays funds for exercising the right to social security by about 35 families that receive limited financial assistance, covering about 130 people, so BAM 44,562.00 from the 2011 Ministry's budget were paid for this purpose. The people are eligible for this entitlement if they do not receive any employment related income.
All persons above 15 years of age with recognized status are registered in Employment Offices with the possibility of employment under the same conditions as BiH nationals.
The Salakovac-Mostar Refugee and Reception Centre, which houses 37 individuals, of which 28 persons under international protection, is under the Ministry for Human Rights and Refugees. The remaining number of refugees in BiH with recognized status is in private housing.
In addition to people with refugee status, for many years now, a large number of persons accepted as refugees have been living in BiH and they have not integrated in BiH yet. They are mainly Serb refugees from Croatia and Bosniacs, Roma and Albanians from Serbia and Montenegro. A significant portion of these people has not resolved the issue of legal status or other issues in BiH, which would facilitate the integration, or they have BiH citizenship, which prevents both them themselves and appropriate authorities from solving difficulties of this group of people in BiH in accordance with rules of international legal protection.

Domestic violence against women
FEDERATION OF BOSNIA AND HERZEGOVINA (FBiH)
General principles and rules set forth in the Law on Protection against Domestic Violence (FBiH Official Gazette 22/05, 51/06) and other regulations governing the area of domestic violence ensure the prevention and suppression of this type of violence, the impact of effective measures on offenders and other persons not to commit violence and redress consequences of violence, prescribing the manner of providing the protection.
Article 6 of the Law on Protection against Domestic Violence defines that domestic violence is any act of inflicting physical, psychological, sexual or economic harm or suffering, as well as threats as regards the aforementioned, and lack of due care and attention which may seriously impede family members from enjoying their rights and freedoms in all areas of public and private life which are based on equality.
State authorities, which often have the first contact with a victim of violence are: police, social work centres and courts. These bodies, each within its competences, intervene to protect and care of women and children victims of violence and keep records of these cases.
Domestic violence and assaults, particularly violence against women, children and the elderly, often remains hidden from the centre for social work, because the victims rarely seek help for fear of retaliation. Owing to the attitude of non-interference in other family's problems, those who have information about violence do not report it either. The Centre for Social Work interferes in the family primarily because of the protection of interests of children who are, unfortunately, in families where there is violence, victims of psychological abuse, neglect and abandonment, but very often also of physical abuse.
In order to improve child protection, based on direct knowledge or information, the Centre for Social Work as a guardianship authority, i.e. as the basic social welfare service in the local community, is obliged to *ex officio* take necessary measures to protect rights and interests of the child, i.e. to provide help and support to all children whose life, health and development are

threatened as a result of abuse or neglect. Further, anyone who has a suspicion of domestic violence has the right and obligation to report it to the competent social work centre.

Pursuant to the Family Law of the Federation of Bosnia and Herzegovina and the Law on the Fundamentals of Social Welfare, Protection of Civilian War Victims and Families with Children of the Federation, the Centre for Social Work is not only authorized but also obliged to take measures under the Family Law and Social Welfare Law when deeming that interests of children or a person deprived of legal capacity or an elderly person are threatened. Their interests are undoubtedly threatened if the family or institution in which they are placed subjects them to violence. The interests of a child are threatened in his/her family when he/she is exposed to the father's violence against the mother or vice versa. The Centre for Social Work is required to act upon the report and involve the team (psychologist, counsellor, social worker and other professionals, as required) and to draw up a plan to protect victims of violence. The plan includes psychosocial support to children and the parent who are victims of violence, providing financial assistance to victims and if there is a need to organize the displacement from the home and placement in a shelter/safe house, if such resources in the area and legal grounds exist.

The Law on the Fundamentals of Social Welfare, Protection of Civilian War Victims and Families with Children does not define victims of violence as a group of beneficiaries of social security benefits, but it is left to cantonal laws to regulate. The laws respecting social welfare enacted by Sarajevo Canton, Zenica-Doboj Canton and Tuzla Canton are examples of good practice where victims are defined as a special group of beneficiaries.

Practice has shown that it is necessary to amend the Law on the Fundamentals of Social Welfare, Protection of Civilian War Victims and Families with Children stating that victims of domestic violence are defined as a group of beneficiaries of social security, whereby rights of victims of violence would be equal in the whole territory of the Federation. Accordingly, the Federation Ministry of Labour and Social Policy is planning to enact a new law on social welfare and families with children together with appropriate Cantonal Ministries. In preparing it guidelines and recommendations of international documents ratified by Bosnia and Herzegovina, the Strategic Plan for the Prevention of Domestic Violence of the Federation of Bosnia and strategies for preventing and combating domestic violence in Bosnia and Herzegovina will be taken into account so that victims of violence can be treated as a group of beneficiaries of social security benefits.

Furthermore, under the Strategic Plan for Prevention of Domestic Violence institutions in the area of employment were given recommendations to include in employment projects victims of domestic violence, as a special target group, whether the project involve co-financing of employment, training, retraining or self-employment. In this regard, since 2009 the Federation Institute of Employment has been successfully implementing the program of employment co-financing for people with disabilities and other hard-to-employ groups of unemployed people and women victims of violence.

Further, the Federation Ministry of Labour and Social Policy planned to make the Manual of Training and Professional Development in Proceedings of Staff of Centres for Social Work in the Federation in Cases of Domestic Violence. Based on this Manual, in cooperation with the cantonal ministries of social welfare, employees of the centres for social work will be provided with training in the prevention, detection and combat of domestic violence.

In the territory of the Federation of BiH there are six safe houses available for assistance and care of victims of domestic violence: Žena BiH-Mostar Association, „Mirjam“ Mostar Women's Association, „Žene sa Une“ Bihać Association, Foundation of Local Democracy of Sarajevo, „Medica“ Zenica Citizens' Association and „Vive žene“ Tuzla Women's Association. The Federation Ministry of Labour and Social Policy has recognized the importance and, according to its abilities, continuously financially aids their work. These funds are primarily spent for improving conditions for temporary accommodation of victims of domestic violence in safe houses.

REPUBLIKA SRPSKA (RS)

Fulfilling the State's obligation under Article 16 of the Charter to ensure adequate protection for women victims of domestic violence, both in laws and in practice, the RS has taken the following measures: In 2007 the Government of Republika Srpska adopted the Action Plan for Combating Domestic Violence in Republika Srpska, whose implementation started in 2008; the Strategy for Combating Domestic Violence in Republika Srpska 2009 – 2013 has been adopted; the Gender Centre of Republika Srpska, as a professional service of the RS Government for gender equality, is implementing the Action Plan and, in cooperation with the Ministry of Justice, the Ministry of Health and Social Welfare, the Ministry of the Interior, the Ministry of Family, Youth and Sports and the Ministry of Education and Culture, it published A Handbook for Treating Subjects of Assistance – Preventing and Combating Domestic Violence in the RS.

The 2011 Action Plan to Combat Domestic Violence (Health care and social welfare) was designed in accordance with commitments under the Strategy. In accordance with the Action Plan a document/ sectoral analysis in the field of health care and social welfare entitled "Preventing and Combating Domestic Violence and Other Forms of Gender-Based Violence in the RS" was prepared. Further, in accordance with commitments under the Strategy, train-the-trainers courses for health and social workers titled "Stop the Violence" are held. A Handbook for Treating Objects of Assistance – Preventing and Combating Domestic Violence in the RS was printed and distributed to all participants of training.

Every year the RS appropriates funds in support of safe houses in its budget.

Besides the "safe houses" in developed municipalities, teams for domestic violence operate under Centres for Social Work, and the Centre for Social Work of Prijedor and the Centre for Social Work of Banja Luka set up a shelter for victims of domestic violence.

According to the "The Future" Safe House of Modrica, in 2009 it housed 86 women and 98 children victims of domestic violence. According to the safe house of Prijedor, in 2009 it housed 4 women and 6 children victims of domestic violence. According to the safe house of Banja Luka, in 2009 it housed 42 women and 51 children victims of domestic violence.

According to data available to the Ministry of Health and Social Welfare 1,432 and 1,330 victims of domestic violence were reported in the territory of RS in 2009 and 2010, respectively.

BRČKO DISTRIKT (BD)

Article 3 of the BD Family Law provides that violence against a spouse or other family members is not allowed in a family.

Violence is any conduct which has characteristics of a crime of domestic violence defined in the Criminal Law of the BD.

Article 22 of the Law on Social Welfare of BiH BD defines that an abused person is any adult person who was subjected to a deliberate act of inflicting pain, physical or psychological harm causing impairment of health, physical or mental integrity of the person.

According to Article 288 of the BD Family Law, the right to protection from domestic violence is afforded to spouses, common-law partners and all family members.

The BD police and guardianship authority are obliged to provide protection against violent behaviour.

Upon learning of violent behaviour all natural and legal persons are obliged to immediately report it to the police or Prosecutor's Office of BD.

Article 218 of the BD Criminal Code determines as follows:

1. A person who endangers tranquillity, physical or mental health of a member of his family by applying violence, impudent or remorseless behaviour shall be fined or sentenced to prison to up to one year.

2. A person who commits the offence referred to in Paragraph 1 of this Article against a family member with whom he lives in a household shall be fined or sentenced to prison to up to three years.
3. If the person who committed the offence referred to in Paragraphs 1 and 2 of this Article used weapons, dangerous tools or other objects that can cause serious bodily injuries or health impairments, he shall be sentenced to prison from three months to three years.
4. If the family member suffered from serious bodily injuries or serious health impairments as a result of the offence referred to in Paragraphs 1 through 3 of this Article, or if the offence referred to in Paragraphs 1 through 3 of this Article was committed against a child or a juvenile, the perpetrator shall be sentenced to prison from one to five years.
5. If the offence referred to in Paragraphs 1 through 4 of this Article caused death of the family member, the perpetrator shall be sentenced to prison from two to fifteen years.
6. A person who causes death of the family member whom he had previously abused shall be sentenced to minimum ten years or long-term imprisonment.

Protection from domestic violence takes place through advisory work and social welfare scheme.
Professionals of the Sub-Department of Social Welfare of BD (social worker, educator and psychologist) are on stand-by around the clock to be able to respond to the police's call in the event of domestic violence and take statements from minors. Together with the police, they visit families having experienced (reported) violence and provide counselling to the victims and the perpetrator of violence and displace the victim, as required. Should a need arise, together with the victim they try to find an adequate solution for temporary accommodation, with relatives, friends or in a safe house. If the safe house is the only solution, then the victim is placed in any safe house in BiH, with which the Sub-Department of Social Welfare of BD cooperates and they are usually safe houses in the surrounding municipalities. So far, the safe houses have provided services free of charge and if it is the only option, the Sub-Department accepts to pay for the services of accommodation and professional work with victims.
The Sub-Department of Social Welfare of BD provides women victims of domestic violence and their family members with accommodation in humanitarian settlements in BD and, where appropriate, approves one-time cash assistance.

We emphasize that in BD:
- the Law on Protection against Domestic Violence is in the process of enacting!
- BD has adopted the Law on Protection of Witnesses under Threat and Vulnerable Witnesses of BD.

Protective measures against an offender are not implemented because of a lack of legislation on protection from domestic violence to prescribe them.
The Police of BD follow special procedures within their competencies, paying special attention to the protection of minors as victims or witnesses of violence in, of course, clearly defined legal procedures and not in the absence of professional staff of the Centre for Social Work in any way.
Police officers, as well as professionals of the Sub-Department of Social Welfare of BD underwent the necessary training to work with victims and perpetrators of domestic violence.

Domestic violence	2007	2008	2009
Number of reported cases	55	26	29

Source: Brčko District of BiH Police

RESC 16 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 16 of the Charter on the grounds that it has not been established that:

- *Roma families are guaranteed equal access to family benefits;*
- *Roma families receive adequate protection with regard to housing.*

First ground of non-conformity

326. The representative of Bulgaria said it was unfortunate that the incomplete information in the report had led the Committee to conclude that the situation was not in conformity with Article 16 of the Charter. She referred to administrative difficulties encountered during the drafting of the reports.

One of the main objectives of social policies in Bulgaria was to keep children in their families; for this reason, family benefits were available to all citizens, without discrimination, including Roma families. Families were entitled to various benefits such as pregnancy or birth allowances, education benefits, special benefits for children with disabilities and specific lump-sum benefits paid when children were enrolled for the first year in a state school. In 2010, 84 % of children had been covered by benefits. It was not possible to indicate the percentage of Roma families who had received these financial benefits because, for reasons of non-discrimination, the legislation prohibited the use of "Roma" as a criterion for data gathering.

The representative of Bulgaria then said that Roma accounted for approximately 5 % of the population of Bulgaria and that specific projects were carried out as part of an integrated approach aimed at the social inclusion of Roma: employment (90 mediators to help them find jobs), health, housing and culture. A project funded by the World Bank was designed to combat poverty, including in the Roma community. There were nine financial support schemes geared towards the specific problems of the Roma community. Bulgaria took part in the Council of Europe's ROMED programme.

327. In reply to the comment by the representative of Bulgaria that Roma integration was a transnational issue which concerned several European countries, the Committee noted that responsibility for solving the problem lay with each individual state. The representative of Bulgaria added that the Bulgarian Government was well aware of its responsibility which by no means it wanted to escape.

328. In reply to the question by the ETUC representative concerning the effectiveness of the programmes aimed at the social inclusion of Roma, the representative of Bulgaria explained that the figures concerning the national Roma inclusion plan were available and would be included in the next report. In reply to the question by the Chair, she also said that a new national strategy for 2012-2020 had been adopted at the start of the year by the Council of Ministers and Parliament.

329. The Committee noted the information provided and invited the Bulgarian Government to take the most appropriate measures to bring the situation into conformity with Article 16 of the Charter.

Second ground of non-conformity

330. The representative of Bulgaria said that Bulgarian legislation protected the right of citizens, including Roma, to housing. To combat the problem of illegal building, which was widespread in the country, the law provided that the buildings concerned could be demolished. Administrative decisions concerning such buildings could be challenged in court. In proceedings, all citizens were entitled to free legal aid from the National Legal Aid Office. Draft legislation designed to strengthen legal protection extended the personal scope to disadvantaged individuals and persons eligible for family benefits.

With more particular regard to the Roma population, a national programme for 2005-2015 to improve the housing situation was being implemented with various projects funded by the Council of Europe Development Bank, the PHARE programme and the national budget.

331. The Committee took note of the information supplied and insisted that the Bulgarian Government provide all the details required for assessing the situation concerning the protection of Roma families with regard to housing in the next report.

RESC 16 FRANCE

The Committee concludes that the situation is not in conformity with Article 16 of the Charter on the ground that the housing conditions of travellers' families are not adequate.

332. The representative of France said that the European Committee of Social Rights had reached a negative conclusion following collective complaint No. 51/2008, European Roma Rights Centre (ERRC) v. France, and proposed that the situation concerning the housing conditions of travellers' families be considered together with Article 31.

333. The Committee took note of the proposal and agreed to defer examination of the situation of non-conformity with Article 16 when examining Article 31 (see under RESC 31§1 France and RESC 31§2 France in the present document).

RESC 16 HUNGARY

The Committee concludes that the situation in Hungary is not in conformity with Article 16 of the Charter on the grounds that:

- *evicted families can be left homeless;*
- *Roma families do not have access to adequate housing;*
- *equal treatment of nationals of other States Parties to the 1961 Charter or the Charter in the payment of family benefits is not ensured because the length of residence requirement is excessive.*

First, second and third grounds of non-conformity

334. The representative of Hungary provided the following information in writing:

> First of all we would like to stress that in both cases the purpose of the enforcement of eviction is to put the residential property at the disposal of the legitimate owner or user. The purpose of the enforcement procedure is to ensure the legitimate and effective possession of the residential property for the entitled person and therefore to remove the persons illegally staying in the property with the involvement of the competent authority if they are not willing to leave voluntarily. Since it is the constitutional purpose of the enforcement procedure we are of the opinion that the rules of the enforcement procedure are to work towards the realisation thereof. However, the procedure doesn't necessarily lead to homelessness because the eviction doesn't prevent the persons concerned from arranging alternative housing either with own resources, with the help of the family or by applying for social benefits. To conclude, we would say, that the regulation of the enforcement procedure cannot be called for to solve the problems of placement and housing of the population. Irrespective of the reasons leading the homelessness these kinds of problems are to be addressed by the state within the social protection system the available services of which are limited by the budgetary constraints of the respective states.
>
> It is not incidental at all that as a result of the enforcement procedure aiming the eviction the housing problems of the legitimate holder can be solved, which exempts the state from providing alternative social assistance benefit for housing of this person.

The comment of the Committee regarding the eviction of arbitrarily occupied residential properties states that *"under this procedure, eviction my take place within three days of the judicial decision".* At this point we note that this deadline relates to the commencement of enforcement procedure and eviction doesn't take effect yet with the date of judicial decision. Once the judicial decision has been delivered to the executor he/she takes appropriate measures towards the advancement of procedural costs and he/she is to commence the enforcement procedure within three days. The very first action of this procedure is the delivery of the order and a notice to leave the residential property voluntarily within two days. The procedure goes on if this deadline is not kept and from this point on the eviction realises.
To this issue please find below additional information on the services available for homeless persons:

Temporary accommodation for the homeless
In Hungary, the types of social services that can be operated are regulated by the Social Act and the associated decrees of enforcement. In this respect, the two most wide-spread types of temporary accommodation for homeless people are: night shelters of homeless people and temporary accommodation of homeless people. Pursuant to the Act, both types should be operated in settlements with populations over 30 thousand by the local governments. The same legal regulations prescribe in many details the minimum services to be provided, as well as the so-called minimum material and personnel conditions.

Night shelters of homeless people
- Night shelters are in fact services that ensure the night resting of homeless people.
- Night shelters are to provide for premises for night resting, cleaning, warming of food, meals, separation of sick persons, community occasions.
- In any night shelter, a single residential room may accommodate up to twenty people.
- At least one shower and one toilet for each of the sexes should be provided for fifteen dwellers.
- In a single residential room, each dweller should have a residential area of at least four square meters.
- Heating, lighting and hot water supply should be provided continuously.
- Night shelters are to provide for towels for cleaning, conditions for the cleaning of clothes, secure keeping of personal items, first-aid equipment.
- Night shelter should be kept open in the evening and at night for at least fourteen hours.
- In practice, when the night is intended to be spent in the night shelter each evening admission is to be requested at the gate of the institutions, and the accommodation should be left each morning, at the time of closing.
- Night shelters should provide for duty services in the opening hours with the engagement of skilled labour.
- In the night shelters, at least four hours a day social work should be performed with the engagement of social workers.

Temporary accommodation for homeless people
Temporary accommodation is in fact services that assist homeless people in their housing, social and mental problems, as well as ensure accommodation.
In the same temporary accommodation, continuously maximum 2 years may be spent (services can be provided for 1 year, and if the housing problem of the homeless person has not been solved, the term of stay in the temporary hostel can be extended with an additional year).
The minimum quality requirements to be fulfilled on a mandatory basis are identical to those of the night shelter with the only difference that:

- in a single residential room up to 15 people can be accommodated;
- bed linen should also be provided;
- the opening hours should last for at least 16 hours a day;
- social work should be performed for at least six hours a day.

Minimum requirement	Night shelter	Temporary accommodation
Maximum period of stay	Daily in the opening hours	2 years
Minimally required number of opening hours a day	14 hours	16 hours
Maximum headcount in a single residential room	20 persons	15 persons
Minimum residential square meter / pers.	4 sq m / person	
Minimum number of showers and toilets	1 for 15 dwellers	
Minimum number of hours for social work a day	4 hours	6 hours

These institutions were established after 1990, and currently they are operated across the country with an aggregate capacity of 8,400-9,500. Slightly more than half of these capacities are located in Budapest.

Third ground of non-conformity

"The Committee noted in its previous conclusion (Conclusions XVIII-1) that all residents holding a temporary or permanent residence permit were entitled to family benefits. It asked whether these residence permits were subject to a length-of-residence requirement. In reply, the Government states that there is no length-of-residence requirement for foreigners with the right to reside in and move freely around Hungary. However, except in a few specific cases mentioned in law, nationals of other countries than those of the European Union and the European Economic Area should have resided uninterrupted for three years in order to be entitled to family benefits. The Committee recalls that imposing a length of residence requirement on nationals of other States Party to the 1961 Charter or the Charter is not, in principle, incompatible with the Charter for non-contributory benefits. However, it must not be excessive. The Committee considers the requirement of three years' uninterrupted residence to be excessive. As a consequence, it considers that the situation is not in conformity with Article 16 in this regard".

Response to this conclusion

The enforcement of the provisions within the Article 16 of the European Social Charter has been implemented under the Act. LXXXIV of 1998 on Family Support (thereinafter: Cst.). The scope of the law regarding the relevant group of people has been determined by the second Paragraph of this legislation. By determining the personal scope of the law, requirements have been defined by the legislation regarding the definition of the circle of not Hungarian citizens who have permanent residence in Hungary, such as the requirement of a status or permit allowing to stay over a three months period and a declared place of residence in Hungary (except for stateless status). According to the Cst. the basic entitlement criterion for family benefits is a declared place of residence so the waiting time for resettlement does not have direct relevance.

The link between the two procedures is that the third country national becomes entitled to declare a place of permanent residence and to claim for family benefits by obtaining residence permit.

During the evaluation period or under the current aliens policing and asylum legislation provisions those third country nationals and persons with the right to free movement and residence can have declared place of residence in Hungary under the Act. LXVI. Of 1992 on

Keeping **Records** on the **Personal Data and Address of Citizens,** who have the following documents or legal status:

- Immigrant or residence status (immigration, resettlement, national resettlement, EC resettlement, temporary resettlement permit), or recognised refugees and subsidiary protected persons.
- People, who have the right to free movement and residence exceeding three months (people who have EEA residence permit, registration card, residence card, permanent residence card).

However, it must be emphasized that before submitting the application the applicant has to live legally and continuously in Hungary for at least three years under the provisions of the Act II. of 2007 on Entry of Third Country Nationals as the general rule prevails under the conditions of issuing a national resettlement permit regarding the residence time.

The rules according to which a shorter stay than three years is needed to acquire a permanent residence permit are the following:

The national resettlement permit can be issued to the third country national prior to the expiry of the residence time in the following cases:

- he/she is a family member of dependent direct relatives in the ascending line – other than the spouse – of a third-country national with immigrant or permanent resident status or who has been granted asylum, and he/she has been living in the same household for at least the preceding one year before the application was submitted;
- he/she is the spouse of a third-country national with immigrant or permanent resident status or who has been granted asylum, provided that the marriage was contracted at least two years before the application was submitted;
- the applicant was formerly a Hungarian citizen and his/her citizenship was terminated, or his/her ascendant is or was a Hungarian citizen.

After the reporting period (2005-2009) no changes have occurred regarding the residence time required for the national resettlement permit and no legislative amendments are planned to take the provided benefits into account as well.

Information on the support system:

The support system of Cst. is – as one mean of the state redistribution – mainly a tool which is serving demographic goals. The benefits of the Cst. are tax-financed, non-contributory benefits, the main aim of which is to support the families permanently staying in Hungary to have children, to strengthen their social protection, to ensure financial support to the raising and schooling of their children. Therefore, the benefits regulated in the Act – with the exceptions defined by EU law and the Cst. – are due only after acquiring a permanent residence permit. The permanent residence permit certifies the right to stay in Hungary for an unlimited time. As a general rule, three years of uninterrupted stay is needed to acquire a permanent residence permit. Above we referred to the rules according to which a shorter stay is enough to get a permanent residence permit, and below you find the cases where a third country national without permanent residence permit can be entitled to the benefits of the Cst. or to other benefits which are also serving the protection of the family.

According to the amendments of Cst. the entitlement to the benefits without acquiring a permanent residence permit in case of persons who are not the citizens of the European Union or of the States which are parties to the Agreement on the European Economic Area, or persons enjoying the same treatment by virtue of an agreement (EEA-nationals).

- **as of 1st January 2007** the family members of Hungarian nationals or EEA-citizens have the right of free movement and stay. In their case, there is no length of residence requirement.
- **as of 1st January 2011,** in order to improve the health protection of mothers and children, the personal scope of the Cst. has been widened as regards maternity grant.

According to the amendment of the Cst. the **maternity grant can be claimed by a mother, who is lawfully staying** in Hungary, provided, that during her pregnancy she took part in at least four prenatal examination (or one in case of premature birth). In this case there is no length of residence requirement.

- **as of 1st January 2011** those third country nationals holding an **EU Blue Card** (permit issued for the purpose of highly qualified employment) can be entitled to the benefits of the Cst. without length of residence requirement.

It has to be mentioned that **not only the benefits of the Cst. ensure the economic and social protection of the family.**

In the case of the **contributory child raising benefits** (pregnancy confinement benefit - terhességi gyermekágyi segély and child care fee – gyermekgondozási díj) there is no length of residence requirement. The same applies to the **temporary allowance** (átmeneti segély) regulated in the Act III of 1993 on Social Administration and Social Benefits and the **extraordinary child protection support** (rendkívüli gyermekvédelmi támogatás) regulated in the Act XXXI of 1997 on the Protection of Children and Guardianship Administration.

The rules of temporary assistance (on 31st December 2009)

Temporary allowance

Section 45

(1) The representative body of the local government provides temporary allowance in its decree to those who are in an extraordinary situation endangering their livelihood or struggling temporarily or permanently with troubles of existence. Temporary allowance can be provided in the form of a loan, which cannot be defined as a bank allowance.

(2) In the case of temporary allowance the local government has to define the income threshold per person in the family in its decree in the way, that it cannot be lower than the minimum amount of old-age pension, 150 % in the case of a single person.

(3) Temporary allowance can be given occasionally or monthly. The occasional temporary allowance can be provided in the form of support for buying medicaments or as a fee of health services which are not or just partly supported by the health insurance. The monthly temporary assistance can be provided in the form of income supplementing benefit, regular child raising support or in another form defined in the decree of the local government.

(4) Temporary assistance shall be granted primarily to those who are otherwise not able to provide for their own or their families' existence, or to those who, because of extra costs emerging occasionally, particularly as a consequence of illness, or damage need material help.

(5) In the capital – unless the local government of the capital and the local government of the district agree otherwise – the granting of temporary allowance to homeless people is the task of the local government of the capital.

Extraordinary child protection benefit

Section 21

(1) The representative body of the local government shall award extraordinary child protection benefit (hereinafter referred to as 'extraordinary benefit') of the amount specified in its decree to a child if the family looking after the child faces temporary existential problems or is in an extraordinary situation endangering its livelihood.

(2) Extraordinary benefit shall be awarded from time to time primarily to those children and families whose livelihood cannot be assured in any other manner or who are in need of financial assistance due to occasional extra expenditures, in particular the conservation of the child of a pregnant woman in a crisis, the expenditures relating to preparation for the birth of a child, the promotion of the maintenance of contact with the family of a child in foster care or the promotion of the re-unification of the child with the family as well as illness or schooling.

(3) The parent or other legal representative of the child shall submit the application for the extraordinary benefit to the mayor's office of the local government with jurisdiction at his or her place of residence or to any other entity specified in the local government's decree.

RESC 16 ITALY

The Committee concludes that the situation of Italy is not in conformity with Article 16 on the grounds of:

- *unequal treatment of foreigners in matters of family benefit;*
- *undue interference in the family life of Roma and Sinti families.*

First and second grounds of non-conformity

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

Birth grant

The birth grant provided under Act N° 326/2003 is a one off payment of 1000 euro to families with a new born or an adopted child. The child allowance (family benefit) was authorized by the Municipality and paid by the National Institute of Social Insurance (INPS) only to Italian women and EU similarly, legally resident in Italy on the basis of data provided. Subsequently section 1 of Act N° 266/2005 extended the birth grant to both parents likewise (previously only to the mother), as long as they had Parental Authority, were Italian citizens or EU members and legal residents in Italy.

Recently various jurisdictional provisions pronounced (decision n° 3670 dated 15 of February 2011, Supreme Court of Cassation: court order dated 26 of January, 2009; court order dated 12 of March, 2009; court order dated 27 of May, 2009; court order dated 22 of July, 2010 all issued by the civil court of Brescia), on the basis of non-discrimination, have extended similar benefit equally to all foreign parents legally residing in Italy who meet further requisites.

The aforementioned birth grant (or family benefits) is still paid by most local and regional administrations, whereas at national level it is replaced by the so called "Credit Fund for the new born" (Fondo di Credito per i nuovi nati). Parents, whose children are born or adopted in the years 2009, 2010 and 2011, may apply for a loan of 5000 euro at a low interest rate, with a 5 year reimbursement plan. The Italian Government through the creation of this fund, in the care of the "Department of family policies", guarantees up to 50 % of the loan in case of payment insolvency to banks or financial institutions (section 4, paragraph 1 and 1 bis of Decree Law n°185 dated 29 of November, 2008, converted and amended into law n° 2 dated 28 of January, 2009).

This measure is extended to all legally resident aliens**.** The banks or financial institutions can, at their discretion and assessing the permit to stay of the applicant, grant the loan.

The measures relating to the Credit Fund have recently been extended also to those children born in 2012, 2013 and 2014 (section 12 of Act N°183 dated 12 November, 2011).

Allowances for large families with at least three children

Allowances for families with at least three children are granted by the municipality to the recipient, irrespective of whether one is employed or entitled to social insurance, whereas the standard family allowance is awarded only to employees or those receiving a social security allowance (the ordinary family allowance has been explained in previous reports).

Section 65 of Act N° 448/1998 and subsequent modifications, has laid down that only Italian citizens should be entitled to the large family allowance. Subsequently Prime Ministers' Decree N°452/2000 in paragraph 2 article 14, and paragraph 2 of article 16, sets forth that the application for large family allowance can be submitted by parents with three children, as long as they have Parental Authority, are Italian citizens or EU members legally residing in Italy.

This benefit has been extended to political refugees and those with subsidiary protection status, as evidenced in the last Government report.
Lately various jurisdictional provisions pronounced in first instance ruling (decision n°63 dated 3 of May, 2012 issued by a Labour judge in the court of Gorizia; decision n°7561/ 2011 of the civil court of Rome; order of the court dated 5 December 2011 – civil court of Padova – Labour section), on the basis of non-discrimination, have awarded similar benefit to foreigners with long-term resident permit and have also ordered the National Institute of Social Insurance to provide the money for the allowance.

Social Card
The Social Card was created in 2008, as a tool to combat extreme poverty. Recently, section 60 of Decree Law n°5 dated 9 of February, 2012 (converted and amended into law, n° 35 dated 4 of April, 2012), in order to spread the system, foresees to allocate funds for 50 million euro for a trial period of 12 months, in those Municipalities with a population of more than 250.000 people.
The aforementioned provision has established the extension of the Social Card to foreigners with long-term resident permit.

RESC 16 LITHUANIA

The Committee concludes that the situation is not in conformity with Article 16 of the Charter on the ground that, with regard to the payment of family benefits, equal treatment of nationals of other States Parties is not ensured due to an excessive length of residence requirement.

336. The representative of Lithuania referred to the information included in the national report (paragraphs 175-179) and pointed out that draft amendments to the legislation on social assistance had been prepared. Following the European Committee of Social Rights' negative conclusions, a feasibility study had been conducted in 2011 and had shown that about 4 000 more people would be entitled to family benefits, at a cost of more than 500 000 litai a month. The country's economic situation meant that it was not possible to provide financial assistance for everybody.

However, progress had been made because, since 2011, family benefits had been paid to three new groups of beneficiaries without a length of residence requirement: foreigners living in Lithuania who had custody of Lithuanian children or of foreign children who had been placed under guardianship in Lithuania or of children who had been placed in institutions, foreigners holding temporary residence permits in accordance with European Union regulations on the co-ordination of social security schemes and foreigners holding temporary residence permits on account of highly skilled occupations, the possession of an employment contract being a requirement for applying for a residence permit. Other legislative measures had come into force on 1 January 2012 to increase the number of categories of foreigners entitled to social assistance in cash for poor families and single residents.

It was worth noting that the law on social assistance for school pupils (free meals, financial aid with the purchase of school supplies) applied to all pupils who needed such assistance, regardless of length of residence.

337. The Committee noted that the Lithuanian Government recognised the problem posed by the five-year length of residence requirement for entitlement to family benefits and was seeking to resolve it. It took note of the developments in the legislation and the progress made and asked the Government to continue its efforts to bring the situation into conformity with Article 16 of the Charter.

RESC 16 MALTA

The Committee concludes that the situation in Malta is not in conformity with Article 16 of the Charter on the ground that it has not been established that Malta implements a comprehensive policy to ensure the social, legal and economic protection of the family.

338. The representative of Malta provided the following information in writing:

Childcare Centres
Number of children attending the centres by age group
The number of children registered with child day-care facilities increased with age. A total of 41 people aged under 12 months were registered with the centres, while 428 children aged between 13 and 24 months and 1033 children aged between 25 and 36 months attend the centres (see figure 1).

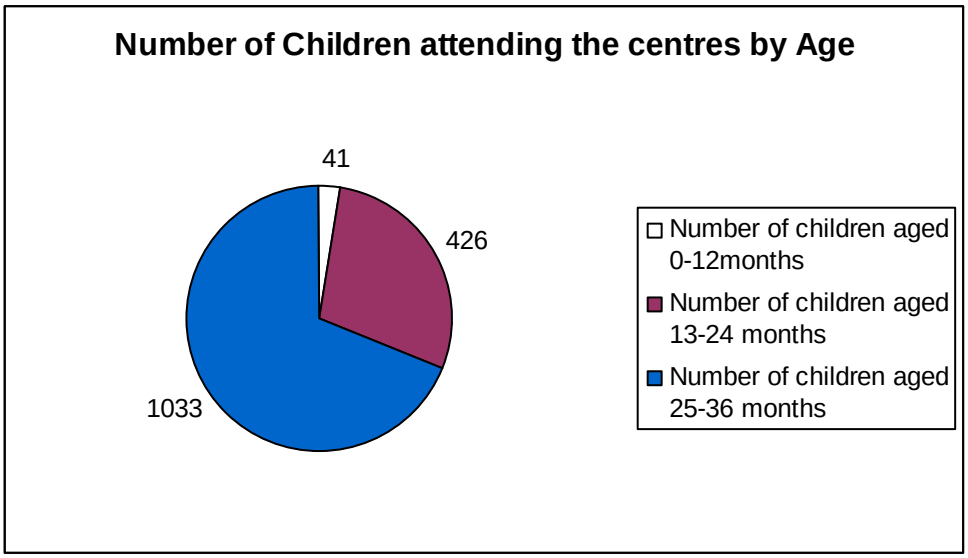

Figure 1

Almost half the centres surveyed (n=21, 42 %) do not cater for children under 12 months. 8 centres which cater for children under 12 months only had one child from this age bracket registered with the centre, 7 centres had between 2 and 4 children from this age bracket registered with the centre, while 3 centres had 5 or 6 children registered aged under 12 months (see figure 2).

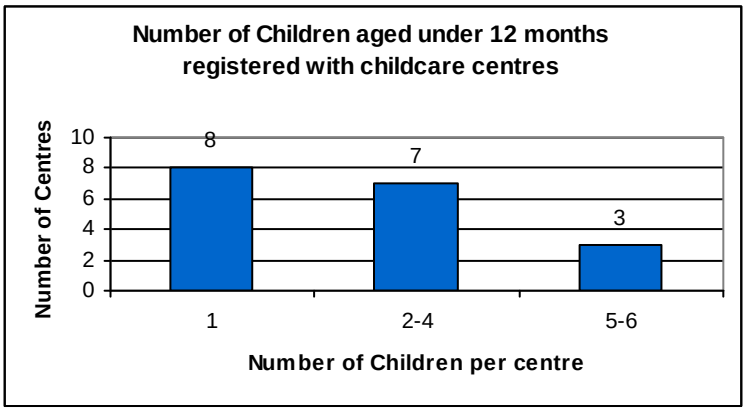

Figure 2

When it comes to children within the 13 to 24 month age bracket, most centres have less than 10 children of this age registered with them (n=24, i.e. 48 %). Only 4 centres (8 %) have over 30 children registered within this age bracket registered (see figure 3). This differs from the figures available for children aged between 25 and 26 months, where the majority of centres have over 11 such children registered (n=37 i.e. 74 %) and 11 centres (22 %) have over 31 registered children that fall within this age bracket (see figure 4).

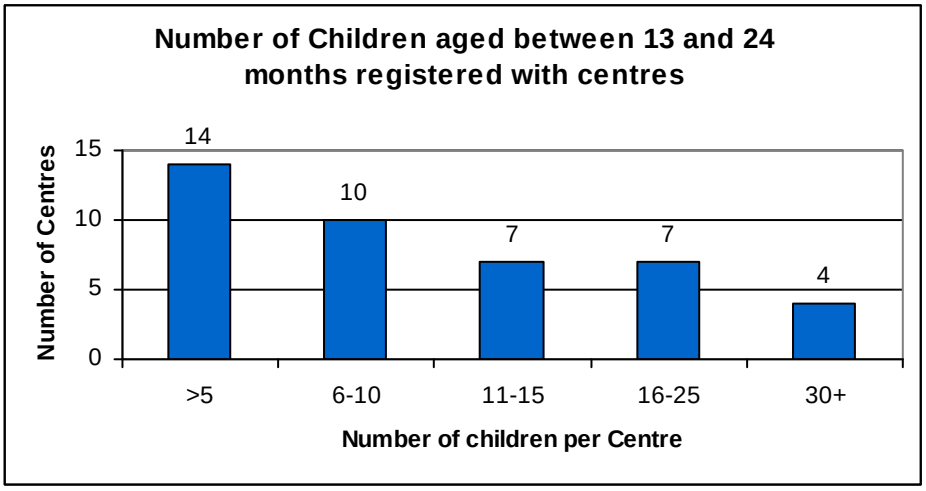

Figure 3

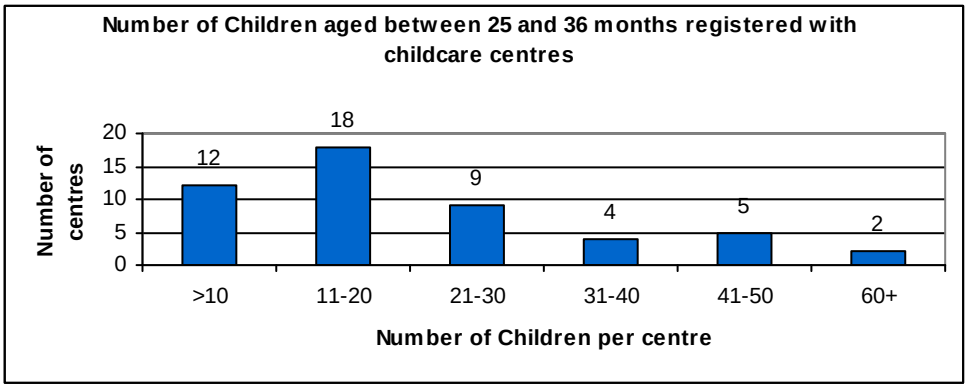

Figure 4

Capacity of the Centres

With regards to the maximum capacity of the centres, 2 centres are home based so they can each accommodate 6 children at any given time. 7 centres can accommodate between 12 and 18 children at one go, while 14 centres can accommodate between 20and 29 children. 9 centres can cater for between 30 and 39 children at one go, while a further 9 centres can cater for between 40-49 children. 5 centres can accommodate 50 children at any given time. 1 centre can cater for 65 children at one go, while another centre can cater for 70 children. Another centre can accommodate 96 children at one go. Only 2 centres can cater for more than 100 children (one being able to accommodate 106 children and another 160 children).
These figures have been given by the owners or managers of the childcare facilities. However, the DSWS is currently conducting an exercise to establish the actual maximum capacity of centres according to the $5m^2$ per child required by the National Standards in this field.

Waiting List

Most centres (n=31 i.e. 62 %) did not have any children on a waiting list (see figure 5). Over half the centres who did have children on a waiting list had less than 10 children on the waiting list (n=10, 52.6 %) (see figure 6).

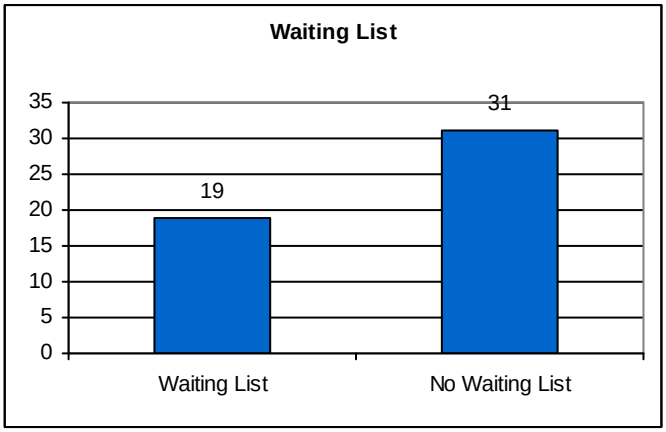

Figure 5

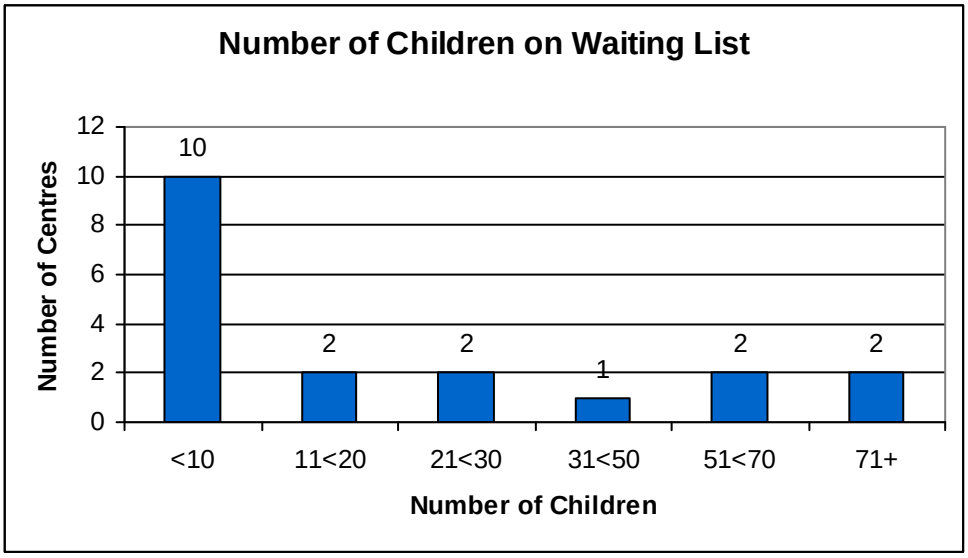

Figure 6

Opening hours

Regarding opening times, all centres are open from Monday to Friday. These have varying opening and closing times. Opening times range from 5am to 9am, with the vast majority (n=41 i.e. 82 %) opening between 7 and 8am (see figure 7).

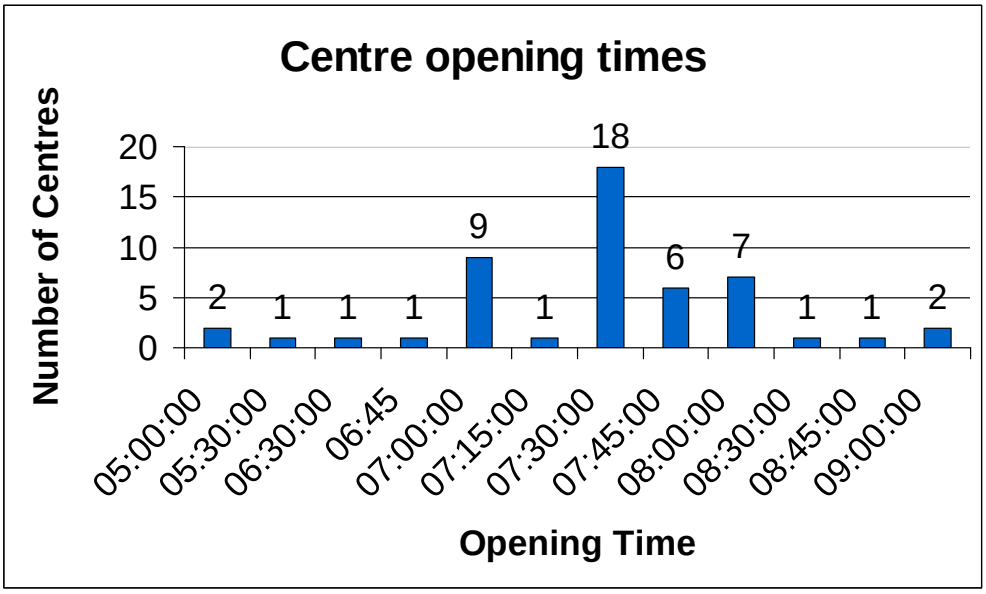

Figure 7

Similarly, closing times range between 12:15 and 18:30, though most centres close on the hour between 15:00 and 18:00 (see figure 8). Two of the centres included in figures 7 and 8 have indicated that they offer their services 24 hours a day, but this must be booked in advance. An additional 2 centres that feature in figure 8 have indicated the possibility of extending their service beyond closing times, but this must be booked in advance.

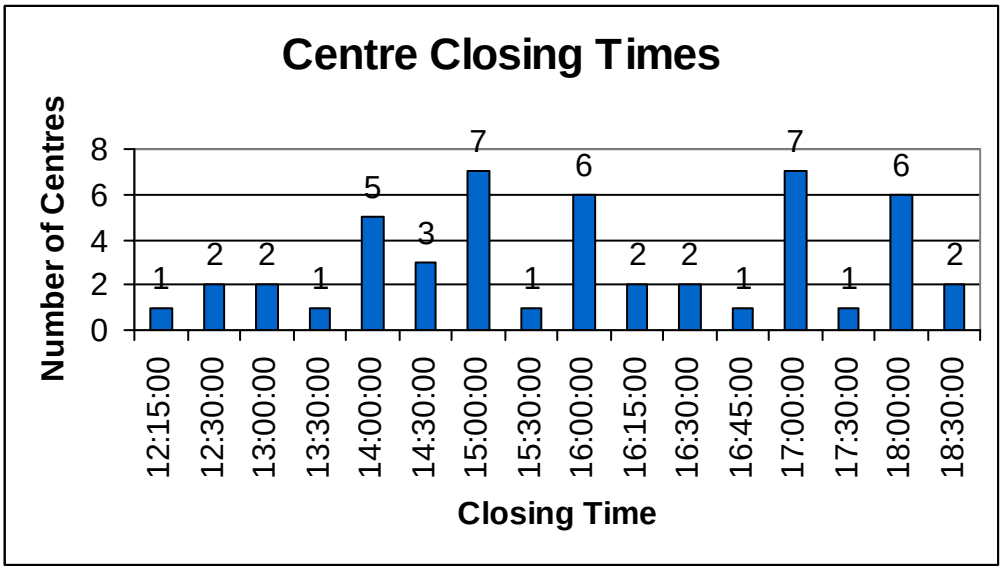

Figure 8

Just over half the centres offer their services for more than 8 hours a day (n=27 i.e. 54 %). Of these, 23 centres (46 %) operate between 8.5 and 10.5 hours daily, 1 centre operates 12 hours daily, 1 centre offers its services for 13 hours daily, while 2 centres can remain open for up to 24 hours as previously mentioned. However, 23 centres (46 %) only offer their services between 3.5 and 7.5 hours a day. of these, 6 centres (12 %) operate between 3.5 and 5 hours daily, while 17 centres (34 %) operate between 5.5 and 7.5 hours a day.

Only 4 centres are open during the weekend (2 open on Saturday only, while the other 2 centres are open on Saturday and Sunday). The 2 centres open on both Saturday and Sunday

are open 24 hours, while those open on Saturday only offer their services between 8:00 and 13:00 and between 8:00 and 14:00 respectively.
For further information on the standards required from child care centres please also find the attached PDF file.

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Family Counselling and Domestic Violence

The Family Therapy Services within the Foundation for Social Welfare Services is composed of the Family Therapy Services formerly servicing Agency Appogg and that servicing Agency Sedqa. The merge between the two teams took place in August 2012 with the aim to offer a more holistic approach to our service users which vary between those of a generic nature and families with addiction related difficulties.
The services within Appogg and Sedqa have been set up since mid-1990s. The Family Therapy Service within Appogg catered for both generic family relationship issues, as well as specialized issues such as family dynamics issues in families where there is a high incidence of trauma. On the other hand, the Family Services within Sedqa offered assessment of the dynamics and needs of families with addiction difficulties.
The current service is offered to all families referred through an internal referral process without any discrimination regarding gender, race or sexual orientation. After an assessment process, some families which in our professional opinion may need to address other social or psychological issues before starting therapy, are guided to other services accordingly before being accepted for family therapy. It is highly recommended that families accessing the service are followed by other specialized social work services where the social worker will be responsible for overseeing the clients' care plans. Family therapists and family therapy workers (workers with a diploma level in systemic practice) work hand in hand with other professionals involved in the cases they will be following including social workers, psychologists, psychiatrists, staff at residential programmes and doctors.
The mission of the merged service is to assess, support and offer therapy to families and couples having a complexity of difficulties including addiction, trauma and relationship issues. We aim to offer therapeutic support in understanding the family's expectations of change within the family and help the family integrate change into their system, which may include multiple adjustments. We strive to elicit strengths within the family as well as address family members' emotional, psychological and social needs. While promoting client's integration in society, we also help families reflect and work on how to continue maintaining changes achieved after termination of family therapy work with us.
The main psychotherapeutic approach applied is highly influenced by the Milan-Systemic approach, whereby a team-approach to dealing with family therapy issue is applied. We are also influenced by other approaches such as the collaborative, narrative and social constructionist perspectives in our work with families. We strongly believe that various relationship issues in families may be dealt with effectively once family members learn to be self-reflective on their behaviour as well as their beliefs of what may be the cause of the problems in their families. Hence our way of working includes a team effort, in order to provide a model of what we call "a self-reflective process for our clients".
The service currently operates from 36 ST Luke's Road G'Mangia and it is part of the Foundation for Social welfare Services (FSWS). The service is composed of a Family Therapist who coordinates a team of 6 Family Therapy Workers who total a 150 hours per week between them. The service receives an average of 80 referrals per annum and an average of 250 sessions is conducted each year.

Family Benefits

The Social Security system in Malta provides for the following family benefits:

- Children Allowance
- Disabled Child Allowance
- Foster Care Allowance
- Maternity Benefit
- Supplementary Allowance

Children Allowance is due to parents who have the care and custody of their children who are still under the age of 21 and who satisfy the following criteria:

- Applicant should be a resident of Malta for at least three months before date of application;
- One of the parents should be a Maltese citizen, has a refugee status or be a citizen of an EU Member State or is a citizen of a member country of the European Social Charter, and has the care and custody of child.

There are two types of children allowance, one which is means-tested and applicable where the total annual income for the year preceding the date of application does not exceed 24,226 €, and the other is flat-rated and applicable where the total annual income for the preceding year is in excess of 24,226 €.

Under the means-tested regime, the actual declared income is deducted from the sum of 24,226 € and multiplied by 6 % for each eligible child in the household who is still under 16. The minimum weekly rate per child cannot be less then 6.73 € and the maximum weekly rate payable is 22.23 € per child.

Under the flat-rated regime where the total annual income for the preceding year is in excess of 24,226 €, the sum of 350 € per year is awarded per child in the household under the age of 16.

Children between the age of 16 and 21 who are undergoing a full-time course of study and not in receipt of a stipend or where the child was never in employment and registering for work and not in receipt of a social security benefit, the difference obtained between 24,226 € and the actual annual income is multiplied by 2 %. The applicable weekly rate for this age group cannot be less than 6.73 € in both means-tested and flat-rated cases while where the head of household is in receipt of social assistance it cannot be less than 7.41 €.

Disabled Child Allowance is payable to persons who have the effective custody of a child suffering from cerebral palsy or severe mental sub-normality or is severely disabled or have a child under 14 years of age who is visually impaired and who satisfy the following criteria:

- Applicant should be a resident of Malta for at least three months before date of application;
- One of the parents should be a Maltese citizen, has a refugee status or be a citizen of an EU Member State or is a citizen of a member country of the European Social Charter, and has the care and custody of child.

A medical panel examines the child and decides on the medical evidence available whether the child qualifies for the Disabled Child Allowance. The medical panel may approve Disabled Child Allowance up to age 16 or for a period of time, in which case a review will be carried out after the lapse of the time indicated by the medical panel.

The weekly rate payable for Disabled Child Allowance is €16.31.

Foster Care Allowance is payable to the head of household who is an approved foster carer in accordance with the Foster Care Act and is fostering a child or to the head of the institution where a foster child is residing. This allowance is not means-tested and the weekly rate is 70 €

per child being fostered. Where a foster care allowance is in payment, no children allowance is due.

Maternity Benefit is awarded to any pregnant woman who is:
1. A citizen of Malta or married to a citizen of Malta, or is a citizen of a European Union Member State, or a citizen of a member country of the European Social Charter, or has a refugee status and is ordinarily resident in Malta or Gozo;
2. Applicant has to be in her eight month of pregnancy or has given birth to a child in the six months prior to the date of the claim;
3. Applicant must not have availed herself of maternity leave.

Payment is effected in two lump sums (if application is lodged before birth) and in one lump sum (if application is submitted after birth) and the weekly rate of benefit is €79.20 for the first fourteen weeks after the birth.
With effect from January 2012 a new benefit is due – **Maternity Leave Benefit -**where an employed woman avails herself of the full maternity leave entitlement as stipulated by the Maltese labour law. This benefit is paid for 2 weeks in 2012 and for 4 weeks from 2013 onwards and is in addition to the maternity benefit entitlement. It is also due for self-occupied women who have recently given birth and are eligible for Maternity Benefit will also be eligible to a Maternity Leave Benefit.
The rate of benefit is €160 per week.

Supplementary Allowance is due to a head of household who proves to the satisfaction of the Director that his total yearly income for the preceding year of application does not exceed the income 10,573 € if married and 8,405 € if single.
The weekly rate due for this means-tested allowance for a married person is established by multiplying by 2.268 %, the difference obtained after deducting the total yearly income from the sum of 24,529 €. The weekly rate for a single person is established by multiplying by 1.7 %, the difference obtained after deducting the total yearly income from the sum of 19,896 €.
The weekly maximum rate paid to a married person is 8.13 € while that paid to a single person is 4.57 €.

RESC 16 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 16 of the Charter on the ground that it has not been established that the family benefits represent an adequate income supplement.

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

En vertu de la Décision du Gouvernement sur les indemnisations adressées aux enfants avec des enfants n 1478 du 15 novembre 2002, les familles avec des enfants bénéficient des types suivants d'indemnisations :
a) indemnisation unique à la naissance de l'enfant ;
b) indemnisation mensuelle pour l'éducation de l'enfant jusqu'à l'âge de 3 ans, pour les personnes assurées ;
c) indemnisation mensuelle pour l'éducation de l'enfant jusqu'à l'âge de 1,5 ans, pour les personnes non-assurées.
En analysant les données sur les indemnisations adressées aux familles avec les enfants nous constatons une croissance continue de leur montant au cours des années 2006-2012.
Par conséquent, depuis le 1er janvier 2012 les indemnisations uniques à la naissance de l'enfant constituent : 2300 lei – à la naissance du premier enfant et 2600 lei – à la naissance de

chaque enfant suivant (tant pour les personnes assurées que pour les personnes non-assurées).
En même temps, l'indemnisation mensuelle pour l'éducation de l'enfant jusqu'à l'âgé de 1,5 ans pour les personnes non-assurées constitue 300 lei, et le montant de l'indemnisation mensuelle pour l'éducation de l'enfant jusqu'à l'âge de 3 ans dans le cas des personnes assurées constitue 30 % de la base de calcul, mais pas moins de 300 lei au cours de 2012.
En analysant les données au cours des années 2009-2011 nous constatons une augmentation du montant moyen de l'indemnisation mensuelle pour l'éducation de l'enfant jusqu'à l'âge de 3 ans, son montant moyen au cours de l'année 2011 a constitué 768,64 lei par rapport à 675,27 lei en 2010 et par rapport à 478,92 lei en 2009.
En plus, pour les enfants adoptés et ceux se trouvant sous tutelle/curatelle, les parents adoptants, les tuteurs/curateurs touchent tous les mois les indemnisations pour l'alimentation, l'achat des vêtements/chaussures et des objets d'hygiène personnelle. L'indemnisation est établie et payée en montant prévu dans la Décision du Gouvernement n 198 du 16 avril 1993 « Sur la protection des enfants et des familles socialement vulnérables » (p.10).
De cette façon, en vue de soutenir les enfants adoptés et ceux sous tutelle/curatelle, à partir du 1er janvier 2012, le montant des indemnisations en cause a été augmenté par 100 lei et constitue 600 lei tous les mois pour chaque enfant.
En même temps, le Ministère du Travail, de la Protection Sociale et de la Famille fait promouvoir le Service de support familial qui est actuellement piloté avec le concours des organisations non-gouvernementales dans quelques régions du pays.
Le service de support familial représente un service d'assistance sociale, destiné à accorder une assistance complexe aux familles et aux enfants en vue de prévenir la séparation des enfants du milieu familial et/ou la réintégration des enfants dans le milieu familial et de développer la compétence et l'autonomie du bénéficiaire et des parents. Le support familial est un service prêté au niveau local qui se trouve sous la gestion de la Section/Direction de l'assistance sociale et de protection de la famille et est offert sous forme d'un aide en espèces. L'aide monétaire peut être accordé une seule fois ou mensuellement pour une durée déterminée, en conformité avec le programme d'activité prévue dans le Plan individualisée d'assistance sociale. Les bénéficiaires du Service de support familial sont les enfants des familles défavorisées qui a cause de certains facteurs de nature économique, sociale, médicale, comportementale etc., qui se trouvent dans des situations de risque de séparation du milieu familial et d'exclusion sociale ; les enfants séparés du milieu familial, placés ou sous risque d'être placés dans les institutions résidentielles de type classique ; les membres de familles biologique/étendue ou leur soigneurs (tuteurs/curateurs, assistants parentaux professionnels, parents-éducateurs). L'assistant social communautaire, en commun avec les représentants de l'autorité publique locale du niveau un, surveille et vérifie l'utilisation efficiente de l'aide monétaire offert à la famille en vue de satisfaire les besoins de l'enfant.

RESC 16 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 16 of the Charter on the ground that the living conditions of Roma families in housing are not adequate.

339. The representative of Romania gave explanations on the legislative situation in her country; in particular she quoted Article 43 of the Housing Law No. 114/1996 and Order of Health Minister No. 536 of 23 June 1997 on hygiene and the living environment.

340. The representative of Romania gave particularly detailed information with respect to the various programmes which aim to build housing for young people whose income does not allow access to housing market conditions and social housing in general, including social housing for Roma communities which is part of the Strategy of the Romanian Government to improve the situation of

Roma. As from 2010, relevant authorities conduct an extensive consultation process with Roma civil society in order to find appropriate solutions which aim to improve the living conditions of Roma families in housing. International organisations support various projects which aim to reinforce social, economic and cultural inclusion of Roma families.

341. As regards vulnerable families, the representative of Romania underlined that a new Law No. 292/2011 on Social Assistance was adopted. It is based on three principles: universality, non-discrimination and equality of chances. This law guarantees to the Roma population an equal access to the social protection measures.

342. As regards the integration of Roma into the labour market, the National Agency for Employment develops and implements employment programmes since 2001. This Agency is a partner in two projects co-financed by the European Social Fund. It is expected that the number of workers belonging to the Roma minority will increase to 60 000 (including 25 000 Roma women).

343. Furthermore, the representative of Romania pointed out that in December 2011 the Government has adopted a new Strategy 2012-2020 for inclusion of Romanian citizens of Roma minority.

344. In reply to the questions by the representative of Lithuania, the representative of Romania confirmed that she was not in possession of data on forced evictions of Roma families.

345. The Committee noted that the Government of Romania made efforts as regards the improvement of housing, employment and vocational training of Roma population. It encouraged the Romanian Government to continue in this direction and invited it to provide all the new information on this subject in the next report.

RESC 16 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 16 of the Charter on the grounds that:

- *Right to housing of Roma families is not effectively guaranteed;*
- *entitlement to childbirth allowance and child minding allowance is subject to an excessive length of residence requirement.*

First ground of non-conformity

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

> On January 11, 2012 the Government of the Slovak Republic approved the Strategy of the Slovak Republic for the integration of Roma up to 2020 in association with the Communication addressed to the European Parliament, Council, European Economic and Social Committee and to the Committee for Regions in April 2011, designated as EU Framework for National Roma Integration Strategies up to 2020. This Strategy responds to the need to address the challenges associated with the social inclusion of Roma communities and principles of this Strategy will become the base for policies addressing the unfavorable situation of the target group for the period of up to 2020.
>
> The Strategy is a result of collaboration between the Office for the Plenipotentiary of the Government of the Slovak Republic for Roma communities, the World Bank, the United Nations Development Fund (UNDP), the Open Society Foundation (OSF), the Association of Cities and Municipalities of the Slovak Republic, and non-governmental organizations. The Ministry of Labour, Social Affairs and Family of the Slovak Republic was instrumental in the creation of this Strategy. Priorities of the new strategy policies aim to improve the situation of

the Roma minority in the following aspects: education, employment, health, housing, financial inclusion and non-discrimination.

As far as housing of the Roma families is concerned, the Government of the Slovak Republic aims, as also stated in the Strategy, to improve access to housing with special emphasis on social housing and the need to support abolishing segregation in housing, while fully making use of the funds that have been made available recently in the context of the European Regional Development Fund, as well as bridge the gap between the majority population and the Roma minority in access to housing and utilities (such as water, electricity and gas). In this respect, the Government:

- is analyzing chances of repairing the existing apartments in cases where the apartments and/or houses in question are in such a technical condition, which could endanger health or life of their residents;
- is preparing ways of legalizing of illegal constructions, while giving their inhabitants an opportunity to acquire legal housing;
- plans to introduce financial and legislative tools enabling settlement of land title for the purpose of building rental social apartments;
- will ensure completing infrastructure and equipment of segregated and separated Roma settlements in Slovakia;
- plans to introduce and implement a program of gradual assisted housing as a social service.

At present, the problem of inadequate housing for Roma families has been partially addressed by the Program for Housing Development adopted by the Government. In the frame of this program the Ministry of Transport, Construction and Regional Development of the Slovak republic subsidizes construction of rental housing, infrastructure as well as elimination of system failures in residential homes.

This program is currently governed by the Act No. 443/2010 on Subsidies for Housing Development and on Social Housing. This act defines social housing and governs the scope, conditions and methods for providing funding for housing development via grants. The grants may be used:

- for acquisition of an apartment lease for the purpose of social housing;
- for acquisition of technical equipment;
- removal of a system failure related to the living in the social housing.

So far, based on this program, there were almost 2 900 apartments built and made available for members of the Roma minority in the Slovak Republic to ensure they are living in much better conditions and among the rest of the population up to now.

Second ground of non-conformity

347. The representative of the Slovak Republic informed the Committee that the situation regarding the requirement of a permanent residence permit to be able to apply for the above mentioned allowances has been changed.

348. At present, it is possible to apply for the child minding allowance even if the applicant resides in the territory of the Slovak Republic on the basis of a temporary residence permit. The allowance is paid on a monthly basis for each child.

349. As regards the childbirth allowance, which is a one-time-only state social allowance that aims at supporting mothers who decided to live and raise their children in the Slovak Republic, it is possible to apply for it without a permanent residence permit in the following conditions:

- the applicant is a citizen of a state that is a member of the EU, EEA or the Switzerland (application on the basis of the Regulation 492/2011 of the European Parliament and of the Council on freedom of movement for workers within the European Union;

- the applicant is a citizen of a state which has a bilateral agreement on social security with the Slovak Republic;
- the applicant is from a “third country” and has been granted an asylum in the Slovak Republic, which at the same time means they are granted a permanent residence permit and are therefore eligible for the state social benefit.

350. The representative of the Slovak Republic pointed out that the Slovak Government focused on the child minding allowance, because it is paid on a monthly basis and therefore provides the applicant with more means of taking care of their children.

351. In reply to the ETUC representative, the representative of the Slovak Republic explained that changes in the legislation as regards the 3 year length of residence requirement are not planned by the Slovak Ministry of Interior. If the applicant does not satisfy necessary conditions mentioned above, it is possible for him/her to have recourse to the asylum procedure.

352. The Committee took note of the legislative changes announced and invited the Slovak Government to review the legislation regarding the childbirth allowances in order to bring the situation into conformity with the European Social Charter.

RESC 16 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 16 of the Charter on the following grounds:

- *it has not been established that Roma families have sufficient legal protection;*
- *equal treatment of nationals of other States Parties to the 1961 Charter or the Charter in the payment of family benefits is not ensured because the length of residence requirement is excessive.*

First ground of non-conformity

353. The representative of Slovenia said that the Government stood by its position that Slovenia had over the last 15 years adopted the policy and the measures necessary for improving the social and economic status of the Roma community and had also improved their access to social assistance services and their legal protection.

Slovenian legislation did not permit the gathering of data concerning race, religion, nationality or any other information covered by the law on the protection of personal data, and the law on social assistance did not include provisions requiring individuals to provide data on their ethnic or religious origins. No data were therefore available on Roma families who were eligible for social assistance or the support of the welfare services.

Social work centres in Slovenia provided assistance to members of the Roma community who made very frequent use of social assistance, whether individual or family benefits, on account of their specific lifestyle, low education levels, illiteracy and poor understanding of the Slovenian language and high unemployment levels.

The Slovenian Government had also provided support for a range of different programmes run by the authorities and non-governmental organisations in the area of social and family assistance, including programmes for the Roma community. Some social services in Slovenia depended on the registration of a permanent residence, which meant access to them was sometimes difficult for members of the Roma community who often changed their place of residence and resided at an address that had no longer a street number or was located in an illegal building. An amendment being prepared to the law on the registration of residence should remedy the situation.

354. In reply to a question by the representative of Poland, the representative of Slovenia said that entitlement to social assistance depended on residence for a certain period on Slovenian territory rather than in a particular region.

355. The Committee took note of the information provided and drew the Slovenian Government's attention to the need to implement reforms to improve the legal protection of Roma.

Second ground of non-conformity

356. The representative of Slovenia underlined that foreigners were entitled to child benefits under a 2006 ruling by the Constitutional Court. European Union nationals were entitled to family benefits in accordance with the EU regulation. A new Family Code had been passed in 2011 and the Directorate of Family Affairs would in 2012 draw up amendments to the parental protection and family benefits act. The length of residence requirement would be looked at on that occasion.

357. The representative of Lithuania noted positive trends in Slovenia in terms of reducing the length of residence requirement for entitlement to family benefits, although the reforms were not yet finished. The representative of Belgium agreed.

358. In reply to the ETUC representative, the representative of Slovenia explained that the permanent residence requirement had been reduced to five years from the previous eight.

359. The Committee noted the five-year residence requirement did not cause difficulties in accessing family benefits for Slovenian Roma families. Difficulties could arise if the required conditions for the registration of residence were not fulfilled (e.g. no street number, illegal building), which consequently could affect access to some social services. The social work centers helped the members of the Roma community in this respect.

360. The representative of Slovenia said that, according to the Ministry of the Interior, no difficulties related to obtaining nationality were observed among Roma population.

361. In reply to the question by the representative of the United Kingdom, the representative of Slovenia again confirmed that the length of residence would be reviewed when the new parental protection and family benefits act was drawn up.

362. In reply to the question by the representative of Turkey, the representative of Slovenia said that no statistics were available on the Roma population with Slovenian nationality because Slovenian legislation did not allow data to be broken down according to ethnic criteria.

363. The representative of Poland said that the five-year requirement stemmed from Community regulations and that bilateral agreements should be concluded to resolve the problem of excessive length.

364. The ETUC representative pointed out that the situation in Slovenia had not changed since the previous assessment with regard to equal treatment.

365. The Committee took note of the legislative changes announced and invited the Slovenian Government to review and reduce the length of residence requirement in order to bring the situation into conformity with Article 16 of the Charter.

RESC 16 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 16 of the Charter on the grounds that:

- *measures implemented to address the problem of domestic violence have not been sufficient;*
- *it has not been established that there is a general system of family benefits.*

First ground of non-conformity

366. The representative of Turkey submitted the following information in writing :

La Turquie mène une lutte résolue contre toutes les formes de violences à l'encontre des femmes, y compris les crimes coutumiers et d'honneur. Dans ce contexte, des mesures juridiques nécessaires ont été réalisées en faveur des femmes. En revanche, la mise en pratique de ces mesures juridiques nécessite une lutte à long terme et multilatérale.

En ce sens, afin de renforcer le statut des femmes au sein de leurs familles et de la société et d'inverser la présupposition et l'approche traditionnelles qui ont des effets négatifs sur les crimes coutumiers et d'honneur et sur la violence domestique à l'encontre des femmes, les efforts de promouvoir la sensibilité de la société continuent en coopération avec toutes les parties concernées.

En outre, les études pour augmenter le nombre et l'efficacité des mécanismes assurant la protection et le soutien aux femmes victimes de violences ont pris de l'ampleur.

1. La circulaire du premier ministre N° 2006/17 relatif aux mouvements de violence envers l'enfant et la femme et aux mesures à prendre pour la prévention des crimes coutumiers et d'honneur a été publiée.

Dans le cadre de cette circulaire :

a) Un Comité de suivi de violence à l'encontre des femmes a été établi avec la participation de toutes les institutions publiques compétentes, des universités et des organisations de la société civile. Ce Comité évalue le travail effectué concernant la violence faite aux femmes et offre des suggestions sur les mesures à prendre.

b) En ce qui concerne la violence domestique et l'égalité des sexes dans la société, les protocoles de formations entre différents Ministères ont été signés en vue d'accroitre la sensibilité du personnel des établissements et des institutions publics fournissant des services aux femmes soumises à la violence.

Dans le cadre de ces protocoles, 40 400 officiers de police, 65 000 agents de santé et 326 médecins de famille ont été formés. En outre, d'ici jusqu'à 2015, on vise à former 100 000 officiers religieux.

2. Un projet relatif au rôle de la police dans la prévention de la violence domestique envers les femmes et à la formation des policiers en matière de violence familiale a été préparé et mis en œuvre avec le soutien financier du Fonds des Nations Unies pour la Population.

3. Dans le cadre des formations en matière de l'égalité des sexes dans la société, des cadres de haut niveau, des fonctionnaires d'État, des maires, des représentants de la société civile, des syndicats et des universités ont été formés.

4. La Commission pour l'égalité des chances a été établie en mars 2009 au sein de la Grande Assemblée nationale de Turquie. Une sous-commission a été créée avec le but d'étudier et de rechercher les bonnes pratiques de prévention d'actes de violence à l'égard des femmes.

Cela montre que le Gouvernement turc prend très au sérieux la question de la violence à l'égard des femmes et qu'il est très engagé dans la lutte contre les violences faites aux femmes.

5. La Turquie a signé et ratifié sans réserve, le 24 novembre 2011, la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique.

6. En vue de prévenir la violence à l'égard des femmes, de protéger les personnes soumises à la violence ou qui risquent de subir la violence, un projet de loi relatif à la protection des femmes et des membres de la famille contre la violence a été préparé.

7. En Turquie, il existe 83 lieux d'accueil d'hébergement d'urgence pour les femmes, dont 55 rattachés à l'État, 25 rattachés aux municipalités et 3 rattachés aux ONG. Leur capacité totale est de 1 859.

Assurer le développement en quantité et en qualité de ces lieux d'accueil est l'une des tâches primordiales du Gouvernement turc. Dans ce contexte, des études sont en cours et un Règlement relatif aux lieux d'hébergement d'urgence pour les femmes a été préparé.

8. En vue de fournir un service plus complet et plus efficace aux victimes de la violence, de mieux examiner les données relatives à la violence contre les femmes et d'assurer une coordination plus efficace entre les institutions /organisations luttant contre la violence à l'égard des femmes, des études sont menées pour établir un Centre de Prévention et de Suivi des violences.

9. Avec la participation des parties concernées, un plan d'action pour la lutte contre la violence domestique envers les femmes a été préparé et mis en œuvre pour les années 2007-2010. Après sa révision, ce plan d'action sera mis en œuvre pour la période 2012-2016.

10. Dans le but de suivre au niveau national la violence faite aux femmes, un projet pilote de base de données concernant la violence à l'égard des femmes a été lancé.

Second ground of non-conformity

367. The representative of Turkey said that the country did not have a general system of family benefits for various reasons, in particular:

- women's labour market participation rate was too low (26 %);
- the rate of undeclared employment was too high and the informal sector too large (50 %);
- regional disparities in birth rates were too high (1-2 children in western regions and urban areas, 4-8 in eastern regions and rural areas).

368. To make up for this shortcoming, various social welfare programmes were run by some 937 NGOs for families who needed them. In particular, these involved assistance with education, health, housing, benefits for widows who had no social security cover, benefits for people with disabilities and their families and benefits for elderly people.

369. Following a study launched in 2009, a bill on welfare benefits had been drawn up. Moreover, the establishment of the Ministry for the Family and Social Policy was a major step towards the introduction of a general system of family benefits, as it would be possible for all benefits to be managed by the same ministry.

370. In reply to the comment by the ETUC representative that the Committee had already welcomed a bill on a general system of family benefits in 2007, the representative of Turkey said that it had been necessary first of all for all the benefits to be brought together under the responsibility of a single ministry, which had now been done. This demonstrated the Government's willingness to meet its responsibilities in respect of the Charter.

371. The representatives of Belgium and Lithuania shared the ETUC representative's concerns and underlined the need for Turkey to introduce a general system of family benefits.

372. The representative of Turkey pointed out that, although no such system existed, the Government had established a system of assistance for vulnerable families.

373. At the close of the discussion and given that the situation in Turkey had not been in conformity since 1995, the representative of Iceland proposed that a vote be held on a recommendation. The proposal was supported by the representative of Poland.

374. In accordance with its Rules of Procedure, the Committee voted on a Recommendation, which was rejected (15 votes in favour, 10 against). It then voted on a Warning, which was adopted (27 votes in favour, 3 against).

RESC 16 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 16 of the Charter on the ground that measures implemented to address the problem of domestic violence have not been sufficient.

375. The representative of Ukraine provided the following information in writing:

At national level, the following relevant legislative and other measures have been adopted in the last years:

- On 1st December 2010 (№ 2154) the Cabinet of Ministers of Ukraine approved the Action Plan for the National Campaign to "Stop the Violence" up to 2015;
- On 7 November 2011 Ukraine signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.
- The working group has been established to develop the draft Law of Ukraine “On Amendments to Some Legislative Acts of Ukraine on Combating Domestic Violence”.

Updated information will be provided in the next report.

Article 17§1 – Assistance, education and training

RESC 17§1 ANDORRA

The Committee concludes that the situation in Andorra is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment is not explicitly prohibited in the home, in schools and in institutions.

376. The representative of Andorra provided the following information in writing :

D’une part, les châtiments corporels sur mineurs sont expressément interdits au sein du foyer familial, tel qu’il est établit dans l’article 114 du texte refondu du Code Pénal de 2008 intitulé « Mauvais traitements au sein du foyer » destiné á la protection du conjoint, de ses descendants et aussi de ses ascendants, comportant des peines de trois mois jusqu’à trois ans de prison. Par conséquent, la modification législative a été faite de telle sorte qu’elle permet l’intervention des tribunaux devant un cas de violence sur mineurs.

« Article 114

Celui qui exerce de façon habituelle une violence physique ou psychologique sur celui qui est ou a été son conjoint ou la personne avec laquelle il a maintenu ou maintient une relation analogue de cohabitation ou sur ses ascendants, descendants…sera puni avec une peine de prison de trois mois à trois ans… »

D’autre part, il est important de mentionner qu’un Protocole d’action dans les cas d’enfants en danger, a été mis en place par le Ministère de la Santé, du Bien-être social et du Travail, et est en vigueur en Andorre depuis le 10 juin 2004. Ce protocole a pour finalité la protection de l’enfant face à n’importe quelle situation de danger, l’établissement des circuits d’intervention, de la coordination des professionnels et des niveaux d’intervention en fonction de la gravité de la situation détectée. Ce protocole a été élaboré avec les différents agents sociaux afin de permettre une intervention souple et efficace qui garantisse l’intérêt supérieur de l’enfant et évite la victimisation secondaire de celui-ci. Les objectifs de ce protocole sont :

- Protéger l’enfant devant les situations de danger ;
- Garantir la coordination entre les différentes institutions ;
- Alléger l’impact occasionné à l’enfant lorsque l’agression a eu lieu en effectuant un suivi correct de l’enfant et de sa famille.

Ce protocole définit les principes généraux d’action et d’intervention dans les deux cas suivants :

- Incertitude ou soupçon de mauvais traitements ;
- Certitude ou évidence de mauvais traitements ;

Dans les deux cas précédents, trois niveaux d'intervention ont été mis en place :

- Niveau 1 : Réponse urgente (L'intervention doit être immédiate au moment du signalement) ;
- Niveau 2 : Réponse préférentielle (L'intervention doit avoir lieu au maximum 48 h après avoir reçu le signalement) ;
- Niveau 3 : Réponse ajournée (C'est les cas où les intervenants ont l'information suffisante pour évaluer qu'il n'y a pas de risque immédiat pour la santé et la sécurité de l'enfant et que cette situation peut se maintenir sans prévision de changement, les services sociaux initient la phase d'intervention/évaluation).

Les niveaux 1 et 2 sont directement pris en charge soit par la police (brigade des mineurs) soit par la justice. Il est cependant conseillé de faire intervenir directement la police puisque son intervention est plus rapide.

Le niveau 3 est pris en charge par les services sociaux qui réalisent une évaluation de la situation, un suivi et dans les cas nécessaires formulent des propositions de mesures de protection à la justice.

Le Protocole permet à la population civile de prendre conscience des mauvais traitements infligés aux enfants d'Andorre et qu'il est important que tous les membres de la société participent à la prévention et à la détection des cas de maltraitance. Ce document garantit l'anonymat de la personne qui dénonce un cas de mauvais traitements aux enfants et émet des recommandations pour écouter les enfants, en particulier ceux qui sont victimes d'abus sexuels sans pénétration où les déclarations de l'enfant sont souvent confrontées à celles de l'adulte.

De plus, les châtiments corporels ou les humiliations délibérées contre des enfants sont interdits dans l'environnement familial, dans toute institution privée ou publique éducative, pénale ou de garde. Il n'existe aucune restriction quant à la dénonciation de faits délictueux commis sur des enfants. Toute personne peut s'adresser au service de police, au Ministère Public ou aux autorités judiciaires. Ces différentes institutions ont l'obligation de recevoir toutes les dénonciations, écrites ou verbales. En fait, n'importe quel mineur, sans limite d'âge, peut s'adresser à la Police ou directement à la justice pour dénoncer un délit auprès des autorités, ce qui implique immédiatement le début d'une actuation judiciaire. Dans la pratique, les mineurs doivent s'adresser à la justice (au juge de garde qui est disponible 24 heures sur 24, 365 jours par an) pour dénoncer les faits, souvent accompagnés d'adultes.

D'un point de vue pénal, le nouveau Code Pénal à cet égard est totalement clair et interdit toutes les formes de violence physique ou psychologique contre les personnes en général y compris la maltraitance et les actes entraînant des lésions corporelles.

En ce qui concerne l'interdiction des châtiments corporels dans les institutions pénitentiaires ou dans d'autres institutions pénitentiaires, il faut noter que jusqu'à l'approbation de la Loi pénitentiaire organique 4/2007 du 22 mars 2007, la loi relative à l'organisation du système pénitentiaire était insuffisante d'après certains organismes internationaux. C'est pour cette raison que l'Andorre a décidé d'approuver la Loi 4/2007, qui établit le principe général du respect des droits constitutionnels des détenus dans tout ce qui n'est pas affecté par la peine et par les propres conditions inhérentes à la détention et qui établit la fonction rééducative et l'insertion sociale prévues par le système pénitentiaire.

Le régime de détention comporte la restriction d'un des droits basiques de la personne, qui est celui de sa liberté, ce qui affecte de nombreux droits reconnus par la Constitution et par les conventions internationales relatives aux droits de l'homme. Dans cette perspective, la Loi 4/2007 considère d'une manière spéciale l'interdiction d'appliquer des sanctions ou des traitements cruels, inhumains ou dégradants, le respect de la dignité humaine, la non-discrimination, le droit à la sécurité personnelle ou même le droit à la vie privée qui doit être également préservé, sous certaines limites, à l'intérieur des prisons.

Un autre aspect relatif à la détention affectant directement les droits des détenus est le système disciplinaire. Bien que la détention comporte l'existence d'une relation spéciale de subjection des détenus à l'égard de l'Administration, il est important de noter que les mesures disciplinaires sont limitées et doivent être réglementées afin de préserver le principe constitutionnel de légalité en matière de sanctions.
Enfin, la Loi 4/2007 prévoit le contenu et la finalité de la peine, l'exercice des droits de l'individu du point de vue civil, social, économique ou culturel.
Parmi les articles les plus importants de cette Loi, il est important de spécifier que l'article 2 garantit la personnalité et la dignité des détenus, la liberté idéologique et religieuse des prisonniers, les droits et les libertés fondamentaux, les autres droits et intérêts juridiques des détenus qui ne sont pas affectées par la condamnation. L'article 4 établit le principe de non-discrimination et l'article 5 prévoit l'obligation de l'Administration de garantir la vie, l'intégrité personnelle et la santé des détenus. L'article 6 stipule que les détenus ne peuvent pas faire l'objet de tortures, être soumis à des mauvais traitements ou à des vexations verbales et physiques, à des traitements dégradants, ni à une rigueur inutile ou disproportionnée dans l'application des normes qui régulent le régime pénitentiaire.
La Loi respecte complètement les standards européens de protection et du respect des droits de l'homme.

RESC 17§1 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 17§1 of the Charter on the grounds that:

- *corporal punishment of children is not explicitly prohibited in the home;*
- *young offenders may be held in pre-trial detention for up to 12 months.*

First ground of non-conformity

377. The representative of Armenia informed the Committee that, in accordance with Article 9 of the Law on the Protection of the Rights of the Child, each child had a right to protection against any type of violence, and any person including the child's legal representative were forbidden to exercise any violence against the child or any punishment humiliating the child's dignity. She reported that her Government had believed that this provision covered all types of violence, including corporal punishment, but since a non-conformity had been found because corporal punishment was not explicitly forbidden in the home, all express prohibition of corporal punishment had been included in the new draft Law on Domestic Violence, which was currently under discussion with the stakeholders. She also reported that a seminar, to which members of the ECSR had been invited, would address this issue in November 2012.

378. The Committee took note of the positive development, and encouraged the Government of Armenia to bring its situation into conformity with the European Social Charter.

Second ground of non-conformity

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

Article 89 of the Criminal Code of RA specifies that imprisonment shall be imposed on minors:
(1) for a maximum term of one year for a crime of minor gravity, and for a maximum term of three years for a crime of medium gravity;
(2) for a maximum term of seven years for a grave or particularly grave criminal offence committed before attaining the age of sixteen;
(3) for a maximum term of ten years for a grave or particularly grave criminal offence committed at the age of sixteen up to attaining the age of eighteen.

And on the basis of Article 86 of the Criminal Code of RA life imprisonment as a type of punishment cannot be imposed on a person who has committed a crime before attaining the age of eighteen.
Hence, imprisonment exceeding period of ten years cannot be imposed on a person who has committed a crime before attaining the age of eighteen. It should also be mentioned that in the draft of the new Criminal Procedure Code of RA (submitted to the Government of RA for discussion) new guarantees for imprisonment of minors during legal proceedings are specified. Particularly, Article 456, part 2 of the draft stipulates that pre-trial detention as a type of restraint can be imposed on a minor defendant as an extreme measure and for the minimal period only when the person is charged with grave or particularly grave crime.
As far as the maximum period of pre-trial detention imposed on minors is concerned, the observation of the Committee will be properly taken into consideration during finalization of the draft.

RESC 17§1 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 17§1 of the Revised Charter on the following grounds:

- *corporal punishment is not explicitly prohibited in the home;*
- *minors can be tried in adult courts and detained in adult prisons.*

First ground of non-conformity

380. The representative of Belgium said that there had been no recent changes in the situation described in the report and informed the Committee that the bill referred to had not obtained the required majority in view of the other provisions in force elsewhere.

The representative of Belgium said that his Government considered that, although it was true that the Criminal Code did not include a specific offence of corporal punishment, a more general offence made it possible to take a holistic approach transcending legal channels and gaining a better understanding of the facts in each case. Nonetheless, the Minister of Justice had sent a circular to all public prosecutor's departments in response to the decision on Collective Complaint No. 21/2003, World Organisation against Torture (OMCT) v. Belgium, reminding them that corporal punishment could, in certain circumstances, result in proceedings for assault and battery or degrading treatment under the Criminal Code.

The representative of Belgium explained that awareness-raising campaigns to protect children from violence were organised by the Belgian Communities to encourage victims to seek help. Preventive action (by the police, associations, doctors, schools, youth protection departments and other bodies) was widespread and brought information to the attention of the authorities as well as alerting the police so that it could take any emergency measures that were required. The Belgian judiciary and police were trained to respond appropriately when faced with any act of violence, particularly domestic violence. The system was backed up by a broad range of awareness-raising bodies, institutions, campaigns and measures, victim support services, training courses, family conflict resolution services and advice and assistance centres.

The representative of Belgium informed the Committee that Belgium had ratified the United Nations Convention on the Rights of the Child and had just signed the Council of Europe Convention on violence against women and domestic violence. Belgium had a legal framework for support and assistance to families which made it possible to assert that the right of children to dignity and physical integrity was afforded large-scale protection.

381. Reacting to the Chair's observation that the bill to make corporal punishment a specific offence had not been passed, the representative of Poland proposed that the Belgian Government's efforts should be supported and emphasised the need to establish a specific offence.

382. In reply to a question from the representative of Iceland, the Secretariat said that the express prohibition of corporal punishment in the home was not necessarily required at criminal level but there was no reason not to incorporate it into civil or family law. The aim was not to make parents into criminals but for there to be an express, clear and concise prohibition.

383. The representative of Turkey said that the ECSR wanted a prohibition combined with penalties.

384. The Secretariat said that under Swedish legislation for example, there was an express prohibition but no specific penalties.

385. The representative of Poland, pointing out that the ECSR did not seem to be satisfied by criminal provisions alone because they targeted only the most serious cases, emphasised that it also wished a prohibition to be included in civil or family legislation, combined with measures such as mediation.

386. The representative of Belgium expressed appreciation for the clarifications that had been made and highlighted the particular role of Belgium's commissioners for children, who were in a good position to receive complaints, kept up one-to-one contacts with families and could help to initiate legal proceedings.

387. In reply to a question from the representative of Greece, the Chair said that there had been positive developments (the circular, the rejected bill, information campaigns and more wide-ranging prevention measures for serious cases) but no new legislation.

388. In reply to a question from the ETUC representative, the representative of Belgium said that the bill that had been discussed had related mainly to regulations on domestic violence, which had included a ban on corporal punishment.

389. The Committee took note of the positive developments and called on the Government of Belgium to prohibit corporal punishment of children in the home expressly so as to bring its legislation in conformity with the European Social Charter.

Second ground of non-conformity

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

> Les mineurs ne sont pas détenus dans des prisons pour adultes avec des adultes. En vertu de l'article 606 du Code d'Instruction Criminelle, ils sont dans des centres spécifiques pour « mineurs » déssaisis. Ces centres (Saint-Hubert et Tongeren) accueillent des détenus qui ont comme point commun d'avoir été déssaisis. Il y a des mineurs de 16 et 17 ans mais aussi des majeurs dont le seul titre de détention est la condamnation faisant suite à leur déssaisissement. S'ils devaient être condamnés pour des faits commis étant majeurs, ces détenus seraient, alors, transférés dans une prison. Eu égard au petit nombre de détenus (ces deux centres accueillent ensemble 40/45 dessaisis), on y retrouve des prévenus ainsi que des condamnés.
>
> Le « déssaisissement » est une procédure d'exception. Dans des cas exceptionnels, lorsque des mineurs de 16 ans et plus ont commis un fait grave ou ont déjà fait l'objet de mesures, ils peuvent être renvoyés vers une autre juridiction par le juge de la jeunesse lorsqu'il estime qu'une mesure de protection du jeune mineur n'est pas ou plus adéquate. Le jeune sera alors jugé soit par une chambre spéciale du tribunal de la jeunesse, composée de deux juges de la jeunesse et d'un juge correctionnel, soit par une cour d'assises qui appliqueront le droit pénal pour adultes (article 57bis de la loi du 8 avril 1965 sur la protection de la jeunesse). Le recours

à la procédure de déssaisissement se fait, néanmoins, dans le respect de conditions très strictes (procédure d'exception) et le mineur jouit de garanties procédurales.

RESC 17§1 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment is not prohibited in the home, neither in schools nor in institutions.

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

Status of the child

FEDERATION OF BOSNIA AND HERZEGOVINA (FBIH)

Article 92 of the FBiH Family Law (FBiH Official Gazette 35/05, 41/05) provides that a child has the right to know that he/she was adopted and that the adoptive parents must inform the adopted child about it until he/she is seven or immediately after the adoption, if an older child is adopted. In addition, the Law provides that an adult adopted child shall be allowed to review the adoption file, while the guardianship authority shall allow a minor adopted child to review the adoption file if it determines it is in his/her interest.

The Family Law of FBiH does not contain any provisions that restrict an adult adopted child's access to the adoption file.

The report has already stated that the Family Law of FBiH does not contain provisions that treat differently legitimate and illegitimate children in any given issue, and so is the case when it comes to maintenance of a minor child. Thus, the Law has several provisions determining that parents are obliged to support their minor children and that in fulfilling this obligation they must use all their abilities and capabilities.

The Federation applies the old Law of Inheritance ("Official Gazette of SR BiH" 7/80, 15/80) which provides that illegitimate kinship is equalised with legitimate kinship in terms of inheritance and adoptive kinship with blood kinship. In the case of full adoption, inheritance rights of the adoptee and his descendants are severed from his relatives by blood (Article 5).

The Federation is preparing a new law on inheritance.

REPUBLIKA SRPSKA (RS)

The current RS Family Law does not specifically provide for the child's right to know his/her origin, so the cases when it can be restricted are not provided for.

Article 8 of the RS Family Law provides that the rights and duties of parents and other relatives of children and the rights and duties of children towards their parents and relatives are equal, regardless of whether the children were born within marriage or outside marriage.

Article 237 of the RS Family Law provides that the stepfather and stepmother shall support their minor stepchildren, if they do not have relatives who are obliged to support them under provisions of this Law. Stepfather and stepmother's obligation to support their minor stepchildren remains even after the death of the child's parent, if at the time of his/her death a family union between the stepfather or stepmother and stepchild existed.

Article 4 of the RS Inheritance Law (Republika Srpska 1/09) provides that illegitimate kinship is equalised with legitimate kinship in terms of inheritance and adoptive kinship with blood kinship. In the case of full adoption, inheritance rights of the adoptee and his descendants are severed from his relatives by blood.

BRČKO DISTRIKT (BD)

Chapter IV of the BD Family Law governs the matter of adoption.

Article 76 of the BD Family Law provides that: "Adoption is a special form of family-legal

protection of children without parents or without parental care, which establishes parental relationship, i.e. kinship. Adoption may be established as incomplete and complete".
Article 77 provides that a child has the right to know that he/she was adopted and Article 94 provides that in pronouncing an adoption the Guardianship authority states the following: personal name of the adopted child, date and place of birth, citizenship of the adoptee, the personal name of one parent, national identification number and nationality of adoptive parents, the type of adoption and the new name of the adoptee.
Adoption may be established only if it is in the interest of the adoptee.
Article 96 of the Law provides that, with complete adoption, unbreakable kinship, the same as blood kinship is established between the adoptive parents and their relatives on the one hand and the adoptee and his descendants on the other hand. The adoptive parents are registered in the birth register as parents.
The same article provides that incomplete adoption creates rights and obligations under the law that exist between parents and children between the adoptive parents, on the one hand, and the adoptee and his descendants on the other hand. Incomplete adoption does not affect rights and duties of the adoptee toward his parents and other relatives.
Article 102 of the Family Law provides that in incomplete adoption the adoptive parent may limit or exclude the adoptee from the right of inheritance, under the conditions provided for in the law on inheritance. In BD, there is no law on inheritance and the old Law of Inheritance ("Official Gazette of SR BiH" 7/80, 15/80) applies.
Cohabitation in terms of the Family Law (Article 5, paragraph 1) is considered to be a union of a man and woman who are not married to or a common-law partner with other party, which lasts at least three years if they do not have children or less if a child is born.
Bearing in mind that the Family Law of BD considers cohabitation to be equal with marriage as regards rights to mutual maintenance and other property issues, a conclusion that the position of children born within marriage and outside marriage are fully equal (Article 5, paragraph 2) is reached.

Protection of children against ill treatment and abuse

BOSNIA AND HERZEGOVINA (BiH)
Article 34, paragraph 2) of the Framework Law on Primary and Secondary Education of Bosnia and Herzegovina defines the role and functions of school and bans corporal punishment of students, providing the following „School implements its role and functions in a motivating environment for acquiring knowledge; respectful and supportive towards the individuality of every student, as well as towards his or her cultural and national identity, language and religion; safe and free of any form of intimidation and abuse, **physical punishment**, insults, humiliation and degradation and damage to health including damage caused by smoking, or by the use of any other intoxicating or illegal substances".

FEDERATION OF BOSNIA AND HERZEGOVINA (FBIH)
It has already been discussed above that in the reform activities in the field of social welfare, in the context of shared responsibilities and activities of the Federation and the cantons in the field of social welfare, the Federation Ministry of Labour and Social Policy, together with line cantonal ministries, plans to draft a new law on social care and protection of families with children. In preparing the new legislation, the provisions of the European Social Charter and the conclusions of the Committee, relating to prohibition of physical punishment of children in social care establishments and alternative forms of care for children without parental care, will be taken into account.

BRČKO DISTRIKT (BD)
Article 110 of the BD Family Law (BD Official Gazette 23/07) implies that a child is entitled to

protection from all forms of violence, abuse, a lack of care and neglect in the family.
Guardianship authorities, police, prosecutor's offices and courts are in charge of protection of personal rights and interests of the child, taking measures and advisory work, including protection from domestic violence and taking actions.
Term „an abused person“ is recognized in the Law on Social Welfare of BD where Article 16 defines that abused children are minors who suffer physical or mental pain or injury, which caused damage to their health, physical and psychological integrity of persons or prevent normal development of the child.
Abused children are beneficiaries of social welfare scheme, too.

Neglect or abuse of a child or minor – Article 21 of the BD Criminal Code (consolidated text) provides that:
1. A parent, adoptive parent, guardian or other person who seriously disregards his duties of taking care or raising a child or a juvenile shall be sentenced to prison from three months to three years;
2. A parent, adoptive parent, guardian or other person who maltreats the child or the juvenile, forces him to excessive work or work inadequate for his age, or forces the juvenile to beg or, out of self-interest persuades him to perform other actions harmful to his development, shall be sentenced as referred to in paragraph 1 of this Article;
3. If the offence referred to in paragraphs 1 and 2 of this Article resulted in a serious damage of health of the juvenile, or if the child or juvenile indulged in begging, prostitution or other types of asocial behaviour or delinquency due to offences referred to in paragraphs 1 or 2 of this Article, the perpetrator shall be sentenced to prison from three months to five years.

Article 218 of the BD Criminal Code defines:
1. A person who endangers tranquillity, physical or mental health of a member of his family by applying violence, impudent or remorseless behaviour shall be fined or sentenced to prison to up to one year.
2. A person who commits the offence referred to in Paragraph 1 of this Article against a family member with whom he lives in a household shall be fined or sentenced to prison to up to three years.
3. If the person who committed the offence referred to in Paragraphs 1 and 2 of this Article used weapons, dangerous tools or other objects that can cause serious bodily injuries or health impairments, he shall be sentenced to prison from three months to three years;
4. If the family member suffered from serious bodily injuries or serious health impairments as a result of the offence referred to in Paragraphs 1 through 3 of this Article, or if the offence referred to in Paragraphs 1 through 3 of this Article was committed against a child or a juvenile, the perpetrator shall be sentenced to prison from one to five years;
5. If the offence referred to in Paragraphs 1 through 4 of this Article caused death of the family member, the perpetrator shall be sentenced to prison from two to fifteen years;
6. A person who causes death of the family member whom he had previously abused shall be sentenced to minimum ten years or long-term imprisonment.

Children in public care

FEDERATION OF BOSNIA AND HERZEGOVINA (FBIH)
With a view to developing the social welfare system that will have the capacity to respond optimally to the need of child to live in his/her biological family, as well as to the needs of children already separated from their parents to get the protection which will be in the best interests of each child individually, a Policy Document on the protection of children without parental care and families at risk of being separated in Bosnia and Herzegovina 2006-2016 was drafted and subsequently adopted by the FBiH Government and in both Houses of the

FBiH Parliament in July 2008. The adoption of this document launched a common policy on children without parental care and families at risk of separation in the Federation in all aspects of protection of children's human rights, as set forth in the Convention on the Rights of the Child.

The Federation committed itself in the document to carrying out deinstitutionalization and transformation of existing institutions for the care of children without parental care, which includes the provision of various services that will provide adequate support to families and children during the process of transformation of institutions.

An Action Plan for the period 2013-2016 was designed within this document, but it has not been adopted by the Federation Government yet. This Action Plan provides guidelines for the harmonization of legislation relating to the care of children without parental care and families at risk of separation with European standards.

The significance of this Action Plan is in the establishment of plans and programs, both at entity and cantonal levels and at local levels, with the aim of improving and implementing activities to successfully protect children without parental care and children at risk of separation and ensure decent conditions for life and optimal development of each child in a family environment.

In part related to the field of institutional childcare, the Action Plan provides for a Book of Rules on general, technical and professional requirements for the establishment and operation of social care institutions including the institutions for children without parental care, with the aim of converting the existing homes housing more than 40 children into homes to house 40 children. In the second phase the reduction should be made continued so that the capacity would be up to 12 children.

It is also necessary to amend the Law on Fundamentals of Social Welfare, which will define the possibility of opening new small family homes housing up to 12 children, whose services will be standardized. The amendments to the Law would provide for the placement of children without parental care under five years in homes only in exceptional situations, for a maximum period of 60 days.

Measures to strengthen the capacity of centres for social work in order to ensure adequate access to social assistance programs for children and their families are taken mainly in projects.

The "Support for Social Security Networks and Employment" Project is implemented by the Federation Ministry of Labour and Social Policy, i.e. PIU SESER and WB, which provide assistance to centres for social work in the Federation in order to renovate 40 centres for social work based on findings and proposals for the renovation made by a chosen consultant.

The "Strengthening the Social Care System and Inclusion of Children in BiH" Project (SPIS) is implemented for capacity building of the social care system and inclusion of children and families in BiH.

Since autumn 2011 the SPIS program has been at the third stage of implementation and will be finalized with IPA 2010 funds. The overall objective of this stage is to improve social care systems at all levels of government, strengthening its programmatic framework and social care capacities, inclusion of children and institutional mechanisms for coordination and communication between providers of social services and authorities responsible for decision making at the local level, with a special emphasis on the needs and human rights-based approach. This will help to train professional employees in the centres for social work.

The SPIS project is implemented by the Ministry of Civil Affairs, the Ministry of Human Rights and Refugees, the Federation Ministry of Labour and Social Policy, the RS Ministry of Health and Social Welfare, the Government of Brcko District, the Directorate for Economic Planning and NGOs. Implementing this project, UNICEF will build on its experience of general training in human rights and specific technical training in the social sector.

The Committee wishes to be kept informed about the development of foster care in the Federation of Bosnia and Herzegovina, how well it is organized and the numbers of children placed in foster care as opposed to institutions.

FEDERATION OF BOSNIA AND HERZEGOVINA (FBiH)

Pursuant to Article 31 of the Law on Fundamentals of Social Welfare, Protection of Civilian War Victims and Families with Children, placement in another family can be provided to the children and adult persons who are in need of permanent assistance and support in order to provide for their sustenance, as they are incapable of meeting them in their own families of in some other way:

- children without parental care, educationally neglected children, educationally uncared children, children with problems in development, caused by the family situation, prior to return to their own families and before the completion of their full-time education, for the maximum period of 12 months following the completion of their full-time education;
- disabled persons, elderly persons and persons with socially negative behaviour who are incapable of taking care of themselves, and due to the housing or family situation may not have the protection ensured in some other manner;
- woman during pregnancy, during or after giving birth and single mother with child younger than 1 year, and in case that she does not have means to support herself or who needs temporary shelter due to unresolved housing question or disorderly family relations.

The centre for social work decides on placement into the third family's care and on termination of such placement of individuals who reside in its territory. The centre for social work which has decided on placement of a person into the third family's care provides assistance to this family and maintains contact with the person placed into the care through regular visits (Article 33 of the Law).

The member of the family in which the person is placed, who shall be in charge of caring for that person (hereinafter: foster parent) has to be sound in body and mind and have housing space and other conditions warranted for protection, care, food, studying and satisfying other needs and interests of that person (Article 34 of the Law).

A person cannot be placed in a family (Article 35 of the Law): in which one of the spouses has been deprived of legal capacity or it has been diminished, in which one of the spouses is deprived of the parental right, in which family relations are unstable, in which some of the members are persons with socially negative behaviour, in which due to the illness of a family member the health of the placed person would be endangered.

To place a child in another family the consent of the parents, that is adoptive parents or custodians, and if the person is older than 15, his/her consent shall be warranted as well. The consent is not warranted if the parents are deprived of the parental right (Article 36 of the Law).

A family in which the child shall be placed may not undertake, without consent of parents, adoptive parents or custodians, significant actions in terms of the child's future, and especially it may not give the child to someone's care, terminate his/her education, change the type of school, decide on vocation choice and conclude an employment contract in terms of the labour regulations (Article 37 of the Law).

The foster parent has the right to an allowance. The value of allowance is determined by the cantonal legislation. Allowance is not considered as salary, nor is it other type of income that is liable to taxation (Article 38 of the Law).

On the basis of the decision on placement in another family, the Centre or the Ministry from one part and nursing parent from the other shall conclude a written contract on placement. The contract shall regulate the mutual relations between the Centre and the nursing parent, and specifically: the value and manner of payment of the allowance for accommodation of the persons, the person/institution under the obligation of allowance payment, conditions and period for contract cancellation, and other significant issues as well (Article 39 of the Law).

The cost of placement into the third family's care bears the person who is place into the care of the third family, parent, adopted parent, custodian, or relative who is legally obliged to sustain that person, or other legal of physical persons who took over the responsibility to settle the costs, in accordance with the cantonal legislation (Article 40 of the Law).
Placement in a social care institution may be obtained by children and adults in the need of permanent protection and support to satisfy their needs of life, and they may not obtain them in their own or some other family or though home care and assistance at home (Article 41 of the Law).
The Centre shall decide on placement in the institution based upon the opinion of the Centre's Expert team, enforcing court decision, custodian body or based upon findings and opinion of the relevant medical institution that is findings and opinion of the expert medical commission. The centre for social work that placed a person in to the institution is responsible for following up his/her treatment in that institution for the sake of care, protection, medical treatment, and physical and mental health of that person (Article 42 of the Law).
The institution is obliged to receive the person referred by the Centre. Exceptionally of the provision from par. 2 of this Article the institution may deny the admission of the person in the instance when its capacity is full and in the instance when, considering its field of work, it is not capable of providing adequate service to the beneficiary (Article 43 of the Law).
If further stay of the person placed in the Institution has become impossible due to some changes in his/her characteristics or due to non-existence of the conditions for appropriate treatment, the Institution shall be obliged to, minimum two months prior to the persons release, notifies the Centre which issued the decision on his/her placement, for the purpose of the placement in another institution of for the purpose of applying another form of social care (Article 44 of the Law).
The cost of the services provided by the Institution established in the territory of the Canton shall be set by the founder. The expenditures of placement in the institution shall be paid by the placed person, a parent, adoptive parent, custodian or relative who is, pursuant to the Law, obliged to support that person or physical or legal person who assumed contractual obligation to settle the costs. The contract regulates the mutual relations between the centre for social work and the institution, conditions and deadline for rescinding the contract, value and manner of paying the allowance, the entity responsible for paying the placement allowance, and other issues (Article 45 of the Law).
The collected data, although incomplete, show that the Federation still has a large number of children without parental care in residential children's homes housing children without parental care. In this respect there is a need to take action to develop alternative forms of care, primarily placement in foster families.
"The 2006-2016 BiH Policy of Protection of Children without Parental Care and Families at Risk of Separation" was developed.
The purpose of the Policy of Protection of Children without Parental Care and Families at Risk of Separation was to design a protection system with capacities to optimally meet the need of children to live in their biological family, as well as the needs of children already separated from their parents to get such protection, which will meet the requirement of the best interests of each individual child. This system will favour family care for children without parental care, the transformation of large institutions into small units, where the existing capacities and resources will be transformed into a series of services, primarily aimed at activities to prevent separation of children from their parents.
In accordance with "The 2006-2016 FBiH Policy of Protection of Children without Parental Care and Families at Risk of Separation", in 2011, Middle Bosnia Canton launched a campaign to promote placement in another family / foster family, which was implemented by "Hope and Homes for Children of BiH" NGO (HHC) in cooperation with the Ministry of Health and Social Policy of Middle Bosnia Canton. The campaign plans to distribute promotional materials, broadcast video and audio clips on local TV and radio stations. The campaign is expected to

contribute to promotion of foster family care and the new foster families in the area of Middle Bosnia Canton facilitating growing up in a family environment for children without parental care who are currently growing up in institutions across the country. In addition, they implemented training programs for professionals of social work centres of the Canton.
In 2011 Canton Sarajevo initiated activities for the implementation of the Foster Care Promotion and Foster Family Training Project, whose goal is to turn attention of the public to the needs of children without parental care and promote foster care as a better form of children care. The project is implemented by "Cantonal Centre for Social Work" plc in collaboration with the Ministry of Labour, Social Policy, Displaced Persons and Refugees of Sarajevo Canton, the "Mjedenica" Institution for Special Upbringing and Education of Children, Hope and Homes for Children of BH, SOS Children's Villages and "Perspective" Association of Bosnia and Herzegovina Foster Families.
It is important to note that, when drafting new legislation in the Federation, the provisions of the European Social Charter respecting the development of placement of children in foster care will be taken into account in accordance with financial capabilities of the FBiH.

The Committee asks what the criteria for the restriction of custody or parental rights are and what is the extent of such restrictions. It also asks what the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances are. It further asks whether the national law provides for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family.

The Family Law of FBiH (FBiH Official Gazette 35/05 and 41/05) stipulates that at the request of one or both parents, or *ex officio*, the guardianship authority may decide on the placement of the child with and giving custody over him to another person or institution, if it is necessary to protect the best interests of a child. Such decision of the guardianship authority shall be adopted without the consent of parents if they are absent, detained or unable to take care of a child while failing to entrust the custody to a person who meets the requirements for guardianship. In case of issuing the decision without the parental consent, the placement, care and upbringing of a child shall last up to two months (Article 147, paragraphs 1, 2, and 3).
If the circumstances which led to entrusting a child to another person or an institution without the consent of parents still exist, the guardianship authority shall immediately issue a decision on appointing a legal guardian to the child (Article 147, paragraph 5 of the Family Law FBiH).
If parents file a request on issuing a decision on the cessation of fostering and surrendering a child, and the guardianship authority establishes that this request is not in the interest of the child, it shall undertake measures to protect the rights and the best interest of the child (Article 147, paragraph 6 of the Family Law FBiH).
If the guardianship authority does not undertake measures to protect the rights and the best interest of the child within 15 days from the day the parents submitted the request, the parents may initiate a lawsuit in order to decide on the further care of the child (Article 147, paragraph 7 of the Family Law FBiH).
While issuing the decisions above, a guardianship authority acts in pursuance of the Law on Administrative Procedure (FBiH Official Gazette 2/98, 48/99) and pursuant to provisions of this Law a party may lodge an appeal against a decision taken by the guardianship authority as the authority of first instance. The Federation Ministry of Labour and Social Policy, as an appellate authority, shall take a decision on the appeal and an administrative dispute may be instituted against this decision before the Cantonal Court.
In addition, the Family Law of FBiH provides for the circumstances in which a parent can be deprived of the right to live with a child, i.e. of parental care.
The court shall deprive a parent of a right to live with a child in a non-contentious proceedings, and entrust the care and upbringing of the child to another person or an institution if the

parents, i.e. the parent with whom the child lives, endangers the interest of the child and seriously neglects the raising, upbringing and education of the child or fails to prevent the other parent or a member of the family to treat the child in such a manner, or the child's upbringing has been seriously disrupted (Article 153, paragraph 1).
The Court shall restore the right of a parent to live with the child when it is in the interest of the child (Article 153, paragraph 4).
The parent who abuses his rights, profoundly neglects his duties, abandons the child, or neglects the child who does not reside with him and by acting so obviously puts at risk the safety, health or morals of the child, or who fails to protect the child from such behaviour of the other parent or another person, shall be deprived of his parental rights by the court in non-contentious proceedings (Article 154, paragraph 1).
The abuse of rights exists especially in cases of physical and mental violence against children, sexual exploitation of children, enticement of a child to socially unacceptable behaviour, and gross violations of child rights in any other way (Article 154, paragraph 2).
Gross neglect of duty exists especially in cases when a parent fails to fulfil the obligation of supporting the child for more than three months, fails to comply with the previously defined measures to protect the rights and interests of the child, fails to prevent child to drink alcohol, use drugs or other intoxicants, and prevents minor below the age of 16 to late night outings (Article 154, paragraph 3).
Parental custody can be revoked also to a parent who was revoked the right to live with the child, if in the course of one year s/he fails to fulfil the obligations and rights that did not cease by imposing this measure and fails to create conditions to restore these rights (Article 154, paragraph 4).
Parental custody can be revoked also to a parent who fails to create conditions for keeping personal relations and direct contacts of child with the second parent, or impedes, or prevents these contacts/relations (Article 154, paragraph 5).
Parental custody will be reinstated by the court decision when reasons for revocation cease to exist (Article 154, paragraph 8).
An appeal may be filed against a court decision revoking the right to a parent to live with an underage child and/or revoking the parental custody (Article 354 in conjunction with Article 337, paragraph 1). The first instance court is required to forward the appeal and the case file without delay to the second instance court (competent cantonal court), which shall issue decision within 15 days of receipt of the appeal.
The FBiH Family Law stipulates that child has the right to live with his/her parents. If not living with both or with one parent, the child has the right to keep regular personal relations and direct contact with a parent with whom s/he does not live. The child has the right to keep personal relations and direct contact with his/her grandparents (Article 124, paragraph 2). Personal relations and direct contact with a parent may be restricted or prohibited only to protect the interest of the child (Article 145, paragraph 3).
Accordingly, a child that was placed with foster family or an institution has the right to keep personal relationship with parents and grandparents, if this is not contrary to his/her interest, and pursuant to the court decision issued in accordance with the provisions of the FBiH Family Law. The social welfare centre shall decide about the placement into an institution and follow up the treatment therein in order to protection the interest of the child (Article 42 of the Law on Social Welfare, Protection of Civilian War Victims and Families with Children).
Provisions of the Law on Administrative Procedure (FBiH Official Gazette 2/98, 48/99) are applied to proceedings for the exercise of entitlements under the Social Welfare Law, including making decisions about placement of a child in an institution or foster family, so a party may lodge an appeal against these decisions in pursuance of the Law. The cantonal ministry in charge of social policy, as an appellate authority, shall take a decision on the appeal.
An administrative dispute may be instituted against the decision of the appellate authority before the competent cantonal court in the Federation of BiH having personal jurisdiction in the

case. The court proceedings are governed by the Law on Administrative Disputes (FBiH Official Gazette 9/05). The court proceedings are instituted after the administrative proceedings were completed solely on the basis of a final decision – that is a decision against which there is no regular legal remedy in the administrative procedure. Further, a party may institute court proceedings (an administrative dispute) when the appellate authority in the administrative procedure fails to issue a decision on an appeal against the decision of the authority of first instance within 30 days and then within further 7 days after a written request. In this case the party institute court proceedings as if his/her appeal had been rejected.

REPUBLIKA SRPSKA (RS)

RS ensures that any limitation or restriction upon the rights of parents to have custody of child is based on the criteria set forth in legislation and does not go beyond the limits necessary to protect the best interests of the child and family rehabilitation.

The Law on Social Welfare of RS provides conditions under which a child is entitled to be placed in an institution or foster family. Namely, the right to foster family placement is enjoyed by children without parental care and children whose development is hindered by family circumstances until the completion of training for independent life, return to their own family or placement with adoptive parents or another family, until the completion of formal education, i.e. training for independent life and work; children with moderate, severe and profound mental retardation, with multiple developmental disabilities, diagnosed with autism and children with physical developmental disabilities if the conditions do not allow him/her to remain in his/her family, while there is a need for this form of care and as long as the reasons for placement exist for neglected children (Article 37).

Also, the RS Family Law prescribes requirements under which the guardianship authority may revoke custody and entrust a child to other parent, another person or a relevant institution. Namely, this measure of the guardianship may apply when no judicial decision on entrusting the child was issued, if parents or if one parent with whom the child lives, abuses or neglects child, fails to bring the child up or the child shows signs of lack of upbringing (Article 97 paragraph 1). If parents, adoptive parent or guardian are unable to implement the measure of intensified supervision of a child (ordered by the guardianship authority), the guardianship authority may decide to entrust a minor to foster family that has the ability and voluntarily accepts to conduct supervision (Article 101).

When selecting the appropriate measure of custody the guardianship authority is obliged to take into account the child's age, his/her psycho-physical development, psychological characteristics, preferences and habits, previous education and training, social circumstances of the family in which s/he lived, and other relevant circumstances. When selecting the appropriate measures, the guardianship authority is obliged to respect the principle of least intrusive (Article 103)

The validity of adoption depends on the consent given by both, the adoptive parents and biological parents and/or guardian before the competent guardianship authority (Article 145, paragraph 1). The consent of the adoptee to adoption is required for adoption of a minor over 10 years of age (Article 145, paragraph 2). The adoption shall be in the interest of the adoptee (Article 146). If there are particularly valid reasons the adoptive parent may be a foreign national. An adoption by foreign nationals cannot be completed without an approval issued by the Ministry of Health and Social Welfare (Article 147).

The adoption can be simple and full (Article 149). The simple adoption requires consent of both parents if adoptee has parents. The consent is not required if parents were revoked parental right, if parents were revoked legal capacity, if parents' residence is unknown for at least one year and if they fail to care for the child in that period (Article 152). Only a child up to 5 years old which has no living parents, or whose parents are unknown, or who have abandoned the child and their whereabouts are unknown for more than one year, can be fully adopted, or a

child whose parents consented before the competent guardianship authority to full adoption (Article 157).
Persons who are entitled to the placement in an institution can be placed in a foster family (Article 38 of the Law on Social Welfare). The placement agreement is concluded between a social welfare centre and a member of a family who thus becomes a foster parent. A foster parent is entitled to allowance for supporting the child and to reward payment, both payable from funds earmarked for social welfare. The Ministry of Health and Social Welfare establishes criteria for determining the amount of allowance and payment (Article 40, paragraph 1, 2, 3 and 4).
The Law on Social Welfare stipulates that the Law on Administrative Procedure shall apply in the process of exercising rights under this Law, and that the appeal against a decision of the first instance authority shall be resolved by the ministry competent for social welfare (Article 71, paragraph 1 and Article 75, paragraph 1). Article 12 of the Law on General Administrative Procedure prescribes that a party shall have the right to appeal against a decision taken in the first instance. Only the law may provide that in certain administrative matters an appeal shall not be allowed, and this only if the protection of rights and rule of law are otherwise ensured.
Moreover, the Family Law stipulates that a person who wants to adopt a child may file an appeal against a decision rejecting the application for adoption with the second instance body competent for social policy issues. The appeal against a decision granting adoption may be filed only in case of error, fraud or coercion and in such cases no deadline shall apply (Article 169, paragraphs 1, 2 and 3).
An administrative dispute may be instituted against the decision of the appellate authority. The right to initiate an administrative dispute shall be vested in a natural or legal person if the final administrative act violated his/her right or direct personal interest based on law (Article 2, paragraph 1 of the Law on Administrative Disputes). Administrative disputes shall be decided by the District Court having territorial jurisdiction over the authority of first instance, being either the head office or an organizational unit, unless otherwise provided by law (Article 5). A party to the proceedings may lodge a request for extraordinary review of a final judgement of the District Court with the Supreme Court of Republika Srpska through the competent court (Article 35, paragraph 1). A citizen whose rights or fundamental freedoms enshrined in the Constitution of Republika Srpska have been violated by a final administrative individual act of an authority shall be entitled to request the protection of the rights or freedoms from the Court, in accordance with this Law, unless a different judicial protection is provided (Article 53). The request shall be decided by the District Court (Article 54, paragraph 1). Protection of freedoms and rights of citizens enshrined in the Constitution shall also be protected if those rights or freedoms are violated by an action of an official in a RS administrative body, local self-government body or responsible person in a public agency or public corporation or any public body, which directly prevents or restricts, contrary to law, a certain individual in exercising such freedom or right (Article 55).
The Book of Rules on detailed conditions regarding space, equipment, necessary professional and other workers as requirements for the establishment of a social care institution provides *inter alia* that in a children's home a sleeping room for children under seven must be of at least 2 square meters per beneficiary and for children over seven years it must be of at least 5 square meters per beneficiary. The size of a living room shall be 2 square meters per beneficiary, the area of personal hygiene facility must be at least 15 square meters per residential group of 15 beneficiaries, a toilet must be provided for every 10 beneficiaries, the size of the room for team and group work is determined depending on the number of beneficiaries and professionals and the kind of work and must be of at least 30 square meters (Article 22).
A sleeping room shall have a maximum of five beds. The beds must be adapted to the age of users and the space between them must be at least 0.65 meters (Article 23).

Provisions of Articles 22-26 are applied to the institutions of social care for neglected children, whereas the facilities of these institutions must be located near facilities for primary education and upbringing, or secondary vocational education and upbringing, if education and training is not carried out within the institution. These institutions must have the following capacities: the Institution for education of children and young people cannot have a capacity of more than 50 children; disciplinary centre for juveniles cannot have capacity of less than two children; reception facility for children and young people cannot have a capacity of more than 20 children; diagnostic and observation Centre for neglected children and adolescents cannot have a capacity of more than 20 children (Article 28).

The capacity of the Institute for Children and Youth with physical or mental disabilities cannot be more than 250 people in one location. The bedrooms for children of 3-7 years can accommodate up to 5 beneficiaries, and dormitory areas must be of at least 3 square meters per user. Each facility must have at least one room as living area of 2 square meters per user. The Institute must have a play room of at least 2 square meters per beneficiary for each group of children aged from three to seven years and a room for learning materials, mattresses etc. of 6 square meters. The personal hygiene facilities must be of at least 25 square meters for a group of 15 beneficiaries. A toilet must be provided for every 6 beneficiaries. A room for storage, washing and disinfection of night vessels, measuring at least 6 square meters, has to be provided for severely mentally retarded beneficiaries (Article 34).

According to the report, the Government develops its policy in relation to measures to be taken to transform the institutional care, develop alternative services, strengthen the capacity of the centres for social work and build a legal framework to protect families and children. The Committee wishes to be informed about the results of such policies.

The RS Government adopted a strategy of improving the social welfare of children without parental care with a plan of action for the period 2009-2014. The Action Plan for the area of foster care and the Action Plan for the area of adoption envisage the following activities: the ratification of international instruments on adoption; establishment of a central registry of adoption and foster care database, creation of unique forms of adoption, introduction of procedures for monitoring the adoption and foster care and regular reporting to the competent institutions; training of professionals in the field of adoption and foster care, training of potential adopters, adoption and foster standardization, promotion of activities in public in order to promote adoption as the most complete social care for children without parental care and public awareness raising about the benefits of being a foster family.

The Ministry of Health and Social Welfare has initiated the process of standardization of social care services. The ultimate goal of standards for social care services is to improve the quality of life of those who depend on these services and to ensure their effectiveness and efficiency. The first five standards that have been piloted relate to social care services that are intended for children (day care centres for children with special needs, institutional housing, early identification of children with special needs, children's village and foster care).

(SPIS) Project – “Enhancing the Social Welfare and Inclusion System for Children in Bosnia and Herzegovina“ – is currently being implemented. The overall objective of the Project is to contribute to development of integrative model of social welfare of children and families with children at all levels. The Project will also contribute to the development of close cooperation between relevant social and financial sectors. The integrated, inter-sector approach to policy development, based on best practices, planning, implementation, monitoring and evaluation, will serve to define and enhance the function, role and strategic goals in the field of education, health, social welfare and other similar sectors which deal with specific forms of the exclusion of children and their families.

In order to provide adequate supervision of the social welfare the Minister has issued a Book of Rules on the Supervision over Professional Work and Providing Professional Assistance to Social Welfare Institutions of RS (RS Official Gazette 67/02).

According to recent figures from the Ministry of Health and Social Welfare, there are 45 Centres for Social Work, whereas 150 foster families are located in the territory of 12 centres.

BRČKO DISTRIKT (BD)

Certain rights to accommodation in institutions or foster family are provided within the social welfare scheme.

The purpose of the placement in a foster family is to enable children to meet their basic needs which cannot be met within their own families or otherwise. Placement into a social care institution shall be performed by sending a beneficiary to an appropriate institution that provides shelter (housing, food, clothes, care and assistance), education, vocational training and health care in accordance with special regulations on occupational, cultural, recreational/rehabilitative activities and services of social work.

The type of accommodation is suggested by the Professional Social Welfare Team on the basis of comprehensive consideration of a beneficiary's needs and the possibilities of his/her family and approved by the Department of Health and Other Services.

Pursuant to Article 57 of the Law on Social Welfare of BD, costs, i.e. part of the costs, of accommodation into an institution that provides social care services or into foster family, shall be borne by the beneficiary, parent, relative who has the obligation to maintain the beneficiary, competent authority, or another organization and persons who undertook to pay for the costs. The beneficiary shall bear costs with all his/her income and salary reduced for the amount needed for his/her personal needs. Housing costs of a beneficiary shall also be borne by parents and relatives responsible for maintenance, except for persons with severe mental disability; persons with severe physical disability; children with autism; and mentally ill persons who have guardians (Article 58, paragraphs 1 and 2).

While performing their activities, social care institutions shall cooperate with beneficiaries, families, citizens, institutions active in the field of health care and education, training and rehabilitation, organizations of the Red Cross and other humanitarian organizations, other institutions and companies, religious communities and foundations.

For the sake of care, protection, treatment of physical or mental health of such a person, the Sub-Department is required to follow his treatment in an institution or foster family.

BD has no public institutions for the accommodation of juvenile inmates. On the basis of their needs the Sub-Department places them in existing public institutions in BiH after the completion of statutory proceedings.

Placement of juveniles in institutions	December 2008	2009	2010	2011
Public institutions outside BD	10	11	11	15

Source: BD of BiH Sub-Department for Social Welfare

Persons who have the right to placement into a social care institution have the right to placement in a foster family, too.

When choosing a family for a beneficiary to be put into, the service conducting the placement shall especially take into account personal characteristics of the beneficiary and family members, housing, other capabilities of the family and beneficiary's needs.

A beneficiary shall not be placed into a family in which a family member is deprived of parental custody or working ability; in which family relations are disturbed; in which a family member has deviant behaviour; in which, due to illness of a family member, the beneficiary's health would be endangered and the purpose of placement lost.

Minors are usually placed in families of their relatives (if any) and other families – foster families, on the basis of decision on placement.

The agreement is made between the Sub-Department and a family member, who thus becomes a foster parent. The foster parent has an obligation to care about the person,

especially about health, education and training for independent life and work. The Sub-Department is required to report on all important issues for beneficiary. The family where the child is placed cannot make, without the consent of parents, adoptive or guardianship authority, any important decisions related to the child and especially cannot give him/her away to another person to take care of him/her, make him/her drop out of school, change school, choose a future occupation or job or conclude an employment contract.
For the sake of care, protection, treatment of physical or mental health of such a person, the Sub-Department is required to monitor his/her treatment in a foster family.
The foster parent has the right to financial support for maintaining the beneficiary and a fee for his/her work that is paid from funds designated for exercising rights in the field of social care.

Foster family	2005	2006	2007	2008	2009
Minors	34	31	29	27	26

Source: BD of BiH Sub-Department for Social Welfare

Article 114 of the BD Family Law determines that restriction and deprivation of parental custody may be ordered solely by the competent authority for the reason that a parent cannot relinquish his/her custody of a child.

Article 133 of the BD Family Law defines protection of rights and best interests of a child and prescribes that the guardianship authority shall undertake, *ex officio*, necessary measures for protection of the rights and best interests of the child on the basis of immediate information and notifications.
1. Notification of a child's rights violation, particularly of violence, abuse, sexual abuse and child neglect, shall be promptly submitted to the guardianship authority by any authority, organization or individual.
2. The court where misdemeanour or criminal proceedings involving a child's rights violation are pending shall notify the guardianship authority thereof and submit a final decision issued in these proceedings.
3. The guardianship authority shall be assisted in taking actions under paragraph 1 above *ex officio* by the Police of Brčko District of BiH.
4. Before taking actions under paragraph 1 above the guardianship authority shall hear the minor child about the circumstances relevant to the decision, if he/she is able to understand what it is all about. The opinion of the minor child shall be respected and appreciated especially in the case of taking the measures separating the child from the parents.
5. The procedure under the preceding paragraph shall be urgent.
6. An appeal against the decision shall not stay the execution.

Article 134 of the BD Family Law – Cautions against shortcomings and provision of assistance:
1. The guardianship authority shall warn parents about their failure to take proper care of the child and help them in the elimination of shortcomings.
2. The guardianship authority shall assist the parents in arranging their social, financial and personal circumstances and relationships, and if best interests of the child require so, it shall refer parents to appropriate counselling.

Article 135 of the BD Family Law – Deprivation of a parent of the right to live with a child:
1. The Court shall, in non-contentious proceedings, deprive parents of their right to live with the child and entrust the care and custody over the child to another person or authority, if the parents or the parent with whom the child lives have violated the interests of the child by grossly neglecting his/her raising, upbringing and education or by failing to prevent the other

parent or a family member to treat the child in the above-mentioned manner, or if the child has had a largely disturbed upbringing.
2. The imposition of the measure under paragraph 1 above shall not stop other parental duties, responsibilities and rights.
3. Deprivation of a parent of the right to live with a child shall be imposed for one year.
4. While this measure in effect, if the court finds that it is in the interest of the child, it shall impose other measures to protect the child or re-impose the same measure.
5. At request of the parent who was deprived of this right or *ex officio* and according to a prior opinion of the guardianship authority, the court shall decide whether to reinstate the right of parents to live with the child.
6. The court shall notify the guardianship authority of the imposition of the measures under paragraph 1 above and the guardianship authority shall appoint a special guardian to the child in order to protect his/her rights and interests for the duration of this measure.
7. An appeal against decision under paragraphs 1 and 5 shall not stay the execution.

Article 136 of the BD Family Law BD - Deprivation of parental custody:
1. A parent who has abused parental rights, or who has grossly neglected parental duties, or who, by leaving the child or failing to provide care to the child who he/she does not live with, obviously puts at risk the safety, health and morals of the child, or who fails to protect the child from such behaviour of the other parent or another person, shall be deprived of parental custody by the court, in non-contentious proceedings.
2. The abuse of rights exists especially in cases of physical and mental violence against children, sexual exploitation of children, enticement of a child to socially unacceptable behaviour, and gross violations of child rights in any other way.
3. Gross neglect of duty exists especially in cases when a parent fails to fulfil the obligation of supporting the child for more than three months, fails to comply with the previously defined measures to protect the rights and interests of the child, fails to prevent child to drink alcohol, use drugs or other intoxicants, and prevents minor below the age of 16 to late night outings.
4. Parental custody can be revoked also to a parent who revoked the right to live with the child, if in the course of one year s/he fails to fulfil the obligations and rights that did not cease by imposing this measure and fails to create conditions to restore these rights.
5. Parental custody can be revoked also to a parent who fails to create conditions for keeping personal relations and direct contacts of child with the second parent, or impedes, or prevents these contacts/relations.
6. In the proceedings of deprivation of one or both parents of parental custody the guardianship authority shall appoint a special guardian to the child. The guardian shall perform the duty even after the measure under paragraph 1 above has been imposed.
7. With the imposition of this measure, rights and responsibilities of the parent to his/her child shall cease to exist, except for the obligation of maintenance.
8. The Court shall reinstate parental custody in the event when the reasons for termination of custody cease to exist.
9. A final decision on deprivation or reinstatement of parental custody shall be communicated to the competent registrar for registration in the Birth Register, the guardianship authority and if the child has a right over real estate, the decision shall be communicated to the competent court land registry office for the records.

Right of Appeal
The rights under social welfare legislation are exercised through the Sub-Department for Social Welfare of BD. At request of a party or his/her legal representative or *ex officio*, the authorized officers of the Sub-Department for Social Welfare of BD institute proceedings for exercising rights according to the Law on Social Welfare of BD.

The proceedings for exercising the rights under social welfare legislation follow provisions of the Law on Administrative Procedure of BD – consolidated text. A party dissatisfied with a decision of the authority of first instance lodges an appeal against the decision with the Appellate Commission of BD within 15 days.

Effective Appeal

Persons dissatisfied with a decision of the authority of second instance may initiate an administrative dispute lodging a complaint with the Basic Court of BD. The procedure before the Court is regulated by the Law on Administrative Disputes of BD.

The court proceedings are instituted after the administrative proceedings were completed solely on the basis of a final decision. Further, a party may institute an administrative dispute when the appellate authority in the administrative procedure fails to issue a decision on an appeal against the decision of the authority of first instance within 30 days and then within further 7 days after a written request. In this case the party is entitled to lodge an appeal with the Appellate Commission of BD as if his/her appeal had been rejected.

Young offenders

The maximum prison sentence and the length of pre-trial detention

Articles 75-106 of the Criminal Code of BiH govern juvenile delinquency and Article 96 governs „juvenile imprisonment" determining that: „(1) the duration of the sentence of juvenile imprisonment may not be shorter than one or longer than ten years, and shall be measured in full years or half-years; (2) In meting out punishment for a senior juvenile for a criminal offence, the court may not impose juvenile imprisonment for a term exceeding that of imprisonment prescribed for that particular criminal offence, but the court shall not be bound by the minimal punishment prescribed for the particular criminal offence". Article 97 regulates the matter of meting out juvenile imprisonment and determines that „In meting out juvenile imprisonment for a senior juvenile, the court shall take into consideration all circumstances that may influence the sentence being longer or shorter (Article 48, *General Principles of Meting out Punishments*), paying special attention to level of mental development of the juvenile and time needed for his correction and occupational training".

The BiH Criminal Procedure Code governs „juvenile procedure" and the matter of ordering for a minor to be kept in custody is regulated in Article 358, which reads: „(1) Exceptionally, the judge for juveniles may order that the minor be placed in custody when the reasons for the custody referred to in Article 132, Paragraph 2, Item a) through c) of this Code exist; (2) Based on the decision on custody issued by the judge for juveniles, the custody may not exceed 30 days. The Panel for juveniles is obligated to review the necessity of the custody every ten (10) days; (3) The Panel for juveniles may extend the custody for two (2) more months if there are legal reasons for the extension; (4) After completion of the preparatory proceeding, the custody may last for six (6) more months at a maximum."

Thus, it follows from the provisions above that maximum prison term may not exceed 10 years, while pre-trial detention may not exceed 30 days.

Minors separated from adults both in pre-trial detention as well as while serving prison sentence

The Law on Execution of Criminal Sanctions, Pre-trial Detention and Other Measures of BiH (BiH Official Gazette, consolidated text, 12/10) governs the execution of criminal sanctions, pre-trial detention and other measures imposed by the Court of BiH and the organization and work of the competent authorities as prescribed by the Law. Article 11 of the Law provides for a duty to provide separate accommodation and determines that separate accommodation shall be provided for each of the following groups of persons: detainees from convicts; males from females; adults from juveniles and this accommodation may be provided either as a separate

Establishment or as a separate unit within an establishment. Further, Article 54, paragraph 2 of the Law determines that minor detainees shall be managed separately of adult detainees.
In BiH a juvenile prison sentence shall be served in a special unit for juveniles in the Establishment or in a special Establishment in the Entity where the prisoner has permanent or temporary residence (Article 190). This allows better and more efficient correction of minors, which in this way are ensured a closer contact with parents and other relatives, or attending or continuing of schooling and other penology treatments that are applied to them.
It is necessary to bear in mind the fact that currently the Federation has no specific institution for juveniles to serve sentence of imprisonment (a special department in Zenica Prison was overcrowded with convicted adult persons due to a lack of prison capacities, which is why juveniles did not have adequate conditions to serve a prison sentence, i.e. the conditions for their separation from adults or other inmates and for preventing contacts with persons convicted of serious crimes). For this reason, and because of the negative impact caused by this legal situation, the Ministry of Justice incorporated in the Law on Execution of Criminal Sanctions, Pre-trial Detention and Other Measures of BiH a special rule that allows that in such situations, on the basis of decision of the Minister of Justice, a juvenile may be sent to serve his sentence in an appropriate institution or in a special department for juveniles in prison in another entity. In this way a full contribution is given to the rule of law and the rule makes it impossible in practice to have such a legal situation that a juvenile cannot be sent to serve a prison sentence due to a lack of prison capacity in the given entity.
Pursuant to Article 191 – Placement of Juveniles in another Establishment or Special Unit:
(1) With respect to a juvenile whom the court with jurisdiction of any entity or of Brčko District of BiH sentenced to a prison sentence, in case of lack of accommodation capacities, implementation of modern rehabilitation measures and treatment, as well as serving juvenile prison sentence in a special unit for juveniles within the Establishment or in another establishment in the entity where a juvenile prisoner has temporary or permanent place of residence, the Minister of Justice may take a decision that such a juvenile shall serve his sentence in an adequate establishment in the other entity in Bosnia and Herzegovina.
(2) The application on the grounds referred to in paragraph (1) of this Article shall be filed by the court that is responsible for referral of such a person to serve his sentence and that is located in the place of his temporary or permanent place of residence through the entity ministry of justice or the Judicial Commission of Brčko District of BiH, which has to give prior approval for the placement of a juvenile in the establishment or a special unit in the establishment from the other entity.
(3) Based on the decision of the Minister of Justice, the court in the temporary or permanent place of residence shall refer the person sentenced to juvenile prison sentence to an appropriate establishment or to special unit for juveniles in the establishment of the other entity, with a prior approval of the ministry of justice of that entity.
(4) The costs of placement shall be borne by the entity ministry of justice or the Judicial Commission of Brčko District of BiH that gave its written for the placement of such a juvenile to a special unit or the establishment for juveniles of the other entity".

Thus, the valid legislation of BiH provides that a juvenile shall serve a juvenile prison sentence in a special unit for juveniles within the Establishment or in another establishment in the entity where a juvenile prisoner has temporary or permanent place of residence. Further, the law specifically states that persons serving a sentence of juvenile imprisonment must have separate rooms for stay from other inmates, if they are in a special department, and the possibility of application of modern methods of treatment in terms of correction, upbringing, education or vocational training; all this with a view to their successfully returning and integrating into free world and fulfilling duties of law-abiding citizens. Currently, the Federation has no special institutes which would be executing juvenile imprisonment, but a special department in the Zenica High-Security Penitentiary, which also accommodates adults

sentenced to imprisonment due to overcrowding of the existing capacities. This situation has undermined the basic principle of separation of juveniles from adults, which is the reason why the organization of treatment and all other professional and regular activities in the process of correction and resocialization of juveniles, as the primary objective of enforcement of penalties that may be imposed on juveniles, is considered impossible to carry out successfully. In contrast, the RS East Sarajevo middle-security prison has built a special building for the accommodation of juveniles to serve a sentence of juvenile imprisonment, where all statutory requirements have been met when it comes to the treatment process.

For these reasons, in practice, difficulties may arise about the possibility of sending juveniles to serve the sentence from the Federation BiH and there is a possibility of prolonged stay of such persons at liberty while waiting to serve their sentence, which is again contrary to the principles of administration of justice and purpose of punishment, both in general terms and specific deterrence, and just satisfaction for the families of the victims in particular.

Based on the above-mentioned legal standards and on the decision of the Ministry of Justice, the court of domicile or residence of a juvenile sends him/her to serve the sentence in a prison of the other entity. The costs of serving shall be borne by the entity ministry of justice or the Judicial Commission of Brčko District of BiH where the court gave its written order for placement of such a juvenile to a special unit or the establishment for juveniles of the other entity.

These legal standards prevent in practice a problem of the impossibility of accommodation and serving a sentence by juvenile persons convicted and thus compromising the principles of justice, the process of correction and purpose of punishment, the attitude towards the victims and the society as an organized community capable to exert influence and take measures not to do criminal acts and to raise citizens' awareness about equity of punishing perpetrators of criminal acts.

Young offenders' right to education

Article 147 of the Law on Execution of Criminal Sanctions, Pre-trial Detention and Other Measures of BiH provides:

(1) The Establishment shall organize educational classes and vocational training for juvenile prisoners and younger adults who have not completed primary school, so that they may achieve standards of general education that conform with regulations on primary and secondary education.

(2) When considered useful and necessary, the arrangements referred to in Paragraph 1 of this Article shall be made for other prisoners as well.

(3) If more convenient, the Establishment may conclude a special contract on cooperation with a local school in order to organize the instruction referred to in Paragraph 1.

(4) Subject to security considerations, and if, in the treatment program, it has been assessed necessary and useful for the purpose of achieving the objective of the execution of the sentence, prisoners may also become part-time correspondence students or participate in courses organized outside the Establishment.

(5) Prisoners who complete their schooling or acquire qualifications in the Establishment shall receive diplomas. Such diplomas shall not indicate that the general or any other educational qualification has been acquired in the Establishment".

In addition, Chapter VI of the Law regulates „execution of juvenile imprisonment" in Articles 189-197. So, Article 192 provides for „schooling in establishment" and paragraph 1 specifically ordains that: „In the Special Unit or Establishment referred to in Articles 168 of this Law, there shall be primary and secondary school in the Special unit or Establishment, in accordance with the regulations on primary and secondary schools, or there shall be established forms of primary or secondary school in the Special unit or Establishment established in co-operation with appropriate primary or secondary school to provide for the education of such persons". Paragraph 2 further determines that a juvenile prisoner may in exceptional cases and under

supervision of the educator, attend school outside the Establishment in order to complete an educational programme they already started, if the security situation and the treatment programme allow.
Article 196 of the Law determines that a juvenile prisoner who has not reached 23 years of age may exceptionally be pronounced the disciplinary measure of solitary confinement for a period of up to five days and when the juvenile prisoner attends school he/she shall be able to regularly attend school during solitary confinement and to read technical books and do homework.

It follows from the above that in BiH juvenile offenders have the statutory, guaranteed right to education.
Following modern trends and international legal standards in the field of juvenile justice, as early as in January 2010 the RS passed the Law on the Protection and Treatment of Children and Juveniles in the Criminal Procedure (RS Official Gazette 13/10). This law includes provisions on substantive and procedural criminal law, then the organization of the courts for juvenile offenders, execution of criminal sanctions for juvenile offenders, as well as provisions relating to crimes committed against children and minors. The following by-laws were enacted, which was an obligation of the ministry prescribed by the Law:

- Rulebook on the Implementation of Correctional Recommendations,
- Rulebook on the Execution of Correctional Measure of Particular Obligation,
- Rulebooks on Disciplinary Responsibility of Juveniles Serving Custodial Correctional Measures and Juvenile Imprisonment and Training Programs,
- Rulebook on the Application of Police Caution.

Further, the RS Ministry of Justice held the first cycle of training and professional development for officials who work in juvenile justice, which included over 1000 participants.
Answering the question whether juvenile offenders serving sentences have the legal right to education, we are informing you that Article 151, paragraph 1 e) of the Law on the Protection and Treatment of Children and Juveniles in the Criminal Procedure provides that a juvenile serving a custodial measure is entitled to attend school outside the establishment if the establishment does not organize certain type of school or courses and if justified by previous achievements and performance of the juvenile, provided that this does not harm the execution of correctional measure.

Corporal punishment
Chapter III of the Law on Execution of Criminal Sanctions, Pre-trial Detention and Other Measures contains provisions for the execution of detention and imprisonment (Articles 52-108). Article 52 provides that the treatment of detainees and prisoners must be humane and with respect for their human dignity, preserving their physical and mental health, taking into account the maintenance of necessary order and discipline. No one shall be subjected to torture, inhuman or degrading treatment or punishment. The treatment of detainees and prisoners shall be without any prejudice on the basis of their ethnicity, race, colour, gender, sexual orientation, language, religion or faith, political or other beliefs, national or social background, consanguinity, economic or any other status. Thus, this Article requires humane treatment of all detainees and prisoners.
Further, Article 37 of the Law provides that an authorized establishment officer may use coercive measures against a detainee or prisoner only when it is necessary to prevent escape, physical attack on a staff member or other persons, inflicting injuries to someone else, to break the resistance to lawful action by an authorized person, self-inflicting injuries or causing material damage. The use of coercive measures has to be proportionate to the level of danger and the risk presented.
Simply because the Law explicitly requires humane treatment of all prisoners and detainees it makes impossible and prohibits corporal punishment.

It should be noted that the Law on Execution of Criminal Sanctions, Pre-trial Detention and Other Measures of BiH contains a number of provisions ordaining the special treatment of juvenile offenders. E.g.
Article 69 regulates the matter of diet of detainees and prisoners, providing that adult detainees and prisoners shall be provided with food with a calorific value of 12,500 joules per day and 14,500 for juveniles;
Article 193 regulates the matter of sports, providing that juvenile prisoners shall be provided with opportunities for sports;
Article 194, paragraph 1 provides that juvenile prisoners shall have no restriction on their correspondence with their parents and other close relatives;
Article 195 regulates the matter of leave of absence, providing that a juvenile prisoner who behaves well and studies hard may be granted leave by the Governor of the Establishment to visit parents or other close relatives;
Article 197 provides that measures of isolation shall not be applied to juvenile prisoners who have not reached 23 years of age.
Further, Chapter XII of the Law (Articles 219-223) regulates execution of correctional measures whose purpose is to provide to juvenile criminal offenders, to the greatest extent possible, education, correction and normal development through protection, assistance and supervision and, when necessary, to prevent them from committing criminal offences. It also emphasizes that during the execution of correctional measures juveniles should be treated in a manner that is appropriate to their age and personal characteristics, applying the pedagogical, humane and psychological principles; that juveniles should be motivated to actively participate in their own education, changing of their attitudes and bad habits and in the development of a sense of responsibility for their own actions; and that during the execution of educational measures the juveniles shall be provided with primary and secondary education and vocational training, in accordance with their age, capacities and inclinations for certain occupations.
BiH does not explicitly prohibit corporal punishment of juveniles, but in both entities and Brcko District, a number of legislative measures have been taken and a number of laws have been passed with a view to improving the protection of children. Specifically, the BiH CC and the BiH CPC regulate the field of juvenile delinquency and juvenile proceedings, leaving the regulation of the protection of family, marriage and youth to the entity criminal laws. Prohibition of corporal punishment of juveniles during imprisonment/detention certainly exists, not explicit but it is derived from the requirements for human treatment instead (... no one shall be subjected to torture or to inhuman or degrading treatment or punishment ...).

FEDERATION OF BOSNIA AND HERZEGOVINA (FBIH)
We have already discussed above that, in the reforms in the field of social welfare, in the context of shared responsibilities and activities of the Federation and the cantons in the field of social welfare, the Federation Ministry of Labour and Social Policy, together with cantonal appropriate ministries, makes plans to enact a new law on social welfare and protection of families with children. In preparing the new legislation they will take into account provisions of the European Social Charter and conclusions of the Committee, relating to prohibition of corporal punishment of children in social care establishments and in alternative forms of care of children without parental care.

REPUBLIKA SRPSKA (RS)
As to the Committee's conclusion that corporal punishment is not prohibited *inter alia* in schools, the education legislation of RS defines that serious misconduct of employees is considered *inter alia* "violent behaviour toward students, employees and third parties".

BRČKO DISTRIKT (BD)

At the 54th regular meeting held on 10 November 2011 the BD Assembly adopted the Law on the Protection and Treatment of Children and Juveniles in the Criminal Procedure (BD Official Gazette 44/11).
The Law on the Protection and Treatment of Children and Juveniles in the Criminal Procedure in the BD and the Entities contains provisions governing conditions, manner and duration of pre-trial detention of juveniles and the execution of correctional measures and juvenile imprisonment were defines, which are fully in line with European standards (the UN Convention on the Rights of the Child – Articles 37, 39 and 40 respecting juvenile justice; the United Nations Rules on the Protection of Juveniles Deprived of Their Liberty (Havana Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) – these documents complement the previously adopted Beijing Rules).
This law is fully harmonized with the BiH criminal legislation respecting juvenile justice.
BiH does not explicitly prohibit corporal punishment of juveniles, but in both entities and Brcko District, a number of legislative measures have been taken and a number of laws have been passed with a view to improving the protection of children. Specifically, the BiH CC and the BiH CPC regulate the field of juvenile delinquency and juvenile proceedings, leaving the regulation of the protection of family, marriage and youth to the entity criminal laws. Prohibition of corporal punishment of juveniles during imprisonment / detention certainly exists, not explicit but it is derived from the requirements for human treatment instead (... no one shall be subjected to torture or to inhuman or degrading treatment or punishment ...).

RESC 17§1 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment is not explicitly prohibited in schools and in the home.

392. The representative of Estonia informed the Committee that paragraph 124 of the Estonian Family Law Act, which had entered into force in 2010, prohibited physical, mental and emotional abuse and application of other degrading educational measures with respect to a child; paragraph 31 of the Child Protection Act prohibited to humiliate, frighten or punish the child in any way which abused him/her, caused bodily harm or otherwise endangered his/her mental or physical health; paragraph 121 of the Penal Code stated that causing damage to the health of another person, or beating, battery or other physical abuse which caused pain, was punishable by a pecuniary punishment or up to 3 years of imprisonment.

The representative of Estonia reported that current legislation did not verbalize prohibition of corporal punishment, but that it prohibited any kind of humiliating or abusive behaviour, including corporal punishment. A study from 2012 reported that there were few cases of corporal punishment of children in the home. As from 2011, Estonia had taken action to raise awareness among parents and society, through media campaigns and emphasis on parenting support. The Ministry of Social Affairs had provided financial support for non-governmental organizations to provide local parenting skill trainings.

The representative of Estonia reported that, acknowledging a need to change attitudes on corporal punishment in the society, her Government was prepared to change the current legislation. She specified that the Ministry of Social Affairs was currently consulting stakeholders (Ministries, Child Ombudsman, practitioners) in the drafting process of a new Child Protection Act, to be submitted to her Government by the end of 2013, which envisaged the explicit prohibition of corporal punishment in schools and in the home. Moreover, her government had approved the Strategy for Children and Families 2012–2020, which aimed at improving the wellbeing of children and families, inter alia through parenting support, reduction of child neglect and abuse, and tackle of corporal punishment.

The Strategy involved different actions in awareness raising, parenting support and preventive services.

393. In reply to a question from the representative of ETUC, the representative of Estonia confirmed that the new Child Protection Act was the same as the one announced for 2010, and expressed hope that the bill could be passed in 2013.

394. The Committee congratulated the Government of Estonia on the progress made towards an explicit prohibition of corporal punishment. It expressed hope that the planned legislation would be adopted thus bringing the situation into conformity with the European Social Charter.

RESC 17§1 FRANCE

The ECSR concludes that the situation in France is not in conformity with Article 17§1 of the Charter on the grounds that:

- *all forms of corporal punishment of children are not prohibited;*
- *the maximum periods of pre-trial detention of children are too long.*

First ground of non-conformity

395. The representative of France informed the Committee that Bill no. 2244 had indeed been registered by the presidency of the National Assembly on 22 January 2010 and its single article read as follows: “Children have the right to a non-violent upbringing. No child shall be submitted to corporal punishment or any form of physical violence”. Another bill – no. 2971 – which had the more general aim of prohibiting persons holding parental authority or any other person looking after minor children from making use of physical violence, inflicting mental suffering or humiliating children in any other way, had been registered by the presidency of the National Assembly on 18 November 2010.

396. The representative of France said that these bills had been referred to the National Assembly’s committee on cultural affairs and education and had not yet been examined.

397. In reply to a question from the ETUC representative, the representative of France said that the author of the bills had been campaigning hard, that they should re-merge after the change in the majority in the National Assembly and that revitalising bills was a matter of political expediency.

398. The Chair highlighted the lack of any significant progress over the last two years and considered that although the text was explicit, it did not include any penalties, and that procedures would have to be clarified for it to be workable.

399. The ETUC representative said that the question of penalties could be left to the discretion of courts and that it was important to encourage the Government to adopt these bills.

400. The representative of Italy wanted there to be a balance between recommendations and penalties. Noting that this subject was strongly linked to traditions, she considered it difficult to change mentalities and proposed that the Committee should send a statement to all the states alerting them to the importance of looking into the question.

401. The representative of Lithuania stressed the importance of the subject, but considered it problematic to address the issue by sending a statement to all the states as the ECSR published conclusions and the Committee decided on follow-up measures and this should be sufficient. She proposed that the Committee should proceed as it had with Article 4§1 of the Charter, noting the information provided and emphasising the importance of the right in question.

402. The representative of Turkey, pointing out that the ECSR’s case-law called for prohibition, penalties and a restricted degree of discretion for courts, said that the Committee was not authorised to criticise the ECSR’s case-law.

403. The Committee took note of the positive developments and encouraged the Government of France to follow up on the bills that had been tabled in order to bring its situation into conformity with the European Social Charter.

Second ground of non-conformity

404. The representative of France said that pre-trial detention was applied to juvenile offenders only after other measures which should be given priority were attempted such as educational measures (including pre-trial probation, placement measures, compensatory measures or the day activity measures introduced by the Law of 5 March 2007 on crime prevention) or other coercive measures. She said that it was only when educational measures were clearly inadequate in view of the minor's character and the offences committed that the youth court could order coercive measures (placement under judicial supervision or house arrest with electronic surveillance, the latter being reserved for minors over 16 years of age). Pre-trial detention could only be ordered in respect of minors aged 13 to 16 if the offence committed was punished by a criminal penalty or where the minor in question had deliberately failed to comply with the requirements of judicial supervision connected with his or her placement in a closed education centre.

The representative of France specified that the maximum period of pre-trial detention of 24 months was reserved for the most serious offences, namely criminal ones, and applied only to presumed perpetrators over the age of 16.

405. In reply to a question from the Chair and the representative of Lithuania, the representative of France confirmed that it was theoretically possible to place a minor in pre-trial detention for a combined total of 24 months provided that he or she was over the age of 16 and the offence for which they had been prosecuted was a criminal one. Detention orders could be issued for one month, renewable once, or four months, renewable once, depending on the nature of the offence, and for up to 24 months for a criminal offence.

406. The representative of Lithuania, noting that the length of detention was excessive and this was a serious violation, proposed that a vote should be held on a Recommendation.

407. In reply to a question from the Chair and the representative of Iceland, the representative of France said that she did not have any statistics on the number of minors under 16 currently in pre-trial detention.

408. In reply to a question from the representative of Turkey, the representative of France explained that the changes previously announced related to the development of preventive measures set up since 2009 as an alternative to detention, such as house arrest with electronic surveillance. In accordance with its Rules of Procedure, the Committee voted for a Recommendation, which was rejected (1 vote in favour and 18 against). The Committee then voted on adopting a Warning, which was also rejected (10 votes in favour and 9 against).

409. The Committee urged the Government of France to amend its legislation to reduce the maximum length of pre-trial detention authorised for minors and to bring its situation in conformity with the European Social Charter.

RESC 17§1 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment of children is not explicitly prohibited in the home.

410. The representative of Georgia provided the following information in writing:

From 2004, the State actively carries out children welfare reform, priorities and strategic directions of which are given in action plans of the Government. The aim of the reform is introduction of modern vision and experience of developed countries in childcare system.

It should also be mentioned that Georgia as a signing party to Convention on the Rights of the Child, was guided by requirements pointed out in the Convention in the process of determining childcare policy and strategy. Main priority of the reform became protection of preferential right of children subject to the state care to be brought up in their biological families or in similar conditions.

In terms of the abovementioned priority, from 2005, the state started systemic process of deinstitutionalization of children subject to the state care that included returning children living in orphanages to their biological families, and in case of nonexistence of such families, placing and bringing them up in alternative form of care – foster or adopting families; measures are also provided for strengthening families, that would provide prevention of flowing a new stream of children in the state care system.

The abovementioned priority was strengthened by Government Action Plan of Children's Welfare of 2005-2007, the main focus of which was to strengthen and widen deinstitutionalization process all over the country, specifically, the strategic aim was to reduce number of children in the institutions by 40 % till the end of 2007, as well as introduction of community based children services (small family-type house, day center) that would support widening deinstitutionalization process within the country.

It should be mentioned that in this period, due to assistance of donor organizations, new alternative childcare services, such as small family-type houses and day centers began to operate all over the country.

At present, in the process of reforming childcare system, the guiding act is Government Action Plan of Children's Welfare of 2008-2011, the aim of which is to support deinstitutionalization process, provide protection of children from violation, as well as to widen alternative childcare service network (foster care, small family-type house, day center, crisis center, etc.) all over the country.

As for implementing special measures from the state for the purposes of protecting children from violation, it should be mentioned that according to joint Order No 152/N – No 496 – No 45/N of the Minister of Labour, Health and Social Affairs of Georgia, the Minister of Internal Affairs of Georgia and the Minister of Education and Science of Georgia, Children Protection Application (reviewing) procedures have been approved, which determines responsible bodies for responding to cases of violation and exploitation of children, rights and obligations of involved parties and procedures. The abovementioned documents supported operation of coordinated and flexible response system of all involved parties in given cases of children. It should be noticed that in the abovementioned procedures, bodies of care and guardians have important role and function, which, in the event of identification of violation and exploitation cases on children are obliged to provide children and their family, if the latter does not provide hopeful environment, with necessary assistance.

As for discrimination issues, there are respective Articles in different legislative and standard acts of Georgia, against discrimination (including children's discrimination), which is a criminal action punishable by imprisonment, on the basis of Article 1421 of Criminal Code of Georgia.

In Georgia, childcare services are available for every child regardless their sexual, ethnical or other kind of difference. Impermissibility of discrimination is given in the following legislative and standard acts of Georgia:

Order No 281/N of Minister of Labour, Health and Social Affairs of Georgia of August 26, 2009 On Confirmation of Childcare Standards, which is one of the important basic documents in the field of childcare, which includes information about children's discrimination, Standard No 2 – Availability and Inclusivity of Service, specifically:

Service provider, according to internal regulation, provides the following: to protect user from discrimination, biased or negative attitude or action, which may take place during rendering service from service provider as well as from user.
None of the users who are eligible to enjoy service shall be refused to get the latter despite their race, color of skin, language, religion, political or other belief, national, ethical or other origin, property status, health or birth condition of child, his/her parents and legal representative and any other circumstances.
According to Georgian legislation, **all cases of illegal exaction of forced or compulsory labour are considered as trafficking. Accordingly, sanctions envisaged in Articles1431 and 1432 of Criminal Code of Georgia are applied to all kinds of forced or compulsory labour.**
According to the article 143 of Criminal Code, buying or selling human or subjecting him/her to other forms of illegal deals, as well as, by use of threat, coercion or other forms of coercion, stealing, blackmail against him/her, by deception of human, by use of his/her vulnerable situation or abuse of power, enticing, conveying, hiding, hiring, transporting, handing over, harboring or **receiving a human for the purpose of exploitation**, is punishable by the deprivation of liberty **from 7 to 12 years,** with deprivation of the right to occupy certain position or practice a profession for **1 year**.
According to the note of Articles 1431 and 1432 of Criminal Code, for the purposes of Articles 143 and 143, (a) exploit of humans by the aim of forced labor or service, (b) engaging them in criminal or anti-society activities or prostitution, sexual exploitation or to provide other kind of service, (c) putting the persons in slavery-like conditions or conditions of contemporary slavery, (d) also forcing humans to use their organs or parts of organs are considered as **exploitation**.
According to the Law on Fighting against Trading with Persons (Trafficking) of Georgia, human trafficking is a crime defined by Articles 1431 and 1432 of the Criminal Code of Georgia.
According to the Law on Fighting against Trading with Persons (Trafficking) of Georgia, **exploitation means:** (a) **use of a person for forced labor or service**, (b) involvement of a person in criminal or other anti-societal conduct, (c) putting a person in slavery-like conditions or conditions of contemporary slavery, (d) sexual exploitation or (e) exaction to provide other type of services, (f) as well as use of a person for transplantation of his/her organ, part of organ or tissue, or (g) use of a person for other purposes.
Law on Fighting against Trading with Persons (Trafficking) of Georgia stipulates **forced labor** as any work or service received by means of physical or mental exaction of a person by use of threat or blackmail against him/her or by use of his/her vulnerable situation; Accordingly, pursuant to the Georgian legislation, trafficking in persons includes any kind of forced labour.
According to the Law on Fighting against Trading with Persons (Trafficking), **sexual exploitation** is defined as involvement of a person in prostitution, other sexual services or production of pornographic material by use of threat, violence, exaction or blackmail against him/her or by use of his/her vulnerable situation, by abuse of power, or by provision of false information on the nature and conditions of work.
It should be mentioned, that according to the Law on Fighting against Trading with Persons (Trafficking), **putting a person in contemporary conditions of slavery** is defined as (a) deprivation of a person of his/her identity documents, (b) limitation to the person of his/her right to free movement, (c) prohibition to the person of communication with his family, including written correspondence and telephone contacts, (d) cultural isolation of a person, (e) exaction of a person to work in degrading conditions and/or without any compensation or with inadequate compensation.
It is noteworthy, consent of the victim of human trafficking to his/her deliberate exploitation is also deemed as illegal and it is punishable the same way. Legal person committing a crime envisaged in the articles 1431 and 1432 shall be deprived of a right to carry business or be liquidated and fined.

Accordingly, sanctions envisaged in articles 1431 and 1432 of Criminal Code are applied for all cases of illegal exaction of forced or compulsory labour.

According to the Criminal Code of Georgia, production or/and keeping of a pornographic work containing the image of a minor as well as offering, transfer, dissemination, sale, promotion of or making otherwise available such material – shall be punishable by fine or by corrective labour for up to three years in length or by imprisonment similar in length.

According to the note of Criminal Code in this regard, a pornographic work containing the image of a minor shall mean the visual or audio material made by any method presenting by different means the participation of a particular minor in real or simulated sexual scenes, using his/her voice or depicting the minor's genitalia for sexual satisfaction of the user.

It should be emphasized, that involvement of a minor in illegal production of a pornographic work or other item of pornographic nature or in dissemination, promotion or sale of such material, shall be punishable by imprisonment from 2 to 5 years. For the action stipulated by this article a legal entity is punished by fine, with deprivation of the right to engage in a particular activity or by liquidation and fine.

The Criminal Code of Georgia envisages article on involving minor into anti-public activity in the following manner:

"1. Persuading a minor into begging or any other anti-public activity shall be punishable by social work from one hundred seventy to two hundred forty hours or corrective work for up to two years in length or by imprisonment for up to two years in length.

2. Involving a minor into abuse of toxic or any other medical substances -shall be punishable by restriction of freedom for up to three years in length or by imprisonment for up to three years in length.

3. Involving a minor in prostitution with threat of violence or deception, or without violence, shall be punishable by imprisonment from two to five years in length".

The Government of Georgia is dynamically undertaking measures combat trafficking in human beings in Georgia. Due to the measures taken in line with the requirements of the well known "three Ps" – **Prevention, Protection and Prosecution** of the crime, as early as in 2007, Georgia obtained Tier 1 Placement in the United States Department of State's annual Trafficking in Persons Report. Georgia remains Tier 1 Country in 2010 as well. The efforts leading to this success included, *inter alia,* actions directed at protection of child victims of trafficking as well.

As for the Georgian Permanent Interagency Coordination Council for Carrying out Measures Against Trafficking in Persons (hereinafter – the Coordination Council), it coordinates a wide range of activities and programs throughout Georgia dedicated to the protection and rehabilitation of victims of trafficking, including in case of such need, child victims of trafficking in persons. Proactive measures are undertaken in line with the well established "three Ps" to prevent trafficking in persons, effectively protect victims and prosecute the offenders. The activities implemented by the Coordination Council to that end include:

a) **Creation of Appropriate Legal Basis,** introducing amendments to the criminal, administrative and civil legislation, to the Law of Georgia on the Status of Foreigners, as well as the adoption of the Law on Combating Trafficking in Persons and drafting of the National Action Plan to fight trafficking in persons;

b) **Advancement of Institutional Capacity**, including creation of the State Fund for Protection and Assistance to Victims of Trafficking in Persons (hereinafter – the State Fund) and establishment of the shelters for victims of trafficking, including children;

c) **Provision of TIP Victim Protection,** including enactment of the System provided by the Law via the National Referral Mechanism, elaboration of Programs of Assistance and Reintegration of Victims of Trafficking, including children and granting compensation to them, as well as provision of safe return of victims of the trafficking, including children, to the countries of their origin;

d) **Arranging the wide Public Awareness Activities**, including trainings, establishment of hot-lines, elaboration of special curriculum, broadcasting of public service announcements and TV and radio programs, preparation and dissemination of the print information material, public discussions on the issue of trafficking in persons, etc.

On January 20, 2009 by the Decree of the President of Georgia №46, 2009-2010 Action Plan on the Fight against Trafficking has been adopted. Document was elaborated through cooperation of international and non-governmental organizations, specialized in fight against trafficking. Action Plan is based on the principle of "three Ps" and underlines the necessity in prevention and prosecution of mentioned crime and protection of witnesses. Moreover, document envisages clear monitoring system, where each state agency is obliged to report (once in 3 months) to the Permanent Interagency Coordination Council on the measures undertaken for the implementation of action plan.

Action Plan envisages various important measures to be taken for the fight against trafficking in minors and prevention of the said crime. In particular:

- Raising Awareness of minors regarding the risk of trafficking though educational programs in public schools;
- Based on the existing needs, research on trafficking in minors, particularly looking at the reasons of trafficking;
- Trainings law-enforcement officials on trafficking in minors;
- Training for lawyers/attorneys on the protection of victims of trafficking in minor.

The successful implementation of the Action Plan is ensured through active cooperation of state agencies, NGOs and international organizations.

As for the assistance to child victims of trafficking and for their reintegration, the main Georgian state body providing protection and rehabilitation for the victims of trafficking is a specially created State Fund. Establishment of the State Fund was envisaged by the Law on Combating Trafficking in Persons. The Fund was set up within the Ministry of Labor, Health and Social Protection in summer, 2006. The State Fund, as the state body coordinating assistance/protection and rehabilitation activities for victims of trafficking, receives permanent funding from the Georgian State Budget. Ministry of Education runs number of programs directed at the protection of both – child victims of trafficking. There are budgetary lump sums available at the Fund that can be used in emergency situations on *ad hoc* basis when the necessity arises and respond to different needs of the child victims of trafficking.

State-run activities, programs and facilities are legally supported by a number of documents, including:

- Law of Georgia on Combating Trafficking in Persons (of April 28, 2006);
- Regulation of The State Fund for Protection and Assistance to Victims of Trafficking in Persons (approved by the President of Georgia on July 18, 2006);
- Regulation of the Permanent Interagency Coordination Council for Carrying out Measures Against Trafficking in Persons (approved by the President of Georgia on September 1, 2006);
- The National Action Plan on the Fight against Trafficking in Persons;
- Standards and requirements for the arrangement of a Service Institution for the Victims of Trafficking in Persons (Shelter) and its model Statute, approved by the Coordination Council on the basis of the Law Against Trafficking in Persons;
- Operational Instruction for the Protection of Victims of Trafficking in Persons (National Referral Mechanism), approved by the Coordination Council on the basis of the Law Against Trafficking in Persons;
- Rules of granting compensation by the Fund, approved by the Coordination Council on the basis of the Law against Trafficking in Persons;
- The Strategy for Rehabilitation and Reintegration into society of the victims of Trafficking in Persons, approved by the Coordination Council on July 19, 2007.

The Ministry of Labor, Health and Social Protection along with the Ministry of Education and Science, are the main state institutions in charge of specific programs and facilities focusing on the protection of victims of trafficking, including children (anyone under 18) victims of trafficking and sexual exploitation. Ministry of Labor, Health and Social Protection is well positioned to provide a wide range of protection and health care services to any victim of trafficking, including children. Thus, both ministries are fully capable to provide appropriate care and protection of the child victims of trafficking, taking into account all the peculiarities related to child care.

In order to ensure protection and rehabilitation of possible child victims of trafficking, activities of the Georgian Prosecution Service, Ministry of Internal Affairs, Ministry of Labor, Health and Social Protection, Ministry of Education and Science and the Ministry of Foreign Affairs are very closely coordinated. Coordination of antitrafficking activities and cooperation of governmental and non-governmental actors is specifically regulated by the National Referral Mechanism.

As it was mentioned above, the State Fund provides protection services to individuals falling within its mandate. It guides the process of rehabilitation and reintegration of victims of trafficking in persons on behalf of the State. As per the specific programs and activities with regard to the child victims of trafficking, they will be planned with the assistance of a social worker for any victim concerned.

More specifically: the process of rehabilitation and social reintegration of the victims of trafficking in persons shall be carried out on the basis of individual plans for the victims, by the following actors:

a) The State Fund for Protection and Assistance to Victims of Trafficking in Persons;
b) Local Non-Governmental organization;
c) International organization;
d) Social worker.

The Fund regulates daily life of victims through the Model Internal Regulation for Shelters. Children's daily life is regulated by the internal regulation of the Institution which provides child care. NGOs, who work with the broader range of child victims of other types of violence, provide academic programs and different extra-curriculum activities.

The State Fund provides full psychological and medical assistance to any victim of trafficking falling under care of the State Fund. For that reason, the State Fund employs specially trained psychologists. Psychologists are stationed in the shelters and supports victims in overcoming the stress. Child victims will receive the same assistance, if they are referred to the State Fund. Special treatment and programs will be applied to individual child victims of trafficking, if they appear within the Fund's care.

The Ministry of Education and Science provides assistance via specially trained psychologists through different programs of assistance to children at risk and victims of domestic violence.

It shall be underlined that anyone in contact with a victim of trafficking is obliged to keep the entire identification-related data secret, since the principle of confidentiality of the identification data of victims of human trafficking is one of the principles of the Georgian anti-trafficking legislation.

The following services are available to any child victim of trafficking: shelter, free legal aid, free medical and psychological counseling and treatment, telephone hot-line services, granting compensation, integration and rehabilitation activities.

The Ministry of Justice of Georgia, including Office of the Chief Prosecutor of Georgia maintains hot line for reporting on any human rights abuses including trafficking cases. Information on the hot line as well as anti-trafficking banner is available on the website of the Ministry of Justice of Georgia.

Arranging a temporary housing (shelter) for victims of trafficking is one of the key functions for the State Fund. The purpose of arranging shelters is to protect the rights

and interests of victims of trafficking, provide age-appropriate assistance, rehabilitation and reintegrate into families and society.

Shelters are structural units of the State Fund. However, the Law on Fighting against Trafficking in Persons provides that any natural or legal person is entitled to establish a shelter in a form of a private non-profit legal entity, provided that a shelter meets the standards established by the Georgian legislation. Therefore, any non-governmental organization upon a will could establish a shelter for victims of trafficking subject to reservation regarding general standards, which are rather of technical character and are aimed at granting equal treatment and assistance to all victims of trafficking (standards are mainly made in relation to quality of services, nutrition and social care).

The first state-funded shelter for victims of trafficking in persons started operation in summer of 2006. The shelter is located in West Georgia. The second state-sponsored shelter was opened in September, 2007 and is primarily covering east part of Georgia.

Thus, the existing shelters are located in such a way as to be easily reachable from different points of Georgia and fully cover all regions of the country. **The shelters can accommodate both – children and adult victims of trafficking in persons.**

Children of trafficked parents can also be accommodated in a shelter. One of the functioning shelters accommodates children of trafficked parents. These are children who could not be separated from a parent. In case there is any child victim of trafficking in need of assistance of the Fund/shelter, the Fund is well positioned to take care of such a child victim of trafficking.

A shelter functions on the basis of Internal Regulations that are to be followed both by the victims and the staff. It provides:

a) Secure place of residence with decent living conditions;
b) Age-appropriate food and clothes;
c) Full medical aid, including hospital treatments and surgeries, if needed;
d) Psychological counseling;
e) Legal aid and court representation (provision of assistance of a lawyer in case of necessity including filing complaints, appearing in court proceedings as a witness, requesting asylum, obtaining documents for voluntary repatriation to the country of origin);
f) Provision of information in a language a victim understands;
g) Participation in the long-term and short-term age-appropriate recreational activities and programs of rehabilitation and reintegration. These include age-appropriate education programs, professional skills-gaining and support in finding employment, when relevant.

A victim shall be placed in a shelter on the basis of an individual's consent, taking into account the age, sex and other special requirements. Placement of a victim of trafficking in a shelter is not dependent on whether he/she cooperates with the law enforcement authorities in the proceedings into the crime in question. When entering the shelter, a victim undergoes medical examination.

The period of stay in the shelter shall be 3 months. Extension of the term is possible. A victim may leave the shelter voluntarily before the term expires.

The Standards and Requirements for the Arrangement of a Service Institution for the Victims of Trafficking in Persons (Shelter) are adopted by the Georgian Permanent Interagency Coordination Council for Carrying out Measures against Trafficking in Persons.

The standards, which are obligatory for any shelter for trafficking victims in Georgia, are as follows: a shelter shall necessarily have: a reception area (desirable with the sanitary inspection point), medical examination unit with the isolator, accommodation rooms (bed rooms, living rooms), washing and disinfecting facilities, kitchen, dining room, rooms for extra-curriculum activities and rehabilitation, administrative and storage facilities, etc.

1. Territory around a shelter shall be duly lightened, well-equipped, in green cover.

2. There shall be appropriate fence around the shelter premises and relevant safety measures shall be undertaken. Shelter shall only be entered through a security point stationed outside the shelter premises.
3. A security point shall be organized with the permanent presence of the security guards protecting the territory and premises of shelter 24 hours during 7 days a week.
4. Reception shall be located next to/nearby the security point. The reception shall include:
a) a hall with a cloak room and a temporary storage of the personal belongings of the victims;
b) a sanitary point;
c) a room for staff on duty;
d) facility for possibility of changing clothes of those entering the shelter, whenever needed.

A shelter shall be constructed in accordance with the natural and climate conditions of the territory where it is located. It shall be provided with the appropriate water pipes, sewerage system, heating/air-conditioning systems, energy supply, and any other engineering communications, as needed. Living space of a shelter shall provide decent and secure living conditions and shall have a capacity of isolating persons or a group of persons if health conditions so require.
Each bedroom of a shelter shall accommodate no more than 2 victims of the same sex. There shall be bedrooms for families as well. Space of rooms for parents and children (3-4 persons) shall be no less than 15-20 square meters. Bedrooms shall be isolated from each other and any other rooms. In arranging the shelter standards established for children shall be followed. Living space includes rest and recreational facilities for children.
Washing facilities shall be placed together with the disinfection camera, and both shall be isolated from the living space. Washing facility shall be equipped with the relevant water supplies, sewerage system and washing machines. Before washing, linen shall be disinfected, as provided by the regulations of the Ministry of Labor, Health and Social Protection of Georgia. Facility for drying and ironing shall be placed along with the washing and disinfecting facility.
Kitchen and dining room shall be located separately, and shall be equipped and maintained according to the state-established sanitary standards. They shall be equipped with all the relevant crockery, kept according to the sanitary requirements. Kitchen shall be equipped with fridges and other kitchen-ware. Food shall be served in accordance with the regulations of the Ministry of Labor, Health and Social Protection.

Administrator/Director shall be responsible for administration of the shelter, and can have the following staff members: lawyers, psychologists, social workers, doctors and nurses. A doctor, certified as"a family doctor" shall be in a shelter.
Technical personnel of the shelter shall be identified by the shelter administration. The staff of the shelter should have undergone a special training with regard to trafficking in persons or have experience of working with the similar group of people.
Victims of trafficking are provided with the age-appropriate clothes and all necessary food, as established by the National Referral Mechanism and the relevant regulations of the Ministry of Labor, Health and Social Protection.
Victims of human trafficking receive free medical assistance and treatment from the Ministry of Labor, Health and Social Protection of Georgia via existing medical and social programs. This assistance is equally applicable to any trafficking victim, despite their age. Age specificities are obviously taken into consideration during treatment.
Fund employs specially trained psychologists who support victims of trafficking in persons and assist them in rehabilitation.

It should be emphasized, that the State Fund provides full free legal aid to victims of trafficking including court representation in civil cases, when claiming compensation from established traffickers.

Apart from services provided within a Shelter, a victim of trafficking, who has been granted the status of victim of trafficking by the relevant Georgian state body and who suffered moral, property and material damage from the crime of human trafficking, is entitled to compensation from the State Fund. The compensation in the amount of 1,000 GEL (around USD 600) will be granted to a victim. Paying compensation is not dependent on the cooperation of a victim with the law-enforcement authorities. If the trafficker is arrested, the fact that the victim received compensation from the State Fund does not prevent him/her to claim material, moral and property damage from the trafficker.

It should be emphasized, measures and achievements of the Police in the filed of protection of minors from participation in crimes and prevention of worst forms of child labor. Ministry of Internal Affairs has a systemic approach to the referred issue and implements active work in several directions. This includes: 1. improvement of qualification of police workers in dealing with the minors, 2. implementation of the measures/projects aimed at crime prevention and prevention of worst forms of child labor, 3. implementation of instruments aimed at child protection in cooperation with state bodies and international organizations with the relevant competencies.

1. Qualification of the Policemen

For combating minor crime, it is necessary for the policemen to be equipped with the corresponding qualification and skills. Main educational institution of the MIA – Police Academy ensures improvement of qualification of the policemen through delivering fundamental as well as specialized courses.

Considering that during implementation of the work activities, inspectors, detectives and patrol policemen have the most frequent contacts with the minors, the fundamental course of the Police Academy of the MIA envisages detailed study of the process of interrogating a minor as regulated by the Criminal Procedure Code of Georgia, acquaintance with the essentials of the Convention on Children's Rights and review of the local legislation.

According to the changes entered into the Criminal Code of Georgia, from July 1st, 2008 competence to investigate minor cases is assigned only to those investigators, who have undertaken a corresponding course: pedagogy-psychology. With the support of the Ministry of Education, MIA implemented certification of the policemen working with the juveniles. Up to date 957 policemen have been re-specialized. Referred trainings are continuous.

2. Measures/Projects aimed at Prevention of Crime

As it has been indicated in the previous report, preventive functions are distributed within various sub-divisions of the MIA. The MIA shall allocate sufficient human and material resources to ensure implementation of preventive works by police workers under their competencies. One of the examples of the referred is the work implemented by the district inspectors with the minors with anti-social behavior.

Due to the nature of their activities, district inspectors are in daily contact with the population settled throughout Georgia. They have information on minors, who in the areas of their coverage are singled out for unsocial behavior, and they implement individual preventive work with them. Inspectors regularly converse with difficult children on various relevant topics, increase their awareness about adverse consequences of harmful habits and constantly control their attendance at school classes.

As it is manifested from the analysis of the information received from the sub-divisions of the MIA, as a result of implementation of intensive targeted didactic work by 1238 workers of MIA with 1448 minors in all regions of Georgia from March to June of 2009, 185 children were fully corrected, 1126 were put on the way of correction. Work with majority of them continues.

In March 2009, 48 workers of the MIA undertook trainings on the topic Minor and the Law, Minor and Harmful Habits at the Police Academy of MIA and from April 8 to June 1 in 185 schools of Georgia 520 lectures were held on the referred topics in two stages. Lectures triggered interest of the students which continued into an interactive Q&A session even after completion of the lectures. Students were mostly interested to learn about the rights and obligations of the minors, methods of combating crime, administrative violations, adverse effect of gambling and rights of the persons after serving the punishment.

3. Joint Projects/Cooperation

MIA is in close cooperation with the local governmental, non-governmental and international organizations. Through trainings offered by various organizations, innovations are effectively implemented and applied in this area. In this regard, project Harmony which was implemented in 2009 should be underlined.

Within the scope of the project, with assistance of US Department of State, international organization PH International issued a manual Legal Culture for the legal education program of Georgia designed for the students of 9th grade. Manual was developed jointly by the workers of the Ministry of Education and the MIA. Manual covers issues such as minor and the law, harmful habits and their consequences, cooperation and negligence etc.

Within the scope of legal education program 9th grade students of 40 high schools covered the manual on the classes of civil education in 2009-10, which together with the teachers of civil education were led by the representatives of the law enforcement bodies engaged in the legal education program. Project turned out so successful, that it is planned to continue it from 2010, which implies extending the scope of the manual on *Legal Culture*, covering more schools and engagement of more teachers and workers of police in the educational process.

During 2009, MIA, together with other governmental and nongovernmental organizations was involved in the creation of the system of child protection reporting, which aimed at organization and implementation of the system of reporting facts of child abuse/denial. Reporting system involved various areas, where minors come across: schools, kindergartens, day care centers, medical institutions and other. System involved coordinated action on the part of the police and representatives of other relevant institutions (social workers, teachers and other) for any case of child abuse. On first stage reporting (referral) system was piloted in 8 regions of Georgia.

As a result of 1 year cooperation, procedures of reporting (referral) system for protection of children were elaborated and approved on May 31, 2010 by 3 ministers (education, healthcare, internal affairs). Procedures define the rules of coordinated work by the institutions involved in protection of children from abuse, mechanisms of effective and immediate response to the cases of child abuse.

According to the 2009-10 action plan for combating human trading (trafficking), on August 7, 2009 the MIA of Georgia and representation of international organization World Vision International in Georgia signed a Memorandum of Cooperation based on which it was agreed to cooperate within the framework of the project – Protection of the Rights of Child Victims of Trafficking in Georgia. In relation to the MIA the project aimed at the conduct of trainings for the corresponding workers of the division of combating trafficking and illegal migration of special operative department on the issues of child trafficking. As a result of the project training was undertaken by 15 workers of the Ministry of Internal Affairs.

In the first half of 2010 there was no investigation initiated on trafficking in minors. In 2009, 24 cases of trafficking in minors were initiated. Court decision was taken on 21 cases against 33 individuals. 2 cases of labor exploitation were revealed.

In 2008, investigations on 14 cases of trafficking in persons were initiated, among them 2 cases on trafficking in minors. 8 of the 14 cases involved trafficking for sexual exploitation. 10 cases resulted in convictions. Average sentence was 14-15 years imprisonment.

There were no cases of trafficking in minors for the purposes of sexual exploitation revealed during the reporting period.

In November 2009, 17 year old person – G.D. was recognized as victim of trafficking (labour exploitation). G.D. was placed in shelter on November 5, 2009. She remains in the shelter at this moment. State Fund for Protection and Assistance to Victims of Trafficking in Persons provides G.D. with psychological and legal assistance. Rehabilitation and integration program is also carried out. As the investigation is ongoing, no one has been prosecuted/convicted for this crime.

Based on 2009-2010 data, total number of public and private schools in Georgia equals to 2 462. As for their geographical distribution, it should be mentioned that approximately 40 schools are allocated in each local municipality.

A number of pupils equals to 643 299 from which:

- 597 820 pupils are in public schools,
- 45 479 pupils – in private schools.

It should be mentioned, that average class sizes equals to 21 pupils. As for the ratio teacher per pupil, it makes the following picture 1 teacher – 8 pupils.

It should be emphasized, that Ministry of Education and Science implements project "Development of Inclusive Education in 9 Regional Public Schools". The aim of the project is development/introduction of inclusive education in 9 regional public schools and creation of sustainable system supporting future development of inclusive education. To achieve the goal, it was decided to create supporting environment of SEN children education. Equipment of the resource rooms in ten targeted schools will contribute to enrollment of SEN children into schools together with their peers and to provision of quality education. In particular, the resource-room will be used for individual teaching of SEN children, for team meetings and development of supporting materials. It will also serve as the resource for the whole school too.

According to Civil Code of Georgia, an underage person from the age of seven to eighteen is considered as a person of limited legal capability, while a person under age of seven (juvenile) – as legally incapable (Article 12, Article 14) that is provided by lability of psychological condition of a child, which does not enable him/her to express conscious will and thus, restricts the possibility to make fair decision in the process of adoption. According to the Law of Georgia On Adoption and Foster Care, before the court makes decision on adoption, parent (parents), adoptive parent and a child of 10 years of age to be adopted, can refuse adoption, which is connected with taking into consideration the will of underage person, as this age group has convincing circumstances for adoption purposes.

As for protection of freedom of expression of will of a person under 10 years of age in the process of adoption and foster care, Order No 305/N of the Minister of Labour, Health and Social Affairs of Georgia of December 31, 2008, on Procedures of Preparation and Issuing Conclusion on Adoption and Confirmation of Compatibility Criteria of Adoptive Parent and Child to be Adopted is drawn up according to the Law of Georgia On Adoption and Foster Care, which regulates determination of compatibility criteria during assessment of adoptive candidates and underage person to be adopted by authorized persons (social servants) that is based on necessities revealed as a result of bio-psycho-social assessment of each child of this category.

In the abovementioned direction, the role of the State has been expressed in gradual implementation of changes. After ratification of Convention on the Rights of the Child, inspection of internal legal base has been carried out more than once by legislative body of Georgia for the purpose to make basic requirements of children closer to requirements of regulating norms convention. Reality of the abovementioned measures is confirmed by such changes of legislative base of Georgia as determination of procedures and criteria of granting a status to be adopted, flexible procedure of granting a status to be adopted to a find child, introduction of urgent foster care service, confirmation of respective legislative regulations for target groups of homeless, so-called street children, such as drawing out and introduction of children protection (application) procedures.

It should be mentioned that changes of legal base implemented during the last three years (Civil Code, Law of Georgia On Adoption and Foster Care and respective subordinate regulatory acts) have introduced new regulations, the aim of which are to protect all basic rights of children and include: issues of protection from violation, existence of permanent family, growing up in a family or similar environment, apart from this, respective conditions of service have been established for suppliers of different types of childcare services (taking into consideration target groups, for persons of special needs including persons of capabilities) by means of working out childcare standards.

Issue of supervision on implementation of Government Action Plan of Children's Welfare is very important. In this respect, successful cooperation system has been established between the bodies of executive authority of Georgia, which are involved in the implementation process of the plan that is provided by possibility of uninterrupted delivery and sharing of information between them. Apart from this, reports on implemented measures shall be submitted to Public Defender's office and other interested parties by each body upon request. The abovementioned system shows the existence of open communication between different subjects of executive authority and nongovernmental sector of Georgia. Although, it is very important to analyze and evaluate what kind measures have been implemented and which results have been achieved.

In August of 2009, according to Order No 281/N of the Minister of Labour, Health and Social Affairs of Georgia childcare standards have been approved, which are obligatory to be fulfilled by all institutions implementing educational activities despite their organizational-legal form and property status.

Childcare standards are totality of those norms and requirements, the aim of which are to provide high quality of childcare service (services proposed by institutions implementing educational activities and day centers), including support and protection of children health.

Monetary benefit which is given to adoptive family for bringing up a child includes sum allocated for providing a child as well as remuneration for foster mother/father. For children subject to foster care the State has allocated additional assistances. Specifically, they are provided with health insurance, and apart from this, they have an opportunity to visit resorts of Georgia within the framework of subprogram Rest and Recovery of the State childcare program.

It should be noted that the whole period of foster care of a child shall be monitored by state social servant, who consults foster parents and children with respect to the problems appeared during the process or forwards them to respective services.

As for social and economic condition of foster families themselves, this is very important indicator in the process of selecting foster families, as the foster family represents one of the higher-priority services in the process of implementation of child welfare reform that shall meet requirements of childcare standards.

RESC 17§1 HUNGARY

The Committee concludes that the situation in Hungary is not in conformity with Article 17§1 of the Charter on the grounds that:

- *the living conditions in the child welfare institutions are not satisfactory;*
- *the maximum period of pre-trial detention for minors is excessive.*

First ground of non-conformity

411. The representative of Hungary provided the following information in writing:

Our professional opinion to the Committee's comment is that it should be strictly distinguished from the social services which are designed according to type and length. We consider it

important to note that the Hungarian legal and institutional system do not know the institution name and form called child welfare institution. We have services to provide long-term care, which are predominantly non-voluntarily used services, they are limiting the parental custody law (child protection system forms), and we have voluntarily used services (child welfare services, primary care, temporary care of children, and families).
The second category contains the temporary homes for children, and the temporary homes/shelters for families.
In the temporary home for children the providers have to take a necessary level of care, which is adapted to the children needs. Temporary homes for children receive not less than 12 but maximum 40 children. Nowadays, on average 20 children lives per institution. The accommodation takes place in 2-4 bed rooms. Necessarily the children live there for the weekdays, and in many cases, they spend the weekend at home.
Duration of the service shall not exceed one and a half year, however – based on statistical data – the average time spent in the temporary home is just over three months. The number of children under three years of age is almost negligible. For the children at the higher age groups the public education services are available, so they spend the day in kindergartens, or elementary schools until late afternoon. The protocol's of temporary care contains lots of elements, which are indicate several responsibility for the parents and the crew members during the temporary accommodation, like follow-up the children needs, professional support for parents in the field of child care abilities, and the parents shall take some actions from the daily child care routine. Use of the service is voluntary, but the parents have to pay a service fee.
The capacity of temporary homes/shelters for families is also at least 12 and up to 40 people, but the families have to have their own, private rooms for separate living. Collective accommodation in one room for different families is strictly prohibited. In this service the parents are living together with their own children, but they have to share with their peers the social rooms (kitchen, bathroom), but they also have their own private living space. Placement providers are responsible for the necessary care, so the family self-sufficient, but the provider gives individual case management and necessary physical infrastructure is of help. The maximum length of placement shall not exceed one year and a half, and in case of this form of care is also true that the use of the service is voluntary, but the parents have to pay a service fee.
Based on the abovementioned our firm position is that the two discussed temporary housing services are hardly met the European Social Charter's strong target number, because of the form and manner of the services. The child protection’s services forms and the basic child welfare services forms are non-comparable with each other. In the field of temporary care the providers must have flexible capacity that can respond quickly to the demands and be able to be reached by everyone. These two are factors, only certain capacities above are met efficiently. The proper development of the child under care, despite the higher number may be provided.
Since the report has been completed on these two issues no further legislation actions were taken.

Information regarding Crisis Centres:
The task of the Crisis Centres is to tackle the crisis situation in a complex way and to provide a full treatment after the abuse, which includes the following:

- Physical care for the victim/served people;
- Provide professionals’ help (legal, psychological helper, social worker);
- Social worker’s devices, which help them to represent the victim’s interests; they implement family care; they cooperate with the members of the connected alarm system and other relevant institutions, organisations.

In the crisis centres (which operate within families temporary shelters) the children are placed and cared with parents, grandparents in the home environment. The number of children placed in rooms with family atmosphere never more than 10 people. In practice, it is usually 1-5.

Total number of children placed in crisis centres for 2005-2009

2005	284
2006	445
2007	762
2008	858
2009	921
Total	3270

The operation of the crisis centres and the connecting „System of Half-way house on the way out" received a legal framework and an operating definition with the modification of the Act XXXI of 1997 on child care and operation about guardianship administration, in 2011. The Act integrates the crisis centres and the „System of Half-way house on the way out" into the families' temporary shelters. Furthermore, provisions about services rendered by crisis centres to victims of violence between partners (and relatives) were enclosed to the modification of the Resolution (of the Ministry of Public Welfare) No. 15/1998 (IV.30.) on personal treatment required child welfare, child protection, and on person's professional tasks and conditions of operation.

Additional information and ongoing actions concerning the childcare institutions:
In Hungary there are childcare institutions caring infants, young children and children who attend in the first 4 class of primary school. Our goal is to place with families all children between the age of 0 and 12 who do not need special care.
This year, it has been announced the TIOP (Social Infrastructural Operative Program) 3.4.1.B, value of 3 billion HUF (10.345 million €) in order to change the institutions to placement of foster families.
Moreover in autumn 2012 will be announced TÁMOP (Social Renewal Operative Program) 5.4.10, value of 2 billion HUF (6.9 million €) being aimed at training of foster parents. In the future, only accredited and qualified persons gain foster parents' employment status. It increases child care quality and foster parents' social prestige, too.

Second ground of non-conformity

412. The representative of Hungary informed the Committee that, in accordance with Act XIX of 1998 on Criminal Procedure Code, the maximum duration of pre-trial detention was 12 months in case of smaller offences punishable with 3 years maximum of imprisonment, including juveniles. It was 24 months in case of a crime punishable with 5 years maximum of imprisonment, and 48 months in case of a crime which is punishable by 15 years of imprisonment, or life imprisonment. She reported that the Criminal Procedure Code allowed for exception, if pre-trial detention was ordered or maintained after the announcement of the conclusive decision, or unless a procedure of third instance or a repeated procedure was in progress owing to repeal in the case. She specified that in accordance with Article 455 of the Criminal Procedure Code, the maximum period of pre-trial detention was limited to 24 months for juveniles, but exceptions were the same than for adults.

The representative of Hungary reported that the number of juveniles under pre-trial detention for more than 18 months (in 2009: 3,7 %; in 2010: 5,6 %; in 2011: 1,33 %) and for more than 24 months (in 2009: 0 %; in 2010: 1,4 %; in 2011: 0,6 % of the total number) was insignificant in comparison to the total number of juveniles under preliminary pre-trial detention.

The representative of Hungary explained that the European Court of Human Rights (ECHR) had pointed out that prolonged detention could be justified where the maintaining of coercive measures was justified by public interest, which had greater significance than the respect of personal freedom. She specified that the ECHR took account of several factors when examining the reasonable term of detention, such as the complexity of the case, the defendant's behaviour, and any delay caused by the authorities, and mentioned that the legislator had taken recent steps to accelerate procedures.

The representative of Hungary, affirming that a serious reason for ordering a longer period of pre-trial detention was to shelter juvenile offenders from the criminal milieu, thus avoiding recidivism, highlighted that in principle, pre-trial detention for juveniles was enforced in specific detention homes.

The representative of Hungary explained that, in accordance with the Criminal Procedure Code, courts had to discriminate when applying the rules pertaining to adult offenders to juvenile offenders. She added that available alternatives (house arrest; prohibition of leaving residence; bail) and regularly revised ordinances, as well as necessity and proportionality requirements, ensured that application of these coercive measures against juveniles was kept to the most justified cases. The Criminal Procedure Code protected juveniles also by specific provisions, adding a supplementary condition to general and special conditions pertaining to adults, namely the extraordinary gravity of the offence.

The representative of Hungary affirmed that since 2005, over 25 % of all crimes committed by juveniles were violent crimes against persons (assault; murder), or property (burglary; robbery). She specified that no amendments were envisaged in the coming years.

413. In reply to questions from the representative of ETUC, the representative of Hungary reported that considerable steps had been taken to implement conclusions by the ECSR, and confirmed that the same rules applied to all minors from 14 to 18 years of age. She emphasized that preliminary detention was an exceptional measure, which was limited to offences of extraordinary gravity, and that the court had to take account of all factors of the case.

414. The representative of Lithuania, asking how the procedure had been improved in practice since legislation did still allow for pre-trial detention for up to 24 months, suggested to call for a vote on a Recommendation.

415. In reply to questions from the representative of ETUC about alternatives to pre-trial detention, the representative of Hungary explained that there were also educational centres for minors, and that pre-trial detention of juveniles was enforced in specific detention homes.

416. In accordance with its Rules of Procedure, the Committee voted on a Recommendation, which was rejected (1 vote in favour, 15 against). The Committee then voted on a Warning on the same grounds, which was adopted (19 votes in favour, 5 against).

RESC 17§1 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 17§1 of the Charter on the grounds that:

- *young prisoners are not always separated from adults;*
- *the age of criminal responsibility is too low for some offences;*
- *corporal punishment of children is not explicitly prohibited in the home.*

First and second grounds of non-conformity

417. No information was received from the Government of Ireland.

Third ground of non-conformity

418. The representative of Ireland informed the Committee that no law or statute specifically permitted corporal punishment in the home, but emphasized that Section 246 of the Children Act of 2001 provided clear legal deterrents to the use of excessive physical discipline in the home, as in other settings such as schools, crèches, detention, or public care settings.

The representative or Ireland reported that, in relation to corporal punishment in the home, a limited defence of “reasonable chastisement” existed in common law, but that successful prosecutions had also been taken under Section 246 of the Children Act of 2001 where parents were deemed to have used excessive or unreasonable force in disciplining children.

The representative of Ireland emphasized the recent progress in eliminating virtually all forms of violence against children and in encouraging parents to use alternate forms of discipline. He declared that research by the Department of Children and Youth Affairs indicated that nearly 90 % of parents never used corporal punishment as a means of disciplining children, and opted instead for alternate means of discipline. He added that a wide array of parenting courses was provided.

The representative of Ireland declared that his Government considered there was a delicate balance to be struck between promoting positive models of parenting and using criminal sanctions against parents who do not conform with best practices. He reported that a further definition in law of the defence of “reasonable chastisement” was currently under discussion.

419. In reply to a question from the representative of ETUC, the representative of Ireland reported that the issue was under constant scrutiny, leading to governmental family programmes and child protection strategies, but that a change in legislation faced opposition from parents. He declared that, according to the Legal Advisor, a change in legislation would face successful challenge in courts, given the constitutional protection of the family provided in the Constitution of 1937. He added that statistical data showed that 80 % of parents thought corporal punishment should be made illegal, but only 42 % of parents thought smacking should be made illegal, which revealed that a majority of parents thought that smacking should remain allowed.

420. The representative of Iceland, emphasizing that the constitutional protection of the family seemed to block any possibility to amend legislation, asked to call for a vote on a Recommendation.

421. The representative of the United Kingdom asked for fairness and consistency since not all comparative cases had led to voting.

422. In reply to a question from the Chair, the representative of Ireland confirmed that his Government preferred to change behaviour in practice than to amend legislation, which would be difficult to pass without amending the Constitution.

423. The representative of Italy, referring to her previous remarks about Recommendations on issues close to national traditions, mentioned that legislation was conservative by nature, and suggested to concentrate on changing behaviour in practice.

424. In reply to a question from the representative of Iceland, the representative of Ireland explained that conditions set out for criminal offence and public prosecution, or conditions set out in Section 246 of the Children Act of 2001 had to be fulfilled, to allow to break into family life.

425. The representative of Greece suggested to acknowledge efforts made by Ireland despite legal difficulties.

426. The Chair, emphasizing that the non-conformity had been found upon a collective complaint, recalled that the issue had very practical consequences.

427. In accordance with its Rules of Procedure, the Committee voted on a Recommendation, which was rejected (1 vote in favour, 25 against). The Committee then voted on a Warning on the same grounds, which was also rejected (14 votes in favour, 14 against).

428. The Committee urged the Government of Ireland to amend its legislation so as to bring the situation into conformity with the European Social Charter.

RESC 17§1 LITHUANIA

The ECSR considers that the situation in Lithuania is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment is not explicitly prohibited in the home, in schools and in institutions.

429. The representative of Lithuania informed the Committee that corporal punishment in the home had been prohibited as a form of domestic violence by the new Law on Protection against Domestic Violence, which came into force as from the end of 2011. She specified that, in accordance with this Law, any report on domestic violence immediately triggered pre-trial investigation, ensuring criminal prosecution irrespective of the will of the victim of such violence, who often was under economic or psychological influence of the perpetrator. She also specified that the definition of the victim of such violence was not limited to the person against whom the violence had been used, but included children who witnessed such violence, or lived in an environment exposed to such violence.

The representative of Lithuania reported that the sanctions set out in the Law (obligations to move out, not to approach the victim, or not to communicate) were designed so as to protect the victims of domestic violence. Measures were available to ensure sequestration of the perpetrator and protection of the victim immediately after the occurrence of violence, and assistance was provided to the victim under the Programme of Centres for Specialized Assistance. She mentioned that an additional Programme of Assistance and Funding for the Victims of Domestic Violence 2013-2020 was under preparation to strengthen mechanism and infrastructure of such assistance.

The representative of Lithuania explained that, in addition, corporal punishment was set to be explicitly prohibited by the new Law on Child Protection, to amend the current Act on the Fundamentals of Protection of the Rights of the Child. The draft Law was currently under preparation and available online since summer 2012 for consultation of civil society. Article 45 of the draft Law provided an extensive definition of child protection from violence, stating that the child shall be educated, trained and disciplined without violence and with respect for dignity. The provision also prohibited physical punishment, physical or mental torture or other cruel treatment, humiliation of the child's honour and dignity, and established administrative or criminal liability for physical or mental violence against children, as well as the duty to special assistance for children who were victims of violence.

The representative of Lithuania declared that it was difficult to establish any schedule for the adoption of this draft Law during election time.

430. The Committee congratulated the Government of Lithuania for its new legislation and encouraged it to adopt further measures currently under preparation.

RESC 17§1 MALTA

The ECSR concludes that the situation in Malta is not in conformity with Article 17§1 of the Charter on the grounds that:

- *children born outside marriage are discriminated against in matters of succession and inequalities exist between children of a first and second marriage;*
- *not all forms of corporal punishment are prohibited;*
- *the age of criminal responsibility is too low.*

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

431. The representative of Malta said that amendments to the Civil Code had been made in 2004 so the information should already have been at the Committee's disposal. All children are treated the same under the Civil Code, whether born in wedlock or out of wedlock, no discrepancies exist between children of the first or second marriage. The Civil Code (chapter 16) provides that all children and descendants without distinction are entitled to receive by will from the estate of their parents and other ascendants, under Article 596(2). Moreover, all children of the testator, whether born in wedlock, out of wedlock or adopted, may receive by will from the testator (Article 602); the reserved portion is due to all children, whether conceived or born in wedlock or conceived and born out of wedlock or adopted (Article 616). Furthermore, children or other descendants succeed their father and mother or other ascendants without distinction of sex and whether they are born or conceived in marriage or otherwise and whether they are of the same or of different marriages (Article 811).

432. The Chair said that that the information had apparently not been included in the report and that the legislation appears to be in conformity.

433. The Committee took note of the information and encouraged the Government of Malta to provide full details in its next report.

Second ground of non-conformity

434. The representative of Malta said that in the Domestic Violence Act (chapter 481) and the Criminal Code (Chapter 9), all forms of violence towards children are deemed as a criminal offence and therefore punishable by law. Amendments to both the Criminal and Civil Codes also clearly provide for the prohibition of domestic violence.

The Domestic Violence Act defines "domestic violence" as any act of violence, perpetrated by a household member upon another household member, including verbal violence and any omission which causes physical or moral harm. The term "household member" includes persons married or formerly married to each other, persons living in the same household as the offender, or who has lived with the offender within a period of one year preceding the offence; parents and their children; other adults sharing the same household and persons who are, or have been, related to each other either by consanguinity or affinity up to the third degree inclusive; and persons having or having had a child in common.

Article 247A of the Criminal Code specifically provides for ill-treatment or neglect of children under the age of 12 years. It also states that whosoever having the responsibility of any child under 12 years of age, by means of persistent acts of commission or omission, ill-treats the child, causes or allows ill-treatment shall be liable to imprisonment for a term not exceeding two years, unless this constitutes a more serious offence under any other provision of the Code. Ill-treatment is defined in the wide sense of the term (including neglect of adequate nutrition, clothing, shelter, non respect of dignity, imposition of inappropriate tasks or hard physical labour). Article 203 stipulates that proceedings ex officio shall take place when the act has been committed with abuse of parental authority or tutorship. In practice, any person who deems or suspects that a child may have been physically harmed or abused by his/her parents, may report such a case to the police, who have the power to investigate and prosecute.

A National Children's Policy has been drafted and is due to be launched within the coming months with the aim of bringing about necessary changes in the best interest of children.

435. The representative of Malta, in reply to a question from the Chair, said that he could not provide a date for the introduction of the amendments. The policy would be launched in the coming weeks. He said that Article 154 of the Civil Code which refers to "reasonable chastisement" would be amended to remove this provision from the text.

436. The representative of Malta, in reply to a question by the representative of Poland, said that although corporal punishment is not specifically mentioned in the legislation, the definition in the Domestic Violence Act refers to any kind of harm to a household member.

437. The Committee took note that the Government of Malta has taken measures to modify its law and asked the Government to include all relevant information in the next report.

Third ground of non-conformity

438. The representative of Malta said that the situation has remained the same since the reference period but not all information had been made clear in the report. Article 36 of the Criminal Code provides that minors over the age of 9 and under the age of 14 committing an offence involving "mischievous discretion", shall be liable to the punishment established for contraventions (detention for a maximum period of two months or a fine or reprimand, or to punishment for the crime decreased by 3 degrees). On application by the police, the Court may require the parent or tutor of the child to take responsibility for the conduct of the minor or impose a fine for lack of parental diligence. The maximum length of pre-trial detention depends on the offence of the juvenile offender but it is very exceptional that juveniles (under 16) are not released on bail. Children under the age of 16 are not prosecuted before the Criminal Court, but before a juvenile court which is in separate premises from those of criminal jurisdiction. Such court proceedings are presided by a Magistrate assisted by two lay persons and the setting is of an informal nature.

439. The Secretariat explained that there is the possibility of "mischievous discretion" in the legislation and it is still theoretically possible for children between 9 and 14 years of age to be held criminally responsible.

440. The representative of Malta said that prosecution of children in the age group referred to was rare. Those who are found guilty are not sent to prison but a special correctional facility for juveniles. In reply to a question by the ETUC, he replied that statistics could be made available.

441. In reply to a question by the representative of Lithuania, the representative of Malta, confirmed that "mischievous discretion" exists in the law but has to be proven and only applies to very serious cases.

442. In reply to a question by the representative of Poland, the representative of Malta said that he was not in a position to say whether the Government has the intention to modify the legislation.

443. In accordance with its Rules of Procedure, the Committee voted on a Recommendation, which was rejected (1 in favour and 24 against). The Committee then voted on a Warning, which was also rejected (15 in favour, 8 against).

444. The Committee urged Malta to bring the situation into conformity with the Social Charter.

RESC 17§1 NETHERLANDS (KINGDOM IN EUROPE)

The ECSR concludes that the situation in the Netherlands is not in conformity with Article 17§1 of the Charter on the grounds that:

- *prison sentences for minors may be up to 30 years;*
- *young offenders may be held in adult detention facilities;*
- *unlawfully present children are not provided with shelter for as long as they are in the jurisdiction of the Netherlands.*

First and second grounds of non-conformity

445. The representative of the Netherlands provided the following information in writing:

> Children appear before the children's judge (kinderrechter). The Code of Criminal Procedure contains a separate title with procedural rules specially formulated for cases involving children.

These rules are also applied in cases involving children who were 16 or 17 years old when the offence leading to prosecution was committed.
In the Netherlands it is possible in such cases for the children's judge to impose a penalty or non-punitive order laid down in adult criminal law (article 77b of the Code of Criminal Procedure), for example, due to the gravity of the offence, the perpetrator's personality or the circumstances in which the offence was committed. As a consequence, under the law the penalty or non-punitive order must, in principle, be enforced within the system applicable to adults.
It should be noted that the children's judge in the Netherlands exercises great restraint in imposing penalties or orders from adult criminal law. In 2006, 2007 and 2008, such penalties or orders were imposed on 108, 103 and 104 children, respectively. This represents 1.4 %, 1.3 % and 1.2 % of all convictions of minors. In most cases, children who have received an adult sentence reach the age of majority before the sentence is enforced. In accordance with recent legislation, when a hospital order ("TBS"; a treatment order under adult criminal law) is imposed on a minor by the children's judge, the sentence can be carried out at a young offenders' institution, i.e. outside the adult system, until the person turns 21.
In this context, it is also important to mention that imposing a life sentence on a minor was explicitly prohibited by act of 20 December 2007 (Bulletin of Acts and Decrees 2007, 575).
As stated above, when a children's judge imposes a sentence under adult criminal law the possibility exists that the minor concerned may have to serve the sentence in the adult system. Because of this, when it became a party to the Convention on the Rights of the Child the Netherlands entered a reservation to article 37, paragraph (c). The reservation states that while the Netherlands accepts the provision, this does not prevent the application of adult criminal law to children aged 16 or older if the criteria laid down by law are met. The Dutch Government then reconsidered this reservation in light of the CRC's recommendations. The Government takes the position that despite the fact that penalties or orders under adult criminal law are rarely imposed on minors it wishes to preserve the possibility. This position is set out in the letter sent to the House of Representatives by the State Secretary for Security and Justice, concerning the introduction of a separate criminal law for adolescents aged 16 to 23 (Parliamentary Papers, House of Representatives 2010/11 28 741, no. 17). The aim of having a criminal law applicable to adolescents is for courts to take a more individual approach to sentencing when imposing a penalty or non-punitive order, taking into account the phase of development that the teenager or young adult is in. It will therefore be possible to impose penalties and non-punitive orders from the educational elements of juvenile criminal law on young adults under 23. Dutch law currently allows this for young adults under 21 (article 77c, Criminal Code). Child offenders will continue to be prosecuted by children's judges. In the letter, the Government writes that because it is possible to impose adult penalties and non-punitive orders on minors aged 16 and older, it is unnecessary to make what is currently a mild system of penalties under juvenile law more severe across the board.

Third ground of non-conformity

446. The representative of the Netherlands agreed with the Committee to discuss this situation together with the ground of non-conformity found under Article 31§2 of the Charter. He affirmed that the Revised Charter applied to foreigners only in so far as they were nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, and was therefore not applicable to persons unlawfully present in the Netherlands. The Committee of Ministers had confirmed this understanding by Resolution of 7 July 2010.

The representative of the Netherlands reported that his Government recognised minor foreign nationals were a vulnerable group deserving special attention, and aspired to avoid any situation where minors were left without shelter. He specified that since a decision from a national court from January 2011, his Government had installed family locations ("gezinslocatie") where families with

minor children received shelter and accommodation with restricted freedom of movement until their departure. Six such family locations were operational since July 2011.

The representative of the Netherlands also reported that families staying illegally on the territory were responsible for organising their departure from the territory, a responsibility which rested primarily with the parents, and explained that aliens had 28 days after rejection of their application for asylum to leave the territory of their own accord, during which they stayed in reception centres. If the 28 days were too short to organise the departure, aliens could be placed in an accommodation with restricted freedom of movement for a further 12 weeks and, if this period was still too short, families with minor children received shelter in family locations. Therefore, families whose asylum application had been rejected maintained accommodation until they actually left the territory, and even later during a regular immigration procedure they eventually decided to file, or in case their residence permit had been revoked.

The representative of the Netherlands added that, when a family with children was living on the streets, the Repatriation and Return Service could be contacted by local authorities to find a solution, which could include shelter. Finally the Dutch Supreme Court ruled in September 2012 in favour of the families with children and their shelter needs.

447. The Committee took note of the information provided and congratulated the Netherlands for the adopted amendments to its policy and practice.

RESC 17§1 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 17§1 of the Charter on the ground that prison sentences for minors may be up to 21 years.

448. The representative of Norway provided the following information in writing:

> The legislative proposal concerning juveniles in conflict with the law, “Prop. 135 L (2010-2011) Proposisjon til Stortinget (forslag til lovvedtak). Endringer I straffeloven, straffeprosessloven, straffegjennomføringsloven, konfliktrådloven m.fl (bar og straff)”, was approved by the Norwegian parliament (Storting) in December last year, and several legislative amendments entered into force on 20 January 2012.
> The Criminal Procedure Act Section 184, second paragraph, states that minors (between 15 and 18 years of age) shall not be imprisoned unless it is imperative to do so.
> A statutory maximum penalty of 15 years, corresponding to Section 33 in the 2005 Penal Code, has been adopted. Consequently, the maximum length of imprisonment for minors is currently 15 years. In the same provision it is stated that minors can only be sentenced to a term of imprisonment when it is particularly necessary.
> If the prosecution authority wishes to have a person placed in detention, the person must be brought before the District Court as soon as possible and no later than the day after the arrest, cf. the Criminal Procedure Act Section 183 first paragraph. If the day following the day of arrest is a Sunday or a holiday, the time-limit is extended with one day.
> The previous 4 week-limits in Section 183 in the Criminal Procedure Act has been altered to two weeks if the Court decides to remand a charged person in custody it shall fix a specific time-limit for the custody if the main hearing has not already begun. The time-limit shall be as short as possible and must not exceed two weeks. It may be extended by order up to two weeks at a time, cf. first paragraph.
> The number of minor prisoners is low, usually 10-15 at any time, and has remained quite stable over the last years. In 2008, totally 65 minors were imprisoned. In 2009, 80 minors were imprisoned. In 2010, 64, and in 2011, 59 minors were imprisoned.

As to segregation of minor prisoners from adult prisoners, reference is made to the measures mentioned in the letter of 5 October 2011. To this end it should be mentioned that the proposed criminal sanction, a so-called "Juvenile Sentence", also was approved by the Norwegian Parliament in December, and will become operational as soon as the necessary infrastructure is in place. The sanction is intended to be an alternative to an immediate custodial sentence and more severe Community Sentence for offenders between 15 and 18 years of age, who have committed serious or repetitive crime.
Young offenders have a statutory right to education. Prisoners have the same educational rights as the population in general, limited by security restrictions only, cf. the Execution of Sentences Act Section 4 and its corresponding guidelines, item 1.6. Hence, minor prisoners have the right, as well as a duty, to free primary education, and the right to secondary education, the Education Act Section 2-1 and 3-1.

RESC 17§1 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 17§1 of the Charter on the following grounds:

- *corporal punishment of children is not prohibited;*
- *it has not been established that children in public care receive the sufficient degree of protection and assistance;*
- *young offenders may be held in adult detention facilities.*

First ground of non-conformity

449. The representative of the Republic of Moldova informed the Committee that the conclusions of non-conformity were clearly founded on an omission in the report submitted to the ECSR as, following an amendment introduced by a law of 2008, Article 53§4 of the Family Code now provided that children had the right to protection against abuse, including corporal punishment, from parents and persons replacing them. Under Article 62§2 the methods chosen by parents to educate their children were required to exclude any abusive behaviour, insults, ill treatment, discrimination, physical or psychological violence, corporal punishment or incitement to commit criminal offences.

The representative of the Republic of Moldova said that any breaches of these provisions were punished by a fine or community service under the Summary Offences Code or, in the event of physical injury, by imprisonment under the Criminal Code.

450. The Committee congratulated the Government of the Republic of Moldova on the legislative amendment that had been made.

Second and third grounds of non-conformity

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

Motif 2
En faisant référence particulière sur la protection des droits des enfants vulnérables il faut remarquer quelques moments-clé. Les efforts importants ont été faits dans le sens de la réforme du système des soins des enfants dans des situations de difficulté à la base de la Stratégie Nationale et du Plan National d'actions sur la réforme du système résidentiel des soins de l'enfant pour les années 2007-2012, approuvés par la Décision du Gouvernement n 784 du 09.07.2007.
On a élaboré le cadre normatif et institutionnel pour le développement des services alternatifs de type familial pour les soins de l'enfant, comme les services d'assistance parentale professionnelle et les maisons d'enfants de type familial. En même temps, en vue d'optimiser

les services sociales prêtés on met en œuvre le Programme National pour la création du système intégré de services sociaux pour les années 2008-2012, approuvé par la Décision du Gouvernement n° 1512 du 31.12.2008, dont l'objectif principal est de consolider les capacités de prévention et d'assistance primaire des bénéficiaires dans le cadre de la communauté, tandis que la référence et l'octroi des services sociaux spécialisés ou de haute spécialité sont réalisés seulement au cas où celle-ci est imposée par les nécessités évaluées de chaque bénéficiaire potentiel.

L'organisation et le fonctionnement des services sociaux sont effectués à la base des règlements cadre et des Standards minimaux de qualité.

La Décision du Gouvernement n 351 du 29.05.2012 a approuvé le Règlement sur la redirection des ressources financières dans le cadre de la réforme des institutions résidentielles, qui établit le mode de redirection des ressources financières lors du procès de réforme des institutions résidentielles et l'octroi d'un paquet minimal de services sociaux et de services d'éducation inclusive, la détermination du coût des services sociaux et de services d'éducation inclusive pour un bénéficiaire, la planification des moyens financiers pour les services respectifs, ainsi que la compétence des autorités publiques.

En vue de garantir la qualité des services sociaux prêtés actuellement on fait promouvoir un mécanisme national d'évaluation, d'accréditation et de surveillance des préteurs des services sociaux qui a comme objectif l'accréditation des préteurs publics et privés. Dans ce sens, le Ministère du Travail, de la Protection Sociale et de la Famille a élaboré et promu le projet de loi sur l'accréditation des préteurs de services sociaux, qui le 8 juillet 2012 a été approuvé par le Parlement.

En 2012 on imaginé l'élaboration du Règlement d'accréditation des prêteurs des services et des critères d'autoévaluation et d'évaluation des prêteurs des services sociaux.

Ayant comme but l'assistance aux enfants orphelins et ceux se trouvant sous tutelle/curatelle dans les institutions d'enseignement en vue de poursuivre les études, la Décision du Gouvernement n 870 du 28.07.2004 a approuvé les Normes provisoires de frais en espèces pour les élèves (étudiants) orphelins et ceux trouves sous tutelle dans les écoles professionnelles et de métiers, dans les institutions d'enseignement moyen de spécialité et supérieur universitaire, les écoles de type internat et les maisons des enfants qui prévoient ce qui suit :

1. L'aide matériel, annuel, pour les vêtements, chaussures et inventaire mou au début de l'année scolaire – 3000 lei ;
2. Indemnisations mensuelle pour les matériaux didactiques, inventaire de ménage, objets d'hygiène personnelle et médicaments pour les élèves (étudiants) orphelins – 250 lei ;
3. Aide matériel à la fin d'année d'étude – annuellement 1000 lei ;
4. Frais pour l'alimentation pour une journée (au cours de l'an calendrier) – 35 lei ;
5. Indemnisation pour la fin d'études:
   a) à l'école de type internat ou la maison des enfants ;
   b) à l'école professionnelle et de métiers, à l'institution moyenne de spécialité ou à l'institution d'enseignement supérieur – unique 10000 lei ;
6. Indemnisation mensuelle pour les élèves (étudiants) qui ne touchent pas des bourses d'études (à l'exception de la vacance d'été) – 300 lei ;
7. Indemnisation mensuelle pour le loyer (en cas où l'institution d'enseignement ne dispose pas de foyer ou celui-ci ne fonctionne pas) – 500 lei ;
8. Indemnisation unique pour la réalisation des recherches et l'édition de la thèse de licence pour le dernier an d'études – 500 lei ;
9. Indemnisation unique pour le règlement de la taxe d'obtention de la carte d'identité – 130 lei.

Il faut également mentionner qu'en conformité avec la Loi n 436-XVI du 28.12.2006 „Sur l'administration publique locale", les autorités de l'administration publique locale décident la

mise en évidence des personnes socialement vulnérables qui ont besoin d'améliorer les conditions locatives.
En vertu de l'article 19 de la Loi n 338-XIII du 15.12.1994 sur les droits de l'enfant, les autorités de l'administration publique locale assurent l'entretien et la réparation des habitations des enfants orphelins et de ceux qui sont restés sans soins des parents jusqu'au majorat. En plus, les enfants qui reviennent d'une institution d'Etat pour les enfants, des parents, des personnes subrogatoires légales bénéficient de manière exceptionnelle d'un espace locatif, s'il est impossible de les installer dans l'habitation occupée antérieurement.
L'art. 37 du Code sur le logement n 306 du 03.06.1983 prévoit que les espaces locatifs sont accordés aux citoyens qui sont à l'évidence (au lieu de travail ou au lieu de domicile) en vue d'améliorer les conditions de logement, en conformité avec l'ordre de succession établie dans les listes respectives, en fonction des dimensions de l'espace locatif mis en exploitation et libéré dans le centre peuplé respectivement.
L'article 41, p. 2 du Code mentionné et le p. 45, al 2 du Règlement sur le mode d'octroi des espaces de logement approuvé par la Décision du Gouvernement n 405 du 25.11.1987, prévoit que les personnes qui sont revenues d'une institution d'État pour les enfants bénéficient des espaces de logement de manière prioritaire.
En vue d'améliorer la situation des enfants dans les institutions résidentielles et assurer le droit de chaque enfant d'être éduqué dans sa famille biologique/étendue, d'autres formes de placement, le Ministère de l'Education met en œuvre la Stratégie Nationale et le Plan national d'actions sur la réforme du système résidentiel de soins de l'enfant pour les années 2007-2012, approuvés par la Décision du Gouvernement de la République de Moldova n 784 du 09.07.2007.
En même temps le ministère a élaboré le projet de Décision du Gouvernement de la République de Moldova „Sur l'approbation du Programme de développement de l'éducation inclusive pour les années 2011-2020 comme suite le programme a été approuvé par la Décision du Gouvernement n 523 du 11.07.2011, le Ministère de l'Education a émis son ordre n 255 du 25 avril 2012 sur la révision de la liste des institutions de type résidentiel inclues dans le plan-cadre de transformation. Pendant la période de la Stratégie de réforme du système résidentiel (2007-2012) le nombre des institutions subordonnées au Ministère de l'Education a été réduit de 63 à 46. Par conséquent, le nombre d'enfants a été réduit d'environ 51 %. A partir 2009 les institutions résidentielles employaient des assistants sociaux qui évaluaient la situation des familles et collaborent avec les autorités tutélaires, l'administration publique locale, la famille en vue de réintégrer les enfants dans la famille. L'activité des managers écoliers est orientée vers le respect des conditions sanitaires et des normes d'hébergement des enfants dans les foyers.
Le Ministère de l'Education a sollicité des managers des institutions résidentielles d'instituer une boite, ou les enfants pourraient mettre ses plaintes et suggestions sur la situation et les cas exceptionnelles de l'école.
Le placement des enfants orphelins et ceux restés sans soins des parents dans les institutions résidentielles est effectué en conformité rigide avec la décision de l'Autorité Tutélaire et les Avis des Commissions régionales/municipales pour les enfants en difficultés.
Apres l'année scolaire 2010-2011 de 1086 promus (447 filles, 639 garçons) des institutions résidentielles la plupart est revenue aux lieux de naissance et ne continuent pas leurs études – 300 (27,6 %); 296 (27,3 %) ont été immatriculés dans les écoles/classes de métiers, et 262 promus (24,1 %) ont été immatriculés dans les écoles professionnelles.
Seulement 95 promus (8,7 %) ont été immatriculés aux lycées; 71 (environ 6,5 %) ont été immatriculés aux collèges et 6 (0,6 %) ont été immatriculés aux universités.
Environ 50 promus (4,6 %) ont été placés, et 6 (0.6 %) suivent des cours dans le cadre des Agences Territoriales de l'Emploi.
La vulnérabilité des enfants dans les institutions résidentielles est causée, en général, de :
- investissements réduits dans le secteur social ;

- manque d'un milieu protecteur et sur ;
- possibilité réduite pour les jeunes de s'impliquer dans le procès décisionnel personnel, social et communautaire ;
- insuffisance des connaissances, habilites et comportements des enfants/jeunes de résoudre ses problèmes avec lesquels ils se confrontent, etc.

Services adressés aux promus des institutions de type résidentiel

En vue de faciliter le développement personnel et social des enfants et des jeunes on a créée des réseaux des Centres de Ressources pour les Jeunes, les Conseils Locaux des Jeunes, les Centres de Santé Amicale aux Jeunes, du réseau d'Éducateurs de l'Égal à l'Égal en tant que modèles de succès.

Ils offrent une gamme large, intégrée et accessible de services amicaux aux enfants et aux jeunes, axés sur leurs besoins, intérêts et souhaits.

Pendant l'année scolaire 2011-2012 les représentants du Ministère de l'Education ont participé à 10 émissions TV, radio sur la mise en œuvre de la réforme du système résidentiel des soins de l'enfant.

En partenariat avec la Représentante UNICEF en Moldova, les ONG actives dans ce domaine on a élaboré et discute le concept de la revus „Acasa" qui éluciderait les résultats de la mise en œuvre de la réforme du système résidentiel des soins des enfants et de développement inclusif.

Motif 3

En conformité avec les articles 252, 253 du Code d'Exécution de la République de Moldova et l'ordre du Ministère de la Justice n 327 du 18.08.2005, les condamnés sous l'âge de 18 ans exécutent leurs peines dans les pénitenciers pour les mineurs dans les conditions établies par le Code d'Exécution de la République de Moldova et le Statut de l'exécution de la peine par les condamnés, ils peuvent aussi exécuter leurs peines dans les secteurs séparés des pénitenciers pour les adultes, mais dans des conditions du pénitencier pour les mineurs, norme qui est respectée dans toute son exclusivité. Par conséquent, les condamnés mineurs sont détenus séparément des adultes en bénéficiant en même temps d'une ration alimentaire supplémentaire.

A présent, les institutions pénitentiaires ont 87 détenus qui exécutent leur peine dans les conditions du pénitencier pour les mineurs.

Il faut mentionner que les pénitenciers organisent et mettent en œuvre les activités éducatives occupationnelles en vue de leur resocialisation et réintégration dans la société. De cette façon on réalise les activités éducatives occupationnelles raccordées aux groupes cibles qui assurent le respect des droits, la diminution de la violence et la criminalité, le guidage des condamnés vers la perception du problème, l'élaboration des solutions des problèmes, le développement des habilités sociales-utiles, le développement des habilités de communication interpersonnelle.

Par suite, les détenus mineurs se voient assurées de droit d'instruction générale. Pendant la période de l'année scolaire 2011-2012, 93 détenus mineurs ont fréquenté l'école, dont 87 ont achevé leurs études, et 11 ont soutenu les examens de promotion du gymnase. En vertu des prévisions de l'ordre commun du Ministère de l'Education et de la Jeunesse (n 409 du 01.05.09), du Ministère de la Justice (n 217 du 04.05.2009), du Ministère de l'Administration Publique Locale (n 63 du 01.05.2009) et du Ministère des Finances (n 48 du 04.05.2009) pour assurer les chances égales d'accès à l'éducation générale des classes d'éducation générale affiliées aux écoles, lycées de la zone de dislocation des pénitenciers ont été ouverts et fonctionnent:

- Lycée Théorétique Lipcani – Pénitencier n 2-Lipcani – 45 détenus ;
- Lycée Théorétique « Mihai Eminescu » Cahul – Pénitencier nr. 5-Cahul – 4 détenus ;

- Lycée Théorétique Lăpuşna – Pénitencier n 7-Rusca – 2 détenus ;
- Ecole Secondaire n 9, v. Bălţi – Pénitencier n 11-Bălţi – 7 détenus ;
- Ecole n 41, v. Chişinău – Pénitencier n 13-Chişinău – 26 détenus ;
- Gymnase Saharna, v. Rezina – Pénitencier n 17-Rezina – 3 détenus.

En même temps, les détenus mineurs qui exécutent la peine privative de liberté dans le Pénitencier n 2-Lipcani, se voient bénéficier également de droit à l'instruction vocationnelle-technique. Au cours de l'année scolaire 2011-2012, 47 mineurs ont été immatriculés aux spécialités de charpentier, tourneur et mécanicien réparateur.

On fait dérouler également des activités d'éducation physique et de sport avec les détenus mineurs. On a créé le « Club des amateurs des jeux sportifs » dans le cadre duquel on organise des activités à partir des besoins et les habilités de chaque mineur sous la tutelle de l'institution pénitentiaire. Comme suite, en vertu d'un programme d'activité les détenus mineurs participent aux activités sportives (football, volley, ping-pong, échecs, etc.). En même temps chaque jour bénéficient de promenades pendant lesquelles les détenus bénéficient de manière supplémentaires d'exercices physique et récréatives.

Une partie composante importante dans l'assurance des droits des condamnés mineurs constitue l'assistance psychologique dans le pénitencier réalisée par la counseling et les programme psycho-sociaux. Les programmes de counseling psychologique permettent l'atteinte des objectifs essentielles pour la resocialisation des condamnés, car ils offrent l'accélération du procès de maturation affective de la catégorie mentionnée, aident les condamnés de se connaitre soi-même et de comprendre les mécanismes qui avaient été à la base du comportement déviant. Les psychologues réalisent le plus souvent counseling psychologique individuel, en fonction des nécessités des détenus (auto connaissance, dépression, anxiété, problèmes de relations, etc.), comme suite pendant la période du premier semestre 2012, 97 consultations individuelles ont été effectuées avec les détenus mineurs dans le Pénitencier n 2-Lipcani. En même temps les spécialistes ont réalisé une série de mesures de psycho correction sur différents problèmes : le développement des habilitées de communications, la négociation des conflits, le développement des habilites de solution des problèmes, l'accroissement d'auto respect, l'accroissement d'autocontrôle, du management du stress, etc., qui constitue pendant la période du sem. sem.I de l'an 2012 – 78 actions de psycho correction en groupe.

Le Département des Institutions pénitentiaires a élaboré au cours des années 2006-2010 une série de programmes axés sur les besoins des condamnés qui sont actuellement mises en œuvre dans les institutions pénitentiaires. Sauf la participation aux programmes socio-éducatifs et ceux de préparation pour la libération des détenus, les psychologues sont responsables pour la mise en œuvre de 5 programmes psycho-sociaux :

1. Programme de réduction de la violence au milieu pénitentiaire – programme permet aux condamnés de percevoir le problème et d'élaborer les étapes de sa solution. Sauf les objectifs de base (diminuer la violence) les programmes, étant réalisés en groupe, développe les habilités de communication des détenus. Comme suite, 20 détenus qui ont participé à ce programme ont développé des habilités sociaux-utiles.
2. Le programme d'éducation pour la santé – a été élaboré et approuvé au mois de juin 2007 et a eu du succès dans plusieurs institutions, mais la plupart des séances de programmes sont déroulés par les médecins. Le but du programme est de cultiver chez les détenus la culture sanitaire physique, mentale, émotionnelle et sociale. 12 mineurs détenus ont participé à ce programme durant le I semestre 2012
3. Le programme d'orientation vocationnelle – destiné particulièrement aux détenus mineurs – a été assisté par 32 personnes dans le pénitentiaire P-11 Bălţi, P-2 Lipcani. Les condamnés ont obtenu des connaissances et des habilites nécessaires à la réalisation d'un management efficient dans le choix du métier, dans la recherche et le maintien du lieu de

travail. Ce programme comprend plusieurs composants qui visent le développement des jeunes pour le management de leur carrière.

4. Exclusivement pour la catégorie respective de détenus en vertu de l'ordre du Département des institutions pénitentiaires n 183 du 30 septembre 2009 on met en œuvre le Programme sur la préparation pour la libération des condamnés mineurs. Le Programme vise l'éducation des participants en vue d'explorer les quatre domaines de compétence : les relations interpersonnelles, les relations dans la famille, l'orientation professionnelles et l'attitude par rapport à soi-même, ces domaines se sont démontrés en tant que essentielles pour la préparation pour la libération des condamnés mineurs.

Les programmes de counseling psychologique sont déroulés en fonction des besoins des condamnés suite après avoir déterminé les particularités personnelles de ceux-ci et des problèmes avec lesquels ils se confrontent.

En ce qui concerne le mécanisme de dépôt des plaintes par les enfants en détention – au cours de 2011, dans le cadre du projet « Support au Ministère de la Justice dans la promotions des reformes de la justice pour les enfants » mis en œuvre par le Ministère de la Justice en partenariat avec l'UNICEF Moldova on a réalisé « l'Étude sur l'évaluation et le développement du mécanisme de dépot des plaintes par les enfants en détention » (auteurs Adam Alexandru coordinateur, Raisa Botezatu – président intérimaire de la Cours Suprême de la Justice, Victor Zaharia – directeur IRP, Alexandru Tarasov – psychothérapeute) – ou sont formulés les recommandations pour le DIP qui proposent : opération des modifications dans le Code d'Exécution, le Code de Procédure Pénale et la Loi sur les pétitions par lesquelles il faudrait réglementer la capacité du mineur d'exercer personnellement le droit de pétition ; l'introduction dans le Code d'exécution des réglementations qui établiraient une procédure détaillée sur la modalité de dépôt par les mineurs en détention des plaintes écrite et la procédure de leur examen ; opération des modifications dans le Code d'exécution et du Statut d'Exécution de la peine par les condamnés qui simplifieraient les procédures de dépôt des plaintes verbales des détenus mineurs ; inclusion dans le Code d'exécution des réglementations qui établissent l'obligation de l'Etat, par l'administration pénitentiaire, de supporter les frais liés a l'exercice des droits des mineurs a la pétition par les demandes et les saisies adressées aux autorités publiques, aux organes judiciaires, aux instances et aux organisations internationales intergouvernementales dont la compétence est acceptée et reconnue par la République de Moldova.

En même temps, les panneaux d'informations visuelles n 1 « Information générale » ont placé les listes avec les dénominations et les données de contact des mécanismes et des fonctionnaires qui ont un accès illimité aux lieux de détention et dont la compétence comprend la surveillance et la protection des droits de l'homme de manière suivante : Présidence, Parlement, Gouvernement, Ministère de la Justice, Ministère de l'Intérieur, Ministère de la Sante et de la Protection Sociale, Département des Institutions Pénitentiaires, Procurature Générale, Cour Suprême de la Justice, Cour d'Appel, Centre pour les Droits de l'Homme, Agence Nationale de l'Emploi, Commission de surveillance du respect des droits de l'homme dans les institutions qui assurent la détention des personnes.

Il y a peu de temps, la liste respective a été complétée par l'information concernant la Commission de surveillance du respect des droits de l'homme dans les institutions qui assurent la détention des personnes (Loi n 235 du 13.11.2008 sur le contrôle civil du respect des droits de l'homme dans les institutions qui assurent la détention des personnes), dont la compétence est d'examiner les plaintes concernant les mauvais traitements prétendus ou le non-respect des droits des personnes détenues.

RESC 17§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 17§1 of the Charter on the grounds that:

- *all forms of corporal punishment of children are not explicitly prohibited in the home;*
- *the maximum length of pre-trial detention of minors is excessive.*

First ground of non-conformity

452. The representative of the Slovak Republic informed the Committee that Act No. 305/2005 on Social and Legal Protection and Social Guardianship defined protection of children as a set of measures necessary for the well-being of children, and respecting their best interests, securing of education and general development in their natural family environment. Articles 7 and 8 of the Act prohibited all forms of corporal punishment of the child and other cruel or humiliating forms of treatment, as well as forms of punishment of the child that caused or could have caused physical or psychological harm. All persons were obliged to report any violation of the rights of the child to the Authority of Social and Legal Protection and Social Guardianship of Children. A child had the right to request assistance in the protection of its rights from the Authority.

The representative of the Slovak Republic reported that authorities (Government; Centre for International Legal Protection of Children and Youth; Central Office of Labour, Social Affairs and Family; Offices of Labour, Social Affairs and Family; Municipalities) were obliged to provide immediate assistance to protect a child's life and health, including in cases where a child could not apply for assistance itself in view of his/her age and maturity. A child could also request assistance without parental knowledge. Providers of medical care were also obliged to notify suspicion of neglect, torture or abuse to the Police and the Healthcare Surveillance Authority. The Departments of General Crime in courts and the Police Corps Regional monitored domestic violence, abuse and maltreatment, including corporal punishment.

The representative of the Slovak Republic also reported that violence against children in the home was regulated by Article 208 of the Penal Code (torture of a close or entrusted person). The duration of a criminal sentence was increased for inflicting harm on a child's health (including neglect by unwarranted withholding of food, rest or sleep, or forced begging).

The representative of the Slovak Republic explained that, based on the conclusions of the ECSR, section 2.4 of the current National Action Plan for Children aimed at implementing zero tolerance towards corporal punishment in other legislative acts as well. The Ministerial Committee for Children had reported in September 2012 that the Ministry of Labour, Social Affairs and Family and the Ministry of Justice worked on amendments to the Civil and the Penal Codes to explicitly prohibit all forms of corporal punishment of children in the home, so as to make draft amendments available by the end of 2012.

453. In reply to a question from the representative of ETUC, the representative of the Slovak Republic specified that draft amendments would be available by the end of 2012, would undergo intergovernmental coordination involving ministries, social partners and the public; ministerial evaluation of proposals, and Government approval. The approved draft would then be sent to Parliament for adoption. He explained that the process had just started, that two Codes had to be reviewed, and that the purpose was to get three acts which each ban corporal punishment. He emphasized that the principle was already effective under Act No. 305/2005 on Social and Legal Protection and Social Guardianship.

454. The representative of Poland, concurring that the Social Charter was already implemented under legislation currently in force, declared that the finding of non-conformity was not understandable and had only been taken on the basis of information provided by a non-governmental organization. The representative of Lithuania, also expressing concern that some conclusions were based on views of non-governmental organizations, affirmed that such organizations could identify practical problems, but not interpret the law.

455. The Chair recalled that the ground of non-conformity was that corporal punishment inflicted by parents was not explicitly covered under legislation currently in force.

456. In reply to the question from the Chair whether, if the representative of the Slovak Republic did not question the conclusions of the ECSR, they were deemed to be correct, the representative of the Slovak Republic referred to this statement and added that his Government's view was that corporal punishment inflicted by parents was already prohibited under Act No. 305/2005, and that the draft amendments were only made to enhance visibility of the prohibition.

457. The Committee took note of the draft amendments under consultation, invited the Government of the Slovak Republic to provide full details in its next report and bring its legislation into conformity with the European Social Charter.

Second ground of non-conformity

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

> As is stated in the Conclusions by the ECSR, juveniles in the Slovak Republic may receive a conditionally suspended prison sentence for a probationary period (conditional sentence) which may involve supervision (probation). Juveniles may be held on remand only for as long as it is absolutely necessary. The court may extend the custody of juveniles who have committed a particularly serious crime beyond one year, but the total length of custody may not exceed two years.
> Based on the statistical data provided by the Directorate General of the Prison and Court Guard Corps and especially when considering the real total length of custody of juveniles who have committed a particularly serious crime, the Ministry of Justice of the Slovak Republic does not plan to lower the maximum length of pre-trial detention of minors due to the very low number of juveniles who have committed a serious crime and were actually held on remand in the previous years. In 2009 only 4 young persons were accused of having committed a particularly serious crime, in 2010 only 1 person and then 2 persons in 2011.
> As for the next question of the ECSR, young offenders in the Slovak Republic do have a statutory right to education. This is governed by Act 245/2008 (School Act), §24, 2 (c) which states that when a pupil has been taken into custody or is serving a sentence, an individual education will be granted to the pupil to ensure that the education of the pupil is not interrupted.

RESC 17§1 SLOVENIA

The ECSR concludes that the situation in Slovenia is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment in the home is not prohibited.

459. The representative of Slovenia, recalling that any action under the Family Law was based on the best interest of the child, a principle which applied regardless of whether or not some norm regulated a situation explicitly, informed the Committee that the Ministry of Labour, Family and Social Affairs had decided to include the best interest of the child into the introductory provisions of the new Family Code. She reported that Article 7, last paragraph of the new Family Code adopted by Parliament in June 2011 obliged parents, other persons, state authorities, public service providers and holders of public authority not to expose the child to any form of corporal punishment. However, the new Family Code had been rejected on 25 March 2012, in a subsequent legislative referendum.

The representative of Slovenia explained that Article 25 of the Referendum and Popular Initiative Act (Uradni list RS, Nos. 15/1994, 25/2005-UPB1 – ZRLI) prohibited the National Assembly from adopting an act in opposition to the outcome of a referendum, or containing solutions which were identical or similar to the rejected act, or carry out another referendum about the same issue for one year. Therefore, regulation of the substance of the mentioned Act could be taken up again as of March 2013, at the earliest.

The representative of Slovenia emphasized that family violence was still prohibited under the Family Violence Prevention Act (ZPND). Children were a protected category, since the Act provided that violence against children could result from their mere presence in a situation of violence committed against other family members, and authorities were requested to act quickly when confronted with violence against children. Severe or frequent corporal punishment could be qualified as domestic violence under the Act, and the Social Work Centre or the Court could eventually restrict parental care. The Act also envisaged victim protection, and referred to the punitive law (minor or criminal offences) for sanctions.

The representative of Slovenia reported that the National Assembly had also adopted the National Programme on Prevention of Family Violence 2009-2014, which laid down, in a coordinated cross-sectorial approach, efficient measures to detect and prevent family violence. On basis of this Programme, an Action Plan 2010-2011 had intensified cooperation between the Ministry of Labour, Family and Social Affairs, the Ministry of Interior and the Police, to adopt rules of coordination between police and other authorities in the detection of family violence. The Police had carried out 400 activities aimed at preventing family violence in 2010, and 1000 activities in 2011.

460. In reply to a question from the Chair, the representative of Slovenia specified that the Family Violence Prevention Act had been adopted in 2008, and had been mentioned in the report to the ECSR. She added that her Government had a clear intention to implement an explicit and broader ban of corporal punishment in the new Family Code, and that the issue was accepted in society.

461. The representative of ETUC welcomed the fact that the new Family Code was under preparation for 2013 and asked whether a clarification of the existing Family Violence Prevention Act before the ESCR could provide a solution.

462. The Secretariat specified that the information had been before the ESCR, but an interpretation of the Family Violence Prevention Act had not been considered sufficient, since what was required was a clear, explicit and written prohibition of corporal punishment.

463. The Committee took note of the provided information including the announced amendments in 2013, invited the Government of Slovenia to contact the ECSR if Slovenia was of the view that current legislation was compliant, and invited the Government of Slovenia to bring its legislation into conformity with the European Social Charter.

RESC 17§1 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 17§1 of the Charter on the grounds that:

- *there is no explicit prohibition of corporal punishment in the home;*
- *prison sentences for minors may be up to 20 years.*

First ground of non-conformity

464. The representative of Turkey provided information concerning the ratification by Turkey, on 24 November 2012, of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Turkey is the first state of the Council of Europe to ratify this Convention which includes provisions concerning domestic violence against children. In order to give effect to the Convention, a new law on the Protection of the family and the Prevention of violence against women had been adopted on 8 March 2012. Article 1, paragraph 1, lays down principles and measures to be adopted to prevent violence against women and children. Article 2 provides far reaching definitions of violence and domestic violence, with corporal punishment in the home falling within the scope of this law.

Moreover, the Government considers that Article 232, paragraph 1, of the Turkish Penal Code provides for the prohibition of all forms of violence against children, including corporal punishment. Nevertheless, the Ministry of Family and Social Policy has put forward a proposal to amend Turkish legislation to include a clear provision which explicitly prohibits corporal punishment in the home, at school and other settings. This states that disciplinary power, provided for under Article 232 of the Penal Code, under no circumstances includes corporal punishment. This proposal is being examined by the Ministry of Justice and a working group has been set up.

465. The representative of Turkey, in reply to questions by the ETUC and the representative of Lithuania, said that the notion of disciplinary power had given rise to a misunderstanding, hence the proposal to amend the text of the legislation. He pointed out that in the current legislation, disciplinary power does not authorise parents to exercise violence against children.

466. The Committee congratulated Turkey on ratifying the Convention on Preventing and Combating Violence against Women and Domestic Violence. It took note of the efforts to prohibit corporal punishment at home and asked the Government to include all relevant information in its next report.

Second ground of non-conformity

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

> Il n'a pas eu de changement dans notre législation concernée, à savoir l'article 31, paragraphe 3 du Code des peines. La conclusion de non-conformité du Comité est portée à la connaissance du Ministère de Justice.

Article 17§2 – Free primary and secondary education – regular attendance at school

RESC 17§2 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 17§2 of the Charter on the grounds that:

- *measures taken to reduce drop-out from compulsory schooling are not adequate;*
- *it has not been established that measures taken to increase the enrolment rate in secondary schools are sufficient.*

First and second grounds of non-conformity

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

> According to the Article 39 point 2 of the RA law "On Education" the head of community has mandatory authority to conduct registration of children in pre-school and school age and ensures their enrolment in educational institutions.
> In order to take adequate steps towards bringing back the dropped-out children to school the Ministry of Education and Science has officially applied to regional administrations and Yerevan Municipality to provide relevant details of those children who were not attending school during the 2011-2012 educational year.
> According to the introduced data there were 157 children in the country not attending school during the mentioned period: (Yerevan 14, Kotayq marz 50, Shirak marz 38, Armavir marz 18, Aragatsotn marz 16, Lori marz 11, Syunik marz 5, Vayots Dzor marz 5). There were 3 marzes (Arart, Gegharkunik and Tavush) where no cases of drop-out were registered.
> Taking into account the fact that the cases of drop-out from schools are conditioned also by the social reasons the Ministry of Education and Science has started "School feeding" programme

which will enable to increase the enrolment of those children who are not attending school due to social-economic conditions.

RESC 17§2 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 17§2 of the Charter as it has not been established that measures taken to increase the enrolment rate in secondary schools are sufficient.

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

BOSNIA AND HERZEGOVINA (BIH)

The framework legislation at all levels of education in BiH guarantees to every child the right to equal access, equal opportunity to participate in appropriate upbringing and education and equal treatment without discrimination on any grounds and none of the law contains discriminatory provisions.

Article 6 of the Framework Law on Preschool Upbringing and Education of Bosnia and Herzegovina (Prohibition of discrimination) provides that: "(1) Each child shall have equal right of access and equal opportunities to participate in appropriate care and education system without discrimination on any ground; (2) Equal access and equal opportunities shall mean providing equal conditions and opportunities for all, to begin and continue further care and education".

Article 3 of the Framework Law on Primary and Secondary Education of Bosnia and Herzegovina defines goals of education, including „promoting respect for human rights and fundamental liberties, and preparing each person for a life in a society which respects the principles of democracy and the rule of law" (point c) and „ensuring equal possibilities for education and the possibility to choose in all levels of education, regardless of gender, race, nationality, social and cultural background and status, family status, religion, psycho-physical and other personal characteristics" (point e).

The Law defines that:

„General objectives of education result from generally accepted, universal values of democratic society, as well as its own value system based on specific qualities of national, historical, and cultural tradition of nations and national minorities living in Bosnia and Herzegovina".

„The child's right to care and education and proper care for the wellbeing of his or her physical and mental health and safety shall have the priority over any other rights. In case of conflict of rights, the priority shall be given to the right, interpretation or action which shall be in the best interest of the child".

The child's right to education is regulated in Article 4, paragraph 1 of the Framework Law, reading „Every child has a right of access and equal possibility to participate in appropriate educational process, without discrimination on whatever grounds".

The Framework Law on Primary and Secondary Education of BiH provides that:

„The school cannot discriminate in children's access to education or their participation in educational process on the basis of race, colour, gender, language, religion, political or other belief, national or social origin, on the basis of special needs status, or on any other basis" (Article 35, paragraph 1).

„The school promotes equal opportunities for all its students, teachers and other employees, taking into consideration and at the same time promoting the right for differences among them. With this aim, the school shall establish and carry out its own programs that support and promote different cultures, languages, and religions of its students and staff" (Article 36).

Since Bosnia and Herzegovina has not accepted Article 15, paragraph 1 of the Charter relating to the integration of children with disabilities in regular education in accordance with Article 17, paragraph 2, we give the following answer:
The framework legislation at all levels of education in BiH guarantees to every child the right to equal access, equal opportunity to participate in appropriate upbringing and education and equal treatment without discrimination on any grounds and none of the law contains discriminatory provisions.
Article 6 of the Framework Law on Preschool Upbringing and Education of Bosnia and Herzegovina (Prohibition of discrimination) provides that: „(1) Each child shall have equal right of access and equal opportunities to participate in appropriate care and education system without discrimination on any ground; (2) Equal access and equal opportunities shall mean providing equal conditions and opportunities for all, to begin and continue further care and education". Social inclusion in schools is improved by applying the inclusion index as a means of self-assessment (progress report).
The Framework Law on Preschool Upbringing and Education of BiH (Article 35) provides that school cannot discriminate in children's access to education or their participation in educational process on the basis of race, colour, gender, language, religion, political or other belief, national or social origin, on the basis of special needs status, or on any other basis.
In terms of paragraph 1 of this article, the competent authorities and institutions, together with schools, are particularly responsible for ensuring functional stay and supporting infrastructure for access and participation in the educational process for children, young people and adults with special needs.
The Framework Law on Preschool Upbringing and Education of BiH (Article 19) provides that children and youth with special needs shall be educated in regular schools and according to their individual needs. An individual program adapted to their possibilities and abilities shall be made for each student and shall determine the status of each student in relation to special education and speech pathology.
Children and youth with serious disorders and difficulties in the development may be educated in part or wholly at special educational facilities, where it is impossible to provide appropriate education in regular schools.
Categories, identification procedures, planning and working methods, profile, training, professional development of personnel working with children and youth with special needs, as well as other issues, shall be regulated more closely by entity, canton and Brčko District of Bosnia and Herzegovina legislation, in accordance with the principles and standards defined by this Law.
Article 21 of the Framework Law on Preschool Upbringing and Education of BiH provides "With the aim of acquiring new knowledge, improvement and professional development, teaching personnel, pedagogues, teachers of special needs education, speech pathologists, and school headmasters shall be included into obligatory programs of training, improvement and testing".
Such programs shall be established by educational authorities in the entities, cantons and BD, in accordance with the principles and standards defined in this law.

Roma education

With regard to Roma children, we have to underline that at the 128th meeting held on 14 July 2010 the Council of Ministers of Bosnia and Herzegovina adopted the Revised Action Plan on Educational Needs of Roma. This document defines four goals and 47 measures so that this marginalized group of children could have equal access to high-quality education and acquire necessary skills to later better integrate into society.
Also it is necessary to emphasize that an expert team was appointed to monitor meeting of the educational needs of Roma, as a direct obligation that derives from it. The team collects all relevant statistical data on Roma education as of 2011/2012 school year. In order to determine the number of children dropping out of school we will need to inspect the data to be collected

only at the end of the school year. All these data will be collected each school year and we will eventually be able to make a comprehensive analysis of the increasing number of Roma children attending school, as well as all other relevant information about the educational needs of Roma.
In 2011 there was an increase in enrolment of Roma children in primary, secondary and higher schools.
From an analysis of indicators of Roma needs compiled by the Ministry of Human Rights and Refugees, we can see that:
- 27 Roma children were included in the compulsory preschool upbringing and education;
- 49 Roma children were enrolled in compulsory preschool upbringing and education;
- 3024 Roma children attended primary school;
- 243 Roma children attended secondary school;
- 17 Roma children were included in higher education;
- 939 children were not covered by primary or secondary education.

Neither competent ministries of education (there are 12 ministries in BiH and 1 Department for Education of BD) nor social work centres could provide data on the number of children who were not included in schools and Roma associations do not provide schools with these data, either.
It is evident that the number of Roma children dropping out of primary and secondary school significantly reduced. In 2011:
- 49 (1.6 %) Roma students dropped out of primary school;
- 43 Roma students dropped out of secondary school (2.3 %);
- 32 Roma students did not get grades because of going abroad;
- 224 Roma students who dropped out of primary school were included in extramural system of primary education;
- 61 Roma children received scholarships in primary and secondary schools;
- 80 % of Roma children received some form of assistance in primary school (textbooks, school supplies, transportation, school meals);
- 7 Roma university students received scholarships.

REPUBLIKA SRPSKA (RS)
As for Roma inclusion, the Ministry of Education and Culture of RS regularly monitors the implementation of the revised Action Plan of BiH on the Educational Needs of Roma:
- schools hold meetings with parents of Roma children in order to inform them that primary education is compulsory. NGOs participate in these activities. In 2011/2012 school year, 21 meetings were held in seven schools in four municipalities;
- meetings and activities are held in order to understand the importance of programs related to early child development;
- day care centres for young children have been opened;
- informative meetings and lectures for parents are held in Roma communities (with the participation of NGOs);
- Bijeljina municipality appropriated BAM 3,700 for the involvement of children in preschool programs in the current year;
- “Improving Access to Preschool Education for Roma Children” project – municipalities of Vukosavlje, Prijedor, Bijeljina and Gradiska;
- seminar titled “Improving Access for Children from Roma Communities” in order to strengthen capacity and skills of teachers working with Roma children – municipalities of Vukosavlje, Prijedor, Bijeljina and Gradiska;
- 676 students were included in the regular primary school education in 2011/2012 school year;
- incentive measures taken to advance regular attendance – regular contacts with the Association of Roma and Roma communities, the Centre for Social Work and Roma families,

exemption from all fees and charges in schools/ free theatre and cinema tickets..., parental meetings, paying visits to families, free school supplies, clothes, shoes, textbooks and school meals (the Municipality of Banja Luka), free school bags and school supplies, transport for students who travel with minimal fares (Vukosavlje Municipality);
- Adapted curriculum – in the last four years we implemented "The Fundamental Right to Education" project for children who had not had the opportunity to regularly attend classes while at school age. A total number of people included in this project were 74. Students who regularly attend classes are taught under the regular curriculum;
- all students who reside over 4 km away from school are provided with free transportation;
- Bijeljina municipality provided a school meal to Roma children in primary education;
- the extramural system of primary education includes 76 Roma children;
- the Municipality of Bijeljina provides taking examinations free of charge;
- parents of Roma children are involved in school bodies – Parents' Councils;
- activities are organized for the purpose of continuous training of teachers, parents and all children in primary schools in order to raise awareness about human rights and rights of children;
- non-violent communication workshops are organized to raise awareness of teachers, parents and all children in primary schools about stereotypes and discrimination against Roma in education and to train them in overcoming them;
- 104 children enrolled in secondary school in 2011/2012 school year;
- free textbooks were provided to Roma children enrolled in secondary schools (19 children);
- free transportation of Roma children enrolled in secondary schools (14 children) was provided;
- 15 Roma children receive scholarships;
- eleven Roma children enrolled in higher education institutions;
- four Roma children at higher education institutions receive scholarships;
- information about the organization of adult primary education is sent to the Association of Roma, Association of National Minorities and the Centre for Social Work;
- the competent institutions inform about education programs of Roma adults through the media, newspapers, television, radio and Employment Office. So far there have been no Roma registered for adult primary education.
- seven schools promoted Roma culture and history as extracurricular activities (Banja Luka and Bijeljina) during the Roma Day, Roma's celebration of St George and "Kaleidoscope: Let's get acquainted! National Minorities in BiH" diversity is all around us, explore its riches;
- Let's get acquainted! National Minorities in BiH Manual was published;
- all newly born children and adult Roma have been registered in the Birth Register in Banja Luka;
- six Roma assistants were hired to teach.

BRČKO DISTRIKT (BD)

The Law on Education in Primary and Secondary Schools of BD requires that all children have an equal right to education. Article 6, paragraph b) of the Law prohibits discrimination or favouritism based on ethnic, religious, sexual, political, social or any other basis.
The education system of BD has no special schools or classrooms for Roma children, but they are integrated into regular classes with other students instead. The BD primary schools include 107 Roma students and 16 Roma students are in secondary schools. The legislation gives equal rights to all students but problems of Roma students caused by family and social circumstances are evident. We emphasize that the education system includes much larger number of Roma students, but the problem is the inconsistency in their declaration of nationality.

Schools help these students during their education in accordance with their capabilities, organizing humanitarian activities in the school for students and having good cooperation with local communities and NGOs with a view to providing necessary conditions for these students.
Accordingly, professional teams in school consisting of an educator, psychologist, defectologists, social workers, social educators facing the problem of poor school attendance of Roma students are trying to solve this problem in cooperation with parents, working on changing attitudes and habits that their children attendance has become an instrument to achieve something (e.g. a school meal free of charge, one-time monetary assistance etc.). In fact, very often, the only reason the parents send their children to school regularly is to get the (albeit minimal) benefits.
A project that will provide day care of students after school in the Ninth Primary School of Prutače where a majoritz of Roma students reside is under preparations. Students have free transport and textbooks in primary schools while secondary school students are provided free transport and efforts are made to provide textbooks to these students.

FEDERATION OF BOSNIA AND HERGEGOVINA (FBiH)

Two schools under one roof

In order to make a real insight in the number of “two schools under one roof” and how they operate in order to work out options for their integration, at the Conference of Ministers of Education in Bosnia and Herzegovina, the Minister of Civil Affairs appointed a working group, consisting of representatives of Middle Bosnia Canton, Herzegovina-Neretva Canton and Zenica-Doboj Canton, the Federation Minister of Education and Science and the OSCE Mission to BiH.
The working group visited all the schools, analysed the situation in the field and drafted a comprehensive report, which included a categorization of the degree of integration in these schools. After touring all the schools, they found the tendency of reduction of their number as a result of administrative and legal unification of schools in Zenica-Doboj Canton and emphasized the necessity of further unification.
The working group adopted the recommendations made by the Federal Ministry of Education and Science to the Government of FBiH, which adopted the same, and it went into Federal Parliament.
On 16 February 2010 the BiH Federation Parliament deliberated the report and on that occasion adopted the following conclusions:
1. The cantonal ministries of education of Middle Bosnia Canton, Herzegovina-Neretva Canton and Zenica-Doboj Canton are invited and the Federation Minister of Education and Science is ordered to do whatever it takes to ensure the next school year in the three cantons set off without the phenomenon of “two schools under one roof”.
2. The Federation Government is called upon to initiate discussions with the cantonal governments of the possibility of transfer responsibilities in the field of education from the cantonal level onto FBiH, to begin with.
3. The House of Representatives of the Parliament of the FBiH gives an assignment to the Constitutional Commission to examine, while exercising its duty of monitoring of constitutionality and legality in the FBiH, whether these values are respected and applied in the primary and secondary education system in BiH, in which many schools implement curricula of neighbouring countries.
The Constitutional Commission is obliged to inform the House of Representatives whether the teaching process in FBiH implementing curricula of other countries is in accordance with the Constitution of FBiH.
On 29 March 2010, acting on the 16 February 2010 Conclusion of the House of Representatives, in accordance with its responsibilities, the Federation Ministry of Education and Sciences sent a letter enclosing the Conclusions of the House of Representatives to all authorized representatives of the cantonal and municipal authorities of Middle Bosnia Canton,

Herzegovina-Neretva Canton and Zenica-Doboj Canton, i.e. prime ministers and speakers, mayors and chairmen of municipal councils of the three cantons where the phenomenon of "two schools under one roof" was recorded, asking the authorities to take urgent measures and activities to eliminate this phenomenon so that the next school year can begin without this phenomenon.
Following up this Conclusion, the Federation Ministry of Education proposed and the Government of FBiH adopted, on the 139 meeting held on 14 April 2010, the Conclusion (V. No. 351/2010) which determined the possibilities of transferring of jurisdiction in the area of education, in whole or in part, in accordance with the Constitution of the Federation of Bosnia and Herzegovina and initiated discussions with the cantonal governments and other authorized entities about the possibility of transferring of jurisdiction from the cantons to the FBiH. A commission was appointed for this purpose to include representatives of the Federation Ministry of Justice, the Government of the Federation Office of Legislation and Harmonization with EU Regulations and the Federation Ministry of Education and Sciences, having an obligation to implement this Conclusion of the Government of the Federation of Bosnia and Herzegovina within six months.
The ministers called upon the general public, including parents and school committees, to get involved in solving this problem.
Talking about this issue, it is necessary to emphasize that in 2012 the Municipal Court of Mostar issued the first instance judgment ordering that this discriminatory practice of "two schools under one roof" be abolished. The same lawsuit is pending before the Municipal Court of Travnik.

The integration of children with disabilities into mainstream education
FEDERATION OF BOSNIA AND HERGEGOVINA (FBiH)
- Is there legislation explicitly protecting persons with disabilities from discrimination in education and training?
These persons are protected by the Law on Primary and Secondary Education in the provisions we have already cited above. Further, in September 2003 the Council of Ministers of BiH carried the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. In April 2010 the 2010-2014 Strategy for the Equalization of Opportunities for Persons with Disabilities was adopted in FBiH, one segment being dedicated to education. This year a report on the implementation of this Strategy will be made for the United Nations.
- Are measures in place to facilitate the integration of children with disabilities into mainstream education, e.g. adapting schools to make them physically accessible?
New schools are built to comply with building standards and old school are repaired to meet the standards, wherever possible. A particular problem is satellite schools in rural areas.
- Does general teacher training incorporate special needs education as an integral component?
Pedagogical standards and norms envisage that schools with larger numbers of students must have an educator and psychologist. Seminars, roundtables and other forms of education are organized for educational staff.
- Are individualised educational plans are crafted for primary and secondary school students with disabilities and how? Are individualised educational plans are crafted for university students with disabilities and how?
Children with special needs use individualized and customized educational plans. These educational plans are developed in collaboration by teachers and mobile teams consisting of experts in certain fields (educators, psychologists, defectologists, occupational therapists).

REPUBLIKA SRPSKA (RS)
All laws of the RS in the field of education protect people with disabilities from discrimination:

The RS Law on Preschool Upbringing and Education (119/08, 1/12) provides that every child has the right of access and equal possibility to participate in appropriate educational process. When enrolled in pre-school establishments for children with special needs, individual programs adjusted to their abilities and capabilities shall be developed for each child respectively.
The Law on Preschool Upbringing and Education provides that an educational group attended by a child with special needs has an inclusion assistant. An educational specialist dealing with children with special needs – defectologist shall have an appropriate university degree.
Pursuant to the RS Law on Preschool Upbringing and Education, each child shall have equal right of access and equal opportunities to participate in appropriate care and education system without discrimination on any ground. Equal access and equal opportunities shall mean providing equal conditions and opportunities for all, to begin and continue further care and education.

Year	Number of children with special needs
2007/2008	452
2008/2009	436
2009/2010	1.204 (girls: 486)
2010/2011	1.284 (girls: 528)

The Law on Primary and Secondary Education provides that school cannot discriminate children in their access to education or their participation in educational process on the basis of race, colour, gender, language, religion, political or other belief, national or social origin, on the basis of special needs status, or on any other grounds. RS and local self-government units, along with school, are responsible for providing premises, equipment and supporting infrastructure for access and participation in the educational process of persons with special educational needs. Education of children and young people with special educational needs is an integral part of a unified education system. The Minister enacts curricula for students with special needs for each type and degree of disability of students.
RS has adopted the 2010-2015 Strategy of Improving the Social Position of Persons with Disabilities in the RS. The Strategy also lists the following objectives:
- harmonization of existing laws and regulations in education with the principles of international documents dealing with disability;
- improvement of work in mainstream schools/kindergartens on the principle of inclusion and establishment of resource centres and service providers in support of the regular education system, all based on the principle of promotion of students' abilities and potentials and ongoing monitoring of developments through the whole process of education;
- provision of funds in support of educational institutions in order to realize high quality and affordable education and upbringing of children and students with defects and developmental disabilities;
- improvement of performance of teachers / educators, professional associates and others who work with children/students with disabilities and special needs;
- ensuring better physical access to upbringing and education and other institutions and equipping them better in accordance with standards and modern trends;
- wider offer of textbooks and related literature, with parts that are more specific and easier depicted, richly illustrated textbooks, better adapted to children and students with various disabilities and special needs;
- inclusion of the media with a view to developing positive attitudes when it comes to the education of children/students with disabilities;
- improving conditions of study for students with disabilities.

BRČKO DISTRIKT (BD)

Articles 49, 50 and 51 of the Law on Primary and Secondary Education of BD regulate enrolment, identification procedure, education and rehabilitation of children with mental disabilities. This Law prohibits any form of discrimination in education and training of the students.
In order for school to be physically accessible to children with disabilities, the schools have adequate facilities tailored for such access. In one school an elevator is in operation so that the rooms upstairs can be accessible for children with disabilities and in other schools, classroom arrangement is adapted to the needs of these children.
The educational system of BD employs teachers with different specialities (oligophrenologist, surdoaudiologist, speech therapist, tiflopedagogue), who together with pedagogues, psychologists, social workers and social pedagogues make an expert teams working with these students and provide help and support to parents and teachers of these students.
Adapted curricula for children with disabilities are developed by teachers working in collaboration with professional teams consisting of appropriate professional associates.

Conclusion

The Committee considers that the enrolment rate for secondary school is low and there is no evidence that measures taken to counter this fact are sufficient, thus amounting to a violation of Article 17§2.

ANSWER:

REPUBLIKA SRPSKA (RS)
The enrolment rate in secondary schools in the RS is 97 % (almost 100 % - as if secondary school had been mandatory).
In the recent past almost all student who have completed primary school have continued secondary school. All students are provided with transport to school free of charge. The establishment of professional teams in schools (pedagogue, psychologist, defectologist, social worker, and social pedagogue), support to marginalized groups and working with them for a change of attitudes towards school trying to get the parents and students perceive education as a long-term investment helped students to continue and complete further education. One of the benefits brought about by the continuation of schooling is the exercise of the right to child allowance under the social welfare scheme.

RESC 17§2 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 17§2 of the Charter on the grounds that:

- *it has not been established that measures taken to increase enrolment rates in the secondary education are sufficient;*
- *children with disabilities do not have effective access to education.*

First ground of non-conformity

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

1. Au cours de l'optimisation du réseau scolaire, provenant des problèmes démographiques des différentes régions du pays, assurant le pouvoir d'accès égal à titre gratuit, des élèves à l'âge de seize ans, le Ministère de l'Education, de la Jeunesse et de la Science (MEJS) mène une politique consécutive pour la fondation, l'entretien el le bon fonctionnement des écoles protégés, centraux. Ils avaient été élaborés des mécanismes de

protection à l'égard des chainons restructurés lors de ce processus concernant l'optimisation du réseau scolaire.
La mise à la disposition, du transport pour des élèves à l'âge obligatoire scolaire, l'assurance de repas des enfants à l'âge obligatoire préscolaire ainsi qu'à ceux de l'âge obligatoire scolaire, l'assurance d'une organisation durant toute la journée, représentent des outils convenables pour créer et garantir les meilleurs conditions, nécessaires pour mettre en exécution un processus éducatif de qualité.
En exécution des paragraphes 6b et 6e, des Dispositions complémentaires de la Loi d'Education Populaire, Le Conseil des Ministres (CM) avait agréé un tas de dispositions concernant les activités dans ces écoles.
- Par l'Arrété № 212/02.09.2008, on avait agréé les critères pour la désignation des écoles centrales protégées dans la République de Bulgarie, les conditions et l'ordre de leur financement supplémentaire, ainsi que les conditions de faire complémenter la liste autorisée de ces écoles, dont le nombre pour l'année scolaire 2011/2012, avait augmenté avec 119.
- Par l'Arrété № 84/06.04.2009,on avait déterminé les critères, concernant l'inclusion dans la liste des écoles centraux, les règles financiers de dépenses des ressources de financement complémentaire d'assurer la formation des élèves voyageant des écoles centraux protégés, les conditions de leur actualisation annuaire, ainsi que l'assurance de financement complémentaire pour les activités des élèves voyageant. Pour l'année scolaire 2011/2012, dans la liste figurent 817 (huit cent dix-sept) écoles nécessitant l'assurance du pouvoir d'accès d'éducation des élèves, des écoles fermées.
2. Dans les trois dernières années Le Ministère de l'Education, de la Jeunesse et de la Science travaille successivement pour la création des conditions favorables pour le développement de l'organisation de la journée scolaire, durant toute la journée pour des élèves de 1er à 7^{e} au cas de volonté prononcé par leurs parents. Depuis l'année scolaire 2010/2011, par l'Arrété № 186/07.098.201 de Conseil des Ministres pour assurer l'organisation de la journée scolaire, pendant toute la journée des élèves du premier et du deuxième, il y avait eu lieu des activités de financement complémentaire concernant cette organisation au premier, depuis 2011/2012 scolaire au premier ainsi qu'à deuxième depuis l'année scolaire 2012/2013.
On avait assuré un financement complémentaire, on avait créé des conditions, une telle organisation, aussi pour des élèves du premier, du deuxième et du troisième, le standard unifié des dépenses à l'égard de l'enfant, inscrit dans un jardin d'enfant, étant devenu 474 lévas.
Au cours de l'année scolaire 2011/2012 dans 1710 écoles, on avait réalisé une organisation des cours et des activités, durant toute la journée concernant un nombre assez énorme de 50 108 élèves au premier ainsi que dans 1674 écoles le nombre est égal à 42 535 élèves au deuxième.
3. Durant l'an 2010 par une modification de l'article 20, l'alinéa1 de la Loi d'Education Populaire, il est introduit le préparatif préscolaire obligatoire, concernant les enfants ayant accompli 5 ans jusqu'au premier. Depuis l'année actuelle, il suit que toutes les communes du pays fassent assurer des conditions favorables pour le développement d'une telle organisation.
4. Depuis l'an 2007, chaque année Le Conseil des ministres par ses décisions, confirme des programmes nationales, concernant le développement de l'éducation secondaire, ainsi lui assurant un financement complémentaire pour la réalisation des mesures et des politiques, n'ayant pas été financé par les budgets délégués des écoles. Au cours de l'an 2012, des différentes mesures, visant la réduction le nombre des élèves, ne faisant plus parti, avaient été entrepris par des programmes comme en suit :
« Avec soin pour chaque élève », désignée à améliorer la qualité du procès de formation par faire des soins complémentaires différenciés, visant le développement personnel des enfants, ayant en vue leur nécessité individuelle d'éducation. On se rend compte de la dynamique dans le développement des capacités de chaque élève dans l'apprentissage des différentes

disciplines et en s'y basant de mettre en œuvre des objectifs complémentaires de formation et de développement, relatifs à la correction des omissions dans les connaissances ou les mesures compensatives visant la manque du temps scolaire pour évoluer les talents et les dispositifs des élèves à chaque étape de leur formation scolaire, pour leur participation dans des olympiades. Le mode « L'assurance de l'apprentissage complémentaire des élèves pour l'amélioration le degré de leur préparation concernant des disciplines générales », ainsi depuis l'an 2008, on assure chaque année des ressources financières pour des projets scolaires. On avait prévu durant l'an 2012, une somme d'argent, s'élevant à 1 000 000 lévas pour des travaux supplémentaires avec des élèves, ayant des difficultés graves dans l'apprentissage des disciplines générales au niveau primaire et secondaire.

« L'école – une territoire pour des élèves », par laquelle, on organise le procès éducatif, dans le cadre d'une journée, dans des groupes de semi-internat, au niveau primaire, mettant en exécution la possibilité d'améliorer la qualité du procès éducatif et formatif, en respectant leurs intérêts et en se rendant compte de leurs capacités, relatif aux particularités de l'âge des élèves, pour le développement et le perfectionnement de leurs connaissances, leurs aptitudes, leurs habitudes et leurs rapports. Les groupes semi-internat créent des conditions préalables pour que les représentants des différents groupes sociaux, ethniques et culturels se fassent connaitre et se fréquenter.

« A l'école sans absences », visant la réduction du nombre des cours libres, la réduction le part des absences, en entreprenant des mesures effectives scolaires pour la motivation des élèves à aller régulièrement à l'école et travailler activement pendant les cours, ainsi qu'attirer les parents en tant que partenaires dans la vie scolaire.

On avait fourni une somme d'argent s'élevant à 2 000 000 lévas pour le financement, l'élaboration et la mise en exécution des programmes scolaires pour la réduction des absences des élèves lors des cours à l'école.

« La création d'un milieu accessible architecturel », depuis l'an 2008, on assure des ressources pour les travaux dans les écoles. Actuellement on avait prévu une somme d'argent égale à 800 000 lévas pour l'amélioration d'accès à l'éducation des élèves exigeant des besoins spécifiques éducatifs et pour la construction dans les écoles d'Etat des rampes, des points sanitaires, l'infrastructure y appartenant et les appareillages d'ascenseur.

5. Dans le programme **« Le développement des ressources humaines »**, le Ministère de l'Education, de la Jeunesse et de la Science, étant bénéficient de plusieurs projets, dont l'exécution soit ralliée par la réduction de la part des enfants ne faisant plus parti des élèves, ainsi que ceux d'un montant financier le plus élevé et une universalité réciproque, représentent le projet BG 051PO001-4.2.05 **« Faisons l'école attirant pour les jeunes gens »**, désigné aux activités hors de classe et hors d'école, le développement des capacités selon les intérêts et le sens du temps libre, d'un montant égale à 100 000 000 lévas ; le Projet BG 051 PO 001 - 3.1.06 **« L'amélioration la qualité de l'éducation dans les écoles centraux, par l'introduction d'une organisation de toute la journée, englobant le procés de formation »**, désigné à aider effectivement le procès d'introduire l'organisation de toute la journée pour les élèves de premier à huitième, des écoles centraux dans le pays pour atteindre des connaissances accessible à tous et telles fondées sur les principes de la justice, la tolérance et la perspectivité, d'un montant de 75 000 000 lévas.

6. Actuellement la Commission de l'éducation, de la science et des questions d'enfants, de la jeunesse et du sport près de l'Assemblée Nationale, délibère le projet de Loi de l'éducation préscolaire et scolaire, prévoyant des différentes mesures, ayant pour but l' amélioration du milieu éducatif, les actions réciproques entre les parties protagonistes, notamment (les communes, les parents, les organisations de la jeunesse, les centres de support du développement individuel etc.), assurés par les standards éducatifs de l'État.

7. En exécution les objectifs pour la réduction des personnes, ayant quitté prématurément le système éducatif jusqu'à l'an 2020, sous 11 per cent, le Ministère de l'Éducation, de la Jeunesse et de la Science, initie l'élaboration d'une stratégie nationale pour la réduction des

« ayant quitté l'école » (2012-2020). Concernant le projet, on avait proposé des paquets de mesures respectives, visant la prévention et /ou l'intervention pour retenir des enfants et des élèves, représentant des risques à quitter l'établissement scolaire et pour attirer ceux qui ne fréquentent pas les institutions scolaires. Il y a des paquets de mesures, élaborés pour faire compenser, suivant les programmes « deuxième possibilité », un projet mis en œuvre grâce aux mécanismes de coordination entre le Ministère de l'Education, de la Jeunesse et de la Science, le Ministère du Travail et de la Politique sociale, le Ministère du développement régional et de l'urbanisme, l'Association Nationale des Communes de la République de Bulgarie, d'autre ministères, des établissements, des personnes moraux, des institutions financières éducatives, ainsi que la participation obligatoire des autorités locales, en exécution les mesures communes visant la réduction du nombre « des quittant l'école prématurément ».

Dès le début de l'année scolaire 2011/2012 à l'aide des responsables des Inspectorats Régionaux de l'Education, aux directeurs des écoles, on avait délivré à exécuter, 17 mesures respectives à surmonter l'acte de quitter prématurément l'école, représentant une expérience généralisée des bons pratiques avec des bons résultats provenant des différentes régions du pays, ainsi : désignation d'un enseignant précepteur, des formes alternatives des rencontres avec des parents, des visites de domicile de l'élève, visant la bon connaissance du milieu familial et les causes éventuelles, menant des risques à quitter prématurément l'école.

Nous exprimons la certitude que la réalisation des initiatives, entreprises par le Ministère de l'Éducation, de la Jeunesse et de la Science assureront un milieu bon, protégé et supportant, dont il sera favorable la création des conditions pour donner des soins individuels, consacrés à chaque enfant et ainsi aidant la réduction de la part des « ayant quitté prématurément l'école ».

Second ground of non-conformity

471. The representative of Bulgaria stated that according to Bulgarian legislation, the access to education of handicapped children and children with special needs is guaranteed by the law on Popular Education which provides for their integration into mainstream kindergartens and schools. The principle of inclusive education is also enshrined in the law on the Integration of Handicapped Persons. A number of new strategic documents are also being implemented. These include the adoption by the Council of Ministers of an Annual National Programme on the Protection of Children in the context of the National Strategy for Children 2008-2018 – a long term strategic document which covers all sectors of social life having an impact on the well-being of children, with education as one of the priorities. An objective of the Strategy is to guarantee the access for all children to pre-school and quality school education, governed by the notion of on-going educational policies which are inclusive of children with special educational needs. The aims are to enhance policies and approaches in the educational field to ensure all aspects of the well-being of children in the school environment and promote ways of improving inclusion in the educational system. The Ministry of Education has the main role in the process and a number of other Agencies and Ministries are involved as well as local authorities and non-governmental organisations. Data on inclusive educational activities through national programmes on the protection of children show that resources for guaranteeing inclusive education increased in 2010, enabling the inclusion of 8,925 children with special needs. It should be noted that there was an increase of 12 % of children with special educational needs integrated into ordinary schools. In 2010, 1093 specialists were involved with inclusive educational activities and the number of resource teachers as well as other specialists increased by 17 % compared with the previous year. The number of schools and kindergartens enabling inclusive education for children with special needs also increased in 2010.

Decree N° 1 in 2009 concerning the education of children and children with special educational needs and/or those suffering from chronic illness, provides that specialists in kindergartens and schools draw up a tailor-made educational programme for each child with special needs, which takes into account their individual needs and potential. Data from the Ministry of Education in 2010 shows individual

educational programmes were drawn up for all children with special needs in the context of inclusive education, which includes children with multiple handicaps or seriously disabled in specialised schools. Statistics from 2011 show an increase to 10,304 children benefiting from inclusive education. For the school year 2010/2011, the specialized teacher – pupil relationship in the context of inclusive education was 1 to 9.

An effort has also been made for periodic training of teachers and educators for children with special needs, with training activities in 2010 carried out for 1,141 specialists working in the field, with the number of personnel involved in such training activities representing an increase of 5 %. In 2011, 1,300 specialists in resource centres underwent training and supportive information sessions were organized for parents and local authority personnel.

Accessible infrastructure is also an import aspect of developments, with a part of the national programme in 2011 aimed at improving access to the school environment through the construction of access ramps and other specialized facilities. Another important development is the joint drafting of a methodology to study resource centres and promote inclusive education for children and their families, including a questionnaire to all actors involved. A national programme for guaranteeing the rights of children with disabilities 2012-2013 aims to improve the living conditions of handicapped children and their families to create optimal conditions for development. The representative of Bulgaria provided a statistical breakdown of developments underway.

472. The representative of the ETUC acknowledged that efforts were clearly being made. As trade unions in Bulgaria point to gaps in the educational system which have led to the exclusion of many children, he asked whether the number of disabled children who are now able to access mainstream school represents a significant increase.

473. The representative of Bulgaria referred to figures she had provided which show a significant increase. She said that when referring to children with special educational needs, this includes children with disabilities and those with learning difficulties. It is not possible to provide a breakdown of numbers to determine the percentage of those who are handicapped.

474. The Committee congratulated the Government of Bulgaria on the positive developments and encouraged the Government to include all these details in the next report.

RESC 17§2 HUNGARY

The Committee concludes that the situation of Hungary is not in conformity with Article 17§2 of the Charter on the ground that Roma children are subject to segregation in the educational field.

475. The representative of Hungary provided the following information in writing:

Provisions of legal rules and measures hindering unlawful segregation, and measures serving to strengthen the opportunity creation role of education

Special field of public education

I. Provisions of legal rules to prohibit and prevent unlawful segregation

Based on the UNESCO Convention on the prohibition of negative discrimination, Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities contains the prohibition of school segregation, as well as the prohibition of indirect and direct negative discrimination.

The executive decree of the Act on Equal Treatment, i.e. Government Decree No. 321/2011 (27 December)Korm. on Rules Underpinning the Development of Local Equal Opportunity Programmes, prescribes for municipal local governments to compile local equal opportunity programmes, including the analysis of the situation and the action plan.

The following shall be revealed in the analysis of the situation in respect of equal opportunities in public education of children[6] with multiple disadvantages:
a) rate of segregation between institutions and within the individual institutions;
b) differences between institutions in the efficiency of education;
c) differences in the school results of students;
d) pre-school provision of children with multiple disadvantages.
The action plan based on the analysis of the situation must contain the measures serving the termination of educational exclusion. The decree also prescribes the regular review of the fulfilment of measures.
Compliance with the requirement of equal treatment is one of the principles of Act CXC of 2011 on National Public Education that came into force in September 2012, and it contains the establishment of the voidness and invalidity of unlawful decisions.
Section 38 of Government Decree No. 229/2012 (28 August)Korm. on the execution of the Act on National Public Education contains the rules applicable to official supervision, including the revelation and termination of the practice of unlawful segregation. Pursuant to the legal rule, government offices shall take measures in the interest of the termination of the irregularities revealed in connection with the compliance with the requirement of equal treatment. The Ministry of Education shall also take measures in order to conduct official inspection in the cases made known to it, and based on the examinations by the parliamentary commissioner of fundamental rights.
The regulation of primary school admission districts serves to terminate or prevent school segregation; Section 24 of Decree No. 20/2012 (31 August) on the Operation of Educational Institutions and the Name Bearing of Public Educational Institutions: Schools responsible for mandatory admission shall not segregate students on the basis of their origin and social situation. Consequently when setting the district limits of a primary school responsible for mandatory admission, the social and economic status of families living in the neighbourhood of the school is to be taken into account.
The statutory application of definitions serving to define groups in need of special treatment and attention from the respect of pedagogy (socially disadvantageous, children with multiple disadvantages, children in need of special education) serve the appropriate serve to aim appropriately at programmes and measures, and simultaneously, to prevent unlawful segregation (Section 121 (14) of Act LXXIX of 1993 on Public Education and Section 4 (25) of the National Public Education Act).

II. Measures and programmes to prevent unlawful segregation and strengthen the opportunity creation role of education and training

1. Measures to prevent unlawful segregation

Institutions teaching children with multiple disadvantages apply educational programmes based on the Integrated System of Pedagogy aimed at co-education. The main pillars of the programme are methodological renewal in pedagogy, legal rules and financial incentives. The maintainer of the educational institution shall organize methodology-based ability development

[6] No statistical data collection or records relating to ethnic data are available in the system of public education. The measures currently existing in the field of education, aimed at the improvement of the equity of education, the compensation of disadvantages and the increase of the school performance of students take, as a starting point, the indicator formed on the basis of the low social-economic status, disadvantages and multiple disadvantages. The ethnically neutral index is in harmony with the social cultural index applied in the OECD PISA examinations, takes account of the examination results whereby the problems affecting the majority of Roma students (non-appropriate school achievement, dropout, etc.) are not the consequences of their ethnic affiliation, but their social and health situation. The group of Roma children is strongly over-represented among those with multiple disadvantages. According to estimations, about half of the children with multiple disadvantages are Roma children, and almost two-thirds of Roma students have multiple disadvantages. (In: Kertesi G. – Kézdi G.: Iskolázatlan szülők gyermekei és a roma fiatalok a középiskolában. Beszámoló az Educatio Életpálya-felvételének 2006 és 2009. közötti hullámaiból, 2010.) */(In: G. Kertesi – G. Kézdi: Children of uneducated parents and the Roma youth in secondary schools. Report on the waves of Educatio Life Career Recording between 2006 and 2009.) 2010/*

programmes, or pre-school development programmes involving preparation for integration on the basis of the requirements of legal rules in the institution maintained, and the Integrated System of Pedagogy issued by the Minister of Education.
The development of abilities and the organization of the preparation for integration may not be accompanied with the segregation of students with multiple disadvantages. Should this condition not be satisfied, no extra support can be granted to the institution.
Areas supported by the measures to counterbalance the disadvantages arising from the student's social situation and development:

- co-education;
- institution development;
- renewal of pedagogy;
- individual support of the studies of students with multiple disadvantages;
- co-operation with the social environment of school;
- emphasis on connections with parents.

In the course of introducing educational integration, programmes for the basic and continuing training of teachers were developed in 11 methodological fields in pedagogy. Nearly ten thousand teachers working in the integrating institutions acquired the application of modern methodologies in pedagogy until now during the continuing training courses.
The programme currently affects almost a quarter of primary school task-fulfilment places and more than 70,000 students, and is organized from approximately HUF 7 billion budgetary subsidy annually.
The National Core Curriculum (Decree No. 110/2012. (04 June) Korm.) contains the teaching of knowledge about the situation, history, cultural values and traditions of the Gypsies. It also ensures the teaching of knowledge about the rights, organizations and institutions of the Gypsies, thus promoting the pulling down of stereotypes and prejudices.
In the case of developments implemented with the support of the Union and also domestic subsidies, upon the submission of all public educational development bids, the municipal and institutional plan of equal opportunities must be attached. The plan is based on the analysis of the situation in the course of which it shall be examined whether exemption from segregation and the support of the educational and social integration of students with multiple disadvantages are implemented in the locality. The municipality must react, in its action plan, to the revealed deficiencies of provision and the presence of any form of segregation, and various tender opportunities are available as part of Union developments to implement the above.
Hungarian courts passed 6 condemning decisions against schools or municipalities in charge of the maintenance of schools. In addition, the Equal Treatment Authority took decisions in two segregation cases. In the year 2011-2012, the Ministry of Education took measures in connection with approximately 20 official inspections related to unlawful segregation.
The possibility of organizing so-called "corrective classes" for children with learning difficulties, which were operating formerly, ceased to exist. Students may not be segregated owing to their adaptation or any learning or behavioural irregularity; compulsory education may be fulfilled only with the others, in the school at the place of residence, or in any selected school.
A sociology research in 2004 pointed out that classes with different curriculum were operating in the bigger half of the schools examined, and nearly half of them have been terminated since then. Most terminations took place in 2007 (30 %), and the trend has been decreasing since then. It is a significant result that this took place mostly in schools with Roma majority. This process is monitored by the parliamentary commissioner of fundamental rights, the Equal Treatment Authority, the commissioner of educational rights and other civil organizations.
As a result of the measures taken for reducing unfounded classification as a student with intellectual disability, the ratio of children, students with slight intellectual disabilities was reduced from year to year:

School year	Ratio of those with slight intellectual disabilities in comparison with all children students - %
2003/2004	2.1
2004/2005	2
2005/2006	2
2006/2007	2
2007/2008	1.9
2008/2009	1.8
2009/2010	1.7
2010/2011	1.6

2. Opportunity creating programmes

In Hungary, there are strong connections between the learning possibilities, school performances, later choice of career, success on the labour market and the individual-family social and cultural background characteristics of students. The status on the labour market, the level of education, as well as social, cultural and municipality characteristics are dominant factors of later participation in lifelong learning. In harmony with the numerical educational goals of the EU 2020 strategy, great emphasis is laid on reducing early school leaving and the compensation of disadvantages. The areas of intervention and the directions of development are aimed at the reduction of social and territorial differences. The objective is the strengthening of the role of educational and training systems in the struggle against social exclusion and the improvement of individual opportunities:

- high-priority support of the learning opportunities of those in socially disadvantageous situation, including the reduction of early school leaving and dropout, the strengthening of inclusive education and the facilitation of adaptation to the labour market;
- remedy of the disadvantages of educational and learning reflections and consequences of territorial inequalities;
- formal and informal, ability-centred expansion of learning possibilities.

The achievement of the above goals is supported by government strategic (National Social Inclusion and Roma Strategy[7], Better Life for the Children Strategy[8], Strategic Plan of the Roma Integration Decade Programme[9]) and TÁMOP (Social Renewal Operational Programme) measures, and the National Reform Programme serving to achieve the EU 2020 objectives pays high-priority attention to the fulfilment of goals.

The strengthening of education in the early childhood serves to promote school success: Expansion of mandatory pre-school education as of 2014 from the age of 3 years, the pre-school place expansion constructions that started at the end of 2011 ((DAOP-4.2.1-11, ÉAOP-4.1.1/A-11, ÉMOP-4.3.1/A-11, KMOP-4.6.1-11), pre-school support for children suffering from multiple disadvantages, mandatory pre-school placement of children with multiple disadvantages, pre-school development programme.

High-priority attention is paid in the National Core Curriculum to the better acquisition of core abilities, thus improving further educational results and reducing the risk of dropout.

The school success of students suffering from disadvantages and multiple disadvantages is promoted by an ability development and integration programme (see above in detail).

By launching the new national public educational system, as part of the Bridge programme to be implemented as of September 2013 (Section 14 of Act CXC of 2011) a one-year preparatory year can be organized for the purpose of obtaining primary school qualification,

[7] Government Decision No. 1430/2011 (13 December) on the National Social Inclusion Strategy and on the Government Action Plan on the Implementation Thereof for the Years 2012 to 2014.

[8] Parliament Resolution No. 47/2007 (31 May) OGY on the National Strategy “Better Life for Children”, 2007 to 2032.

[9] Parliament Resolution No. 68/2007 (28 June) OGY on the Roma Integration Decade Programme Strategic Plan.

promoting the success of vocational school studies, continuing interrupted studies and widening the sphere of those with vocational qualifications.
The smooth admission to secondary educational institutions and the successful further education require financial expenditures that can be hardly secured by many families. This is to be mitigated by the opportunity creating, individual progress promoting, modern, differentiated pedagogic methods applying and mentor support providing programmes aimed at students suffering from disadvantages and multiple disadvantages (Arany János Programmes, tanoda (special form of study) programme (TÁMOP 3.3.9)) and fellowship programmes (Útravaló).
The implementation of the "second chance" programmes (TÁMOP 3.3.9.) is to promote students without secondary level qualification, who dropped out of the school system and are partly not of the age of mandatory education to obtain secondary level qualification, and to reduce students' failures through the introduction of study supporting new methods, responding to the individual needs.
The developments to be implemented with the support of the Union, which strengthen the opportunity equalization function of education, are aimed at the improvement of the quality of educational services and the promotion of the co-operation of the vocational and social environment of institutions with programmes and comprehensive interventions providing high-priority support to regions in the most disadvantageous situation. The aim thereof is to make the institutional system itself suitable for the successful education of students, and contain programme elements (e.g. services, supports and incentives) aimed directly at the compensation of the disadvantages and the improvement of the chances of children suffering from multiple disadvantages.
The objective of the TÁMOP 3.3.1. **"Equal Opportunities and Integration in Education" high-priority project** is to promote the school success of students suffering from multiple disadvantages, development of the necessary vocational contents, creation and development of the expert and specialist capacity required for implementation, continuous provision of the necessary expert capacity, harmonization and dissemination of the developments of public educational institutions and central developments, and the quality assurance of the programmes

Legal regulations and measures preventing unlawful segregation

Social inclusion

1. Legal regulations
Government Resolution 1430/2011. (XII. 13.) on the National Social Inclusion Strategy and on the implementation of its Action Plan regarding implementation period 2012-2014.
47/2007. (V.31.) Parliamentary resolution on „Let it Be Better for The Children National Strategy 2007-2032".
68/2007. (VI. 28.) Parliamentary resolution on the Action Plan of Decade of Roma Integration Program.

2. Interventions and programs
The National Social Inclusion Strategy covering a period of ten years and the attached action plan spanning three years are directly related to the EU framework approved as one of the main undertakings of Hungary's EU Presidency. The European Commission issued its Communication entitled „An EU Framework for National Roma Integration Strategies up to 2020" on 5 April 2011. The Council responded to the EU Roma framework laid down in this document with its Council Conclusions approved on 19 May 2011, by virtue of which the Member States committed themselves to participation in the framework strategy, that is, to the submission of their national Roma inclusion strategies or action plans up to 2020 to the EU

Commission by the end of 2011. Hungary submitted its Strategy and Action Plan as first among the member states.
The approach of the Deputy State Secretary for Social Inclusion follows the pipe-line principle that is to say, we find it important to establish a chain of support each link of which represents classes from the age of zero till one-hundred and which aims to spread the widest net above disadvantaged groups and to offer them as many possibilities for inclusion as possible.

Constituents

Opportunity creating programs
In Hungary there is a relevant interrelation between students' studying opportunities, their academic performances, future career choices, labor market success and the characteristic of their individual socio-cultural background. Labor market status, school attainment, socio-cultural and local features are determinants of the individual's participation in lifelong learning processes. In alignment with the EU2020 numerical target of on the field of education, particular attention is paid to reduction of early school leaving, and gap compensation.
The intervention and development trends mainly aim to enhance the role of education and training systems in combating social exclusion and improving the individual's opportunities with the following approaches:
- Enhanced support for the studying opportunities of the socially disadvantaged ones, including the reduction of early school leaving, dropouts, inclusive education and facilitation of integration in the labor market;
- Remedial support for gap in education caused by territorial inequalities ;
- Extension of formal studying opportunities as well as non- formal skill-based learning methods.

The implementation of the goals are prioritized by governmental strategies (National Social Inclusion Strategy, Let it be Better for the Children Strategy, Action Plan of Decade of Roma Inclusion Program) SROP measures and the National Reform Program (created originally for implementing EU 2020 targets).
The **Sure Start program** operating in Hungary serves the early fostering of the skills of young children with multiple disadvantages, including Roma children, and offers a chance at the earliest possible age to children below the age of 5 living in poverty who have no access to crèche facilities and other high-quality services due to the scarcity of family resources, residence in a disadvantaged region or for other socio-cultural reasons. There are now some **44 Sure Start Children Centers** subsidized by funding from the Social Renewal Operational Program mostly in disadvantaged micro-regions. Their complex development, professional reinforcement and organization into a network are currently under way.
Enhancement of pre-school education facilitates successful academic performances: mandatory kindergarten attendance from age 3 (2014) and extension of kindergarten capacities (end of 2011) (DAOP-4.2.1-11, ÉAOP-4.1.1/A-11, ÉMOP-4.3.1/A-11, KMOP-4.6.1-11) subsidizing kindergarten attendance in case of multiply disadvantaged children and kindergarten skill development programs contribute to creating equal opportunities for primary school entrants.

Integrative Pedagogical System
The Integrative Pedagogical System is based on the necessity to establish such system which is sensitized to individual differences and progress and emphasizes inclusiveness.
In the interest to fill the gap resulted by disadvantaged social circumstances of the pupil the following fields are supported by financial incentives and measures: co-education, institutional development, pedagogical renewal, individualized learning supports of multiply disadvantaged children, correspondence with parents.

The integrative program has been operating since 2007, one quarter of the public education institutions has already joined the program for academic year 2011-2012.
Allocation from domestic resources in 2012 sums **6.8 billion HUF**.
The **national Core Curriculum** pays particular attention to basic-skill appropriation in order to improve learning outcomes and reduce the risk of dropping out.
By the start of the new public education system in 2013, in the framework of **Bridge Program** one- year long preparatory academic program can be organized in order to facilitate the acquisition of school-qualification, to promote academic success, to encourage resuming studies and to broaden the stratum of qualified individuals.
The extracurricular learning programs (the so-called **Tanoda** projects) as the informal scenes of the education of disadvantaged children, came into being on the basis of a standardized model, as developments financed from EU funding. The main purpose of the SROP sub-measure 3.3.5 „Aid for extracurricular learning programs" project is to reduce the school drop-out rate and to reinforce the path towards the continuation of studies (in secondary schools providing final examinations and in higher education if possible) for pupils/students with multiple disadvantages, Roma youths, pupils/students under child protection care and migrant pupils/students. The extracurricular learning centers are a form of education opted for by children and their parents out of their own free will that is designed to assist and manage learning adjusted to the personal educational needs of participants and that serves to improve the chances of integration into the formal school system. As part of the programs, 60 alternative learning facility projects were financed in total. In 2012 the programs came to an end.
Continuing the Tanoda programs, this summer the National Development Agency launched a new grant scheme of 4 billion HUF allocation. Number of expected applicants: 240-300.

Financial support for Second Chance programs
By increasing the number of second chance programs and improving their services the completion of elementary studies, the promotion of successful vocational school studies, the continuation of prematurely abandoned studies and the broadening of the stratum of qualified individuals are expected. In the framework of the New Széchényi Plan for the implementation of the programs 3.5 billion HUF is allocated from EU funds.

Scholarship programs
A number of state and private scholarship programs help to promote the educational success of disadvantaged elementary school pupils and secondary school students and students in higher education, including disadvantaged Roma.
The **"Provisions" (Útravaló) Scholarship Program** was launched in 2005. Its comprehensive objective is to promote the establishment of equal opportunities for disadvantaged students, to improve the chances of young people in the continuation of their studies and in obtaining vocational qualifications, a certificate of final examinations or a degree and to foster talented students with an interest in sciences. 'Provisions' provides financial aid and assistance via its mentor system for students in the 7th and 8th grades of elementary school and secondary school students. Three equal opportunities and one talent fostering sub-programs operate under the auspices of 'Provisions'(the *Road to secondary school, Road to final examinations and Road to a qualification* scholarships and the *Road to science* sub-programs) in which some 20,000 students and almost 11,000 mentor-teachers participate on an ongoing basis. The strength of the programs is that students are assisted not only financially but they also receive support from a mentor.
The purpose of the **Arany János Talent Fostering Program** for Disadvantaged Students is to enable the children of the poorest parents with the lowest educational qualifications to successfully attend full-time secondary education providing a final examinations certificate in a larger proportion. The program pays particular attention to talent fostering and multi-faceted,

differentiated skill-development. The program was launched in 2000, and the number of participating students increased to 3,000 by the 2011/2012 school year, while the number of participating institutions (secondary schools and boarding facilities) rose to 23. According to the 2008 State Audit Office Report, 82 % of the students (aged between 14 and 19) participating in the program gained admission to higher education, 95 % obtained a driving license, 89 % were awarded ECDL certificates and 93 % passed language examinations.

A sub-program was devised in 2004 under the title **"Arany János" Talent Fostering Boarding Facility Program** for Disadvantaged Students, in which 890 students and 12 institutions participate in 2012 aims to achieve the above objectives with the aid of the means and methods of boarding facilities. The program operates with individual study plans, assessment, social support and close correspondence with parents. The results are shown in the interconnection of the inclusive nature of the institutions and network-like operation.

The **"Arany János" Talent Fostering Boarding Facility – Vocational School Program** for Students with Multiple Disadvantages: The number of institutions included in the program is seven with 634 participating students. The aim of the program is to create opportunities to obtain marketable qualification for those students who have slight chances to acquire qualification without entering the program. Its further aims are to provide inclusive pedagogical environment to the target group and create social gap compensation as well as reduce the risk of dropouts. The dropout rate in this program is well below the national average: annually 13 %. This is a great achievement considering that the national average of vocational school dropout is around 30 %.

The **Higher Education Mentoral Program** has been operating since 2005 as an equal opportunity program for disadvantaged young people. The aim of the program is to increase the chances of young people to enter higher education, successfully fulfill the educational requirements and to facilitate their placement in labor market.

It is important to make mention of the activities of the **Romaversitas Foundation** operating from non-state and EU funding (inter alia, the Roma Education Fund) which has, since its establishment in 1996, helped approximately 200 Roma students to complete their studies. In the last few years, the program has achieved a more than 80 % degree attainment ratio. Almost 700 young people in Hungary have received scholarships from the Roma Education Fund in the last five years.

The establishment of the **Christian Roma Boarding School Network** serves multiple purposes. The Network endeavors to deepen the social and national sensitivity, strengthen the Roma-Hungarian identity, promote studies, education, personal development of its students along the lines of communal responsibility and commitment to Christian values and development of the Hungarian-Roma intellectuals. The Boarding Schools run in 5 university towns and provide scholarship for 100 disadvantaged students of Roma origin. Co-habitation of the students is an important element of the program. The proportion of the modules, credits, subjects in the study programs are autonomously designed by the boarding schools. However, the following three modules are have mandatory position in the study program: Hungarian-Roma identity building module, religious-spiritual module, and the public awareness module.

School-net

The main goal of School-Net program is to promote development of model-worth programs which shape pedagogical approaches and programs in the interest of increasing the academic progress chances of multiply disadvantaged students. The programs were implemented in academic year 2011-12.

Financial support for equal opportunity based developments of public education

institutions (SROP 3.3.8): This EU funded grant scheme aims to enable public education institutions to successfully educate multiply disadvantaged children, including those of Roma origin and facilitate their academic progress. In the framework of the grant scheme exemplary

programs will go through further development and will become adaptable in other education institutes. In addition proven, well-functioning programs may be adapted. Budget allocation for this grant scheme: **4 billion HUF**.
Projects will be launched in 2013; their implementation will cover 2 academic years.

RESC 17§2 ITALY

The ECSR concludes that the situation in Italy is not in conformity with Article 17§2 of the Charter on the ground that it has not been established that measures taken to improve access for Roma children to education are sufficient.

476. The Secretariat recalled that this was previously a situation of non conformity under Article 17§1. As all matters concerning education now come under Article 17§2 – it is considered as a renewed conclusion of non-conformity under 17§2.

477. The representative of Italy said that the new Government, which took office on 17 November 2011, has fully taken stock of the problem of inclusion of Roma, Sintis and travellers and has decided to draft a Strategy to deal with this in a concrete way over the coming years. The Ministry of International Cooperation and Integration, in liaison with other Ministries concerned, has set up a Steering Committee to oversee policies. Representatives of local and regional authorities as well as representatives of the minority communities concerned are also involved. There is a sustained effort in terms of methodology, priorities and resources and the Steering Committee is in charge of overseeing the projects, results and policies. It liaises with UNAR (National Office against Racial Discrimination) and follows initiatives undertaken, in particular to address housing problems, to provide support for cultural mediation and combat school drop-out, as well as addressing issues in other areas.

Under the overarching policy management of the Steering Committee, four Tables will be set up on the specific issues of housing, education, work and health, as well as working groups for a continual update of relevant data. A main objective of the National Strategy is to increase the access of Roma children to the national education system and improve educational standards, in particular for women.

Following the reform of Part V of the Italian Constitution, the responsibility for education issues is shared between the State, which is responsible for determining national strategy, and the regions which deal with the practical implementation of policies. Each region, in the light of the authority granted in terms of educational matters, apply measures which take into account the population of the minority communities concerned present on their territory, which varies greatly from one region to another.

An analysis of trends over the last four years of children from Roma, Sinti and traveller communities, participating in the school system, has reinforced the urgency of the Strategy to promote access and inclusion. In particular, the number of children from the communities concerned attending secondary school has declined. Despite efforts undertaken to raise awareness, the customs of Roma, Sinti and traveller communities are not always coherent with respecting school obligations. At 12 years old, children in these communities are considered as adults who can already earn a living. The obligation for them to attend school can be considered as a threat to their customs.

The success of any initiative needs not only to involve the family, ensuring income for the parents and adequate housing conditions but also a welcoming school environment. The objectives that the Strategy aims to promote are firstly, to foster pre-school education and inclusion in the school system through improved access to education (for example, alternative work and school timetables, ‘second chance’ schools, training for teenage mothers, good practice training of personnel in the field). Secondly, to improve the participation of young persons from the communities concerned in universities and other forms of higher education through access to credit, loans and scholarships, to allow them to become financially independent and improve job opportunities. The third objective is to

foster dialogue and cooperation between school institutions and the minority communities, through, for example, culture mediators. Financial assistance for some parents may be possible, on condition they actively participate in sending their children to school from a young age (3-6 years). Specific information on the results achieved from these objectives will become clearer in the coming years, as the National Strategy is still in its early stages. More precise information will be provided in the next report.

478. The representative of Italy, in reply to a question by the Chair, explained that the strategy not only meets the commitment that all EU members have been called to make but also draws on the personal commitment of the new Minister for International Cooperation and Integration, who is internationally renowned for his knowledge and experience in the field.

479. The representative of Italy, in reply to a question by the Turkish representative concerning results, acknowledged that despite many efforts undertaken, not enough results were being achieved. So the strategy is encouraging new approaches, such as targeting very young Roma children to accustom them to going to school. Incentives are provided and ways are sought to bridge the differences between collective identity of the minority community concerned and the culture of the host nation.

480. The Lithuanian representative said that progress has been made and the fact that the strategy actively sought to tackle obstacles showed that the Italian Government was treating the situation seriously.

481. The representative of ETUC also welcomed the strategy which appears to be serious and ambitious. He asked whether the current economic context of budgetary restraints caused a problem for implementing the plan.

482. The representative of Italy said regions received resources from the state for the practical implementation of measures. Taxes are also levied at regional level and financing is received from European funds and other sources.

483. The Committee took note of the elements provided, encouraged the Government of Italy to provide all relevant information in the next report and bring the situation into conformity with the European Social Charter.

RESC 17§2 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 17§2 of the Charter on the grounds that:

- *it has not been established that measures taken to increase the enrolment rate in secondary schools are sufficient;*
- *it has not been established that measures taken to increase the school enrolment rate of vulnerable groups are sufficient.*

First ground of non-conformity

484. The Secretariat recalled that this was previously a situation of non conformity under Article 17§1. As all matters concerning education now come under Article 17§2, it is considered as a renewed conclusion of non-conformity under 17§2.

485. The representative of the Republic of Moldova said that the current Government is committed to reforming the education system, as mentioned in public declarations made by the Prime Minister. A series of documents had been drawn up in 2011, which are in most cases for the period 2011-2015, in the context of a plan of action for structural reforms to the education system further to poor attendance rates at school. A programme for inclusive education has been drawn up, for the period 2011-2020,

which concerns a broad range of categories of children, from disadvantaged families, Roma communities, handicapped children and those from institutions – in order to implement a consolidated strategy of development of education. The Government is analysing the situation and aims to have results which will be reflected in the next report. Efforts are already underway with the joint committee of education authorities and local authorities meeting regularly to implement a number of initiatives, such as visits to families and the organization of school buses to transport pupils from remote villages. Moldova is continuing to grant material aid to children from poor families and encouraging parents in the schooling of their children. A series of measures is also being undertaken to improve the quality of education, particularly in rural areas, through teacher training and improving the teaching curricula to make it more attractive to children. According to the national bureau of statistics, the gross rate of schooling for 2010-2011 was 93.6 per cent which rose to 93.8 per cent for the year 2011-2012. It is hoped that the strategy and plan of action will bring about even more positive results for the next report.

486. The representative of the ETUC raised the question of the drop-out rate which had previously been identified as related to material problems. Parents often lack the necessary financial resources for their children to attend school and he asked whether the Government had taken steps to remedy this problem.

487. The representative of Republic of Moldova confirmed that the Government continues to grant material aid to families who are unable to purchase clothing, school materials, etc.

488. The representative of Turkey expressed surprise that the rate of schooling in Moldova which was 85 % for boys and 89 % for girls in secondary education, was considered too low. He asked the Secretariat to clarify what rate is considered as acceptable in order to be in conformity with the European Social Charter.

489. The Secretariat replied that although the ECSR has not set precise benchmark rates, it considers that rates such as 86 % are insufficient. The figures provided by the representative of the Republic of Moldova for 2011-2012, which are above 90 %, might be considered sufficient by the ECSR in its next assessment of the situation.

490. The representative of the Republic of Moldova, in reply to a question from the representative of Turkey, said that education is compulsory up to 16 years of age.

491. The Committee took note of the positive developments, encouraged the Government of the Republic of Moldova to continue in this direction and to provide all relevant information in its next report.

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

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

Scolarisation des enfants Roms

L'objectif principal du Ministère de l'Education dans le domaine de l'éducation des Roms :

- Attirer tous les enfants Roms dans le procès éducationnel ;
- Élaborer et mettre en œuvre le composant ethno-national (langue, culture et traditions des Roms).

Selon les données du dernier recensement (2004), 12 000 de Roms habitant dans la République de Moldova.

Il existe des problèmes avec l'évidence des enfants (âgés de 7-16 ans), qui doivent être couverts par la scolarisation obligatoire.

1) On n'a pas de données sur le nombre d'élèves Roms, car dans toutes les statistiques on a enlevé la rubrique – structure nationale.

2) La plupart des enfants-Roms sont inscrits comme moldaves.

3) Les Roms habitant dans une localité donnée n'ont pas toujours une résidence permanente et un document confirmant l'identité.

L'objectif principal du Ministère de l'éducation est d'assurer que tous les enfants Roms fréquentent les institutions d'enseignement préuniversitaire.

5 fois par l'année scolaire toutes les directions régionales/municipales d'enseignement fournissent les informations sur le niveau de scolarisation.
Au 30.05.12 – la scolarisation couvre – 44 élèves et 105 ont quitté leurs études durant le deuxième semestre: dont 17 enfants Roma ne sont pas venus à l'école durant l'année scolaire 2011-2012 et 4 abandonné leurs études pendant la période de printemps a des raisons suivantes :

- 11 sont parties avec leurs enfants ;
- dont 6 à cause de la situation matérielle ;
- 4 suite au refus des parents .

Tous les cas sont examinés par une commission spéciale crée dans les localités qui réunit les pédagogues, les travailleurs de la protection sociale et de la famille, les représentants des organes de l'intérieur.
Ayant comme but l'amélioration de la situation, des mesures suivantes sont entreprises :

- Les enfants Roma reçoivent gratuitement des manuels ;
- Les enfants Roma des classes 1-9 sont nourris gratuitement ;
- Vers le 1er septembre du fonds des institutions scolaires et des mairies un aide matériel (300-800 lei) est accordé pour l'acquisition des objets scolaires et des vêtements.

L'éducation ethno-nationale a été lancée.
Dans la v/ Hincesti a la base du Lycée Technique « Eminescu » un groupe est ouvert pour les enfants-Roma de différents âges (18 personnes) qui sont sous tutelle de 2 médiateurs sociaux Roma. Pendant les leçons qui ont lieu quelque fois par semaine, les enfants parlent, chantent dans leur langue maternelle, étudient les traditions de leur peuple.
Dans le Lycée Technique du village Mingir de la région Hincesti 1 médiateur social pendant les heures extrascolaires apprends à un groupe de 10 personnes la langue et les traditions des Roma.
Dans l'école maternelle du village Vulcanesti de la région Nisporeni dans 3 groupes on déroule des cours sur la terminologie de la langue des Roma.
Les plans d'enseignement pour l'année scolaire 2011-2012 sauf l'étude de l'objet obligatoire « Histoire, culture et traditions des peoples russe, ukrainien et bulgare » on a inclus « Histoire, culture et traditions des Roma » (heure par semaine).
A présent on fait élaborer le curriculum « Histoire, culture et traditions des ». Le groupe d'auteurs est composé de: représentant de l'Académie des Sciences de la République de Moldova, le chef et quelques représentants de l'organisation non-gouvernementale des Roma et le coordinateur – le Ministère de l'Éducation.
L'introduction de l'étude de la langue des Roma dans le programme scolaire obligatoire devient plus compliquée parce que dans chaque localité peuplée par les Roma la langue a ses particularités assez souvent très différentes. Les recherches supplémentaires sont nécessaires ainsi que la détermination de la norme littéraire de la langue des Roma pour concevoir le matériel didactique et introduire un objet obligatoire.
Le programme comprend également beaucoup d'événements dans les régions/localités peuplées par les Roma en coopération avec les autorités locales, qui nécessitent un financement supplémentaire.

RESC 17§2 SLOVAK REPUBLIC

The Committee concludes that the situation in Slovak Republic is not in conformity with Article 17§2 of the Charter on the ground that Roma children are disproportionately represented in special classes.

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

As is mentioned in the Conclusions by the ECSR, in case of children from socially disadvantaged and vulnerable groups, access to education is secured systematically. Children belonging to vulnerable and socially disadvantaged groups are not enrolled in special schools, based on their social background. All children are enrolled in ordinary schools and follow approved school curriculum, even though there are a lot of cases when parents of children from the disadvantaged groups want their children to be specifically placed in special schools.

There are numerous means by which the Slovak Republic helps children from disadvantaged groups with their education; many of them have already been mentioned in the report. New measures have been introduced by the newly adopted Strategy of the Slovak Republic for the integration of Roma up to 2020 which also introduces new mechanisms to improve the education of the members of the Roma minority.

To improve the education of the children from socially disadvantaged groups, an allowance for improving conditions for education and upbringing of these students is granted to the school founders under § 107 paragraph 4 of the Act 245/2008 (School Act).

Similar allowance and, on top of it, a motivational scholarship is available for children in the secondary education to ensure as high gross enrolment rate in the secondary education as possible.

Another important institution that ought to assist these students is the so called “zero year”. The minimum number of students per class in a zero year is 8, while maximum is 16. Per each child enrolled in the zero year the school will receive 200 % of the regular normative. For many teachers this is an important and meaningful tool when working with children from disadvantaged groups to catch up in social and cognitive area with children who are raised in normal environment so that they could eventually move into the education mainstream. Due to the fact that curriculum of the zero year is often created by dividing the curriculum of the first year into two school years (thus allowing for a more leisurely speed of tutoring), the students of the zero year usually form a homogenous class also in the first year and remain in the same class throughout their elementary school studies.

These pupils are also eligible for an allowance from the Ministry of Labour, Social Affairs and Family which takes the form of school lunches, school supplies, and also a motivation allowance for the child’s regular school attendance.

The Strategy of the Slovak Republic for the integration of Roma up to 2020 aims to improve the situation of the Roma children, for example, by:

- Increasing the participation of the Roma children in pre-primary education from approximately 18 % (in 2010) to 50 % by 2020, subject to broadening the capacity of the network of kindergartens and programs for education and upbringing of children of a preschool age in regions where the number of Roma steadily increases, including the implementation of programs targeting the improvement of cooperation with the parents, and the increase in the number of teacher’s assistants in pre-primary education.
- Creating diverse educational programs focused on supporting the individualized needs of the student; increase the inclusiveness of the educational system, increase the effectiveness of the system of social support of education, reevaluation of the system of funding the students from socially disadvantaged groups, establishing a permanent funding mechanism for supporting all-day educational and caretaking system in elementary schools with the proportion of socially disadvantaged students of more than 20 %, and ensuring conditions for supporting activities targeting work with families, applying comprehensive integration of gender sensitive and multicultural upbringing in elementary schools. Gradually establish conditions preventing teenage mothers to drop out of school prematurely.
- Improving the care of pedagogical staff and specialists and increase the proportion of teachers and specialists fluent in Romani (local community dialect).
- Exercising the right to education in a Romani language or to learning the Romani language, and supporting further development of identity using support for the use of Romani

language on all levels of education; providing education for teachers of Romani language and literature and supporting further education of teachers teaching in the Romani language; preventing all forms of discrimination, racism, xenophobia, homophobia, anti-Semitism and other manifestations of intolerance; support for inter-ethnical and intercultural dialogue and understanding.

- Addressing problematic issues of education and upbringing in special schools and school facilities, including school consultancy and prevention services; improve the process of diagnostics and placement of children into the system of special education and remove the reason for unjust placement of children into this system; gradually eliminate the process of placing certain children to special schools and special classes in elementary schools, provide their mainstream education while increasing the number of teacher's assistants fluent in the Romani language. Create specific models of school inclusion for all types of disadvantaged children.

RESC 17§2 SWEDEN

The Committee concludes that the situation in Sweden is not in conformity with Article 17§2 of the Charter on the ground that children unlawfully present in the territory do not have effective access to education.

494. The representative of Sweden provided the following information in writing:

Although children residing in Sweden without a permit do not have the formal right to education within the Swedish school system, schools are free to admit these children on a voluntary basis.

In addition, extending the formal right to education to children residing in Sweden without a permit has been the issue of two Government inquiries in recent years.

In May 2007 a report was presented by the Inquiry on schooling for children in families who have gone into hiding to avoid the enforcement of a refusal-of-entry or expulsion (SOU 2007:34). The committee proposed that legislation, be introduced to give these children the right to education in the school system for children and young people on basically the same terms as children and young people on basically the same terms as children resident in Sweden.

The Government concluded that the mandate given to the Inquiry had been to narrow. This had led to a proposal that excluded a number of children from the right to education. Primarily, the proposal did not include children who have arrived in Sweden without applying for residence permit. Because of this a new Inquiry was given the task of supplementing the earlier proposal so that all children residing in Sweden without a permit would have the right to education. The Inquiry presented its proposals in 2012 (SOU 2010:5).

The Inquiry proposed that all children residing in Sweden without a permit should be given the right to education, unless they could be expected to stay in the country for only a short period of time. Children residing in Sweden without a permit were proposed to have basically the same right to education as children residing legally in the country.

As part of a political agreement between the Government and the Swedish Green Party on issues concerning migration, the Government in 2011 announced that the right to education is to be extended based on the proposals of the latest Inquiry. A proposal is currently being formulated within the Government offices.

RESC 17§2 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 17§2 of the Charter as children unlawfully present in its territory do not have effective access to education.

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

In accordance with the Passport Law No. 5682 and the Law on the Residence and Travels of Foreigners in Turkey No. 5683, foreigners who entered Turkey illegally have to be exiled from the country. If foreigners in this situation have a passport or a travel document, they are being exiled immediately. Those who don't own a document, have to contact diplomatic representatives as soon as possible in order to get their documents.

Illegal immigrants are situated in Turkey through violating the law. Giving these persons residence for any reason would interrupt the fight against illegal migration and mean the break of our law, which would lead to a wrong perception of encouraging the breach. Moreover this practice is also the same in EU countries.

However foreigners who entered Turkey legally but got in an unlawfully situation in some way, are given residence permit so that they do not lag behind from their education.

Besides, in accordance with Article 2 of the Law of Primary Education and Education No. 222, since primary education is obligatory for children aged 6-14, governorships are providing that children (in educational age) of foreigners, who applied for asylum and refugee, can reach education opportunities. A notification is made for this.

There is no obstacle, problem or a different practice at accessing educational facilities for children of persons who applied for asylum and refugee and for persons with refugee or asylum seeker status.

However, children of tourists and irregular migrants have not the right for education in Turkey. Because both of them do not intent to stay long time and plan a future in Turkey. Besides, obliging persons who stay temporary in the country to obligatory education would mean injustice and hardship for them. Because first of all you would have to teach them the language and then the culture and life of the country they are situated. These persons don't have that much time and even if they stay a long time (illegally) they will become estranged to their own country, people and culture when they have returned.

If persons who came illegally to Turkey to live and settle or who came in a legal way but got into a illegal status after, are in educational age, they get a residence status at first. Then they get the chance for education. Unaccompanied minors are getting settled to dormitories by the Ministry of Family and Social Policies. Their educational situation is under the control of the dormitory administration.

Refugees and asylum seekers' children at educational age have also the right for education if they've been given a residence for one year. Currently there are totally 1275 asylum seekers being educated from which 1128 are in primary education, 142 in secondary education and 5 in higher education.

L'une des bases des dispositions de l'article 2, alinéas (a) et (b), intitulé « les conditions requises pour l'acceptation-enregistrement » du Règlement de la Direction générale de l'enseignement secondaire du 16/08/2010 prévoyant la possession d'un titre de séjour ou de travail par les enfants migrants ou par leurs parents pour l'accès à l'enseignement est le Règlement des équivalences du Ministère de l'Éducation nationale. En effet, il y est exigé les conditions de résidence et de travail pour les procédures de l'équivalence. Les travaux pour l'amendement du Règlement en question visant à supprimer ladite condition afin de faciliter l'accès à l'éducation est au point d'être terminé. Après cet amendement, les modifications nécessaires seront faites en ce sens dans les dispositions concernées.

Article 19§1 – Aide et information sur les migrations

RESC 19§1 CYPRUS

The Committee concludes that the situation of Cyprus is not in conformity with Article 19§1 of the Charter on the ground that it has not been established that appropriate steps against misleading propaganda relating to emigration and immigration have been taken.

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

On the 13th October 2010, the Council of Ministers approved the first National Action Plan 2010-2012 for the Integration of Third Country Nationals Legally Residing in Cyprus. It covers all migrants (TCNs) legally residing in Cyprus including refugees, beneficiaries of subsidiary protection and to some extent asylum seekers.
The Action Plan 2010-2012 was prepared by the Experts Committee for the Integration of migrants (which was approved by the Council of Ministers in March 2007), after consultation with all relevant stakeholders, social partners and NGOs in a workshop organized by the Ministry of Interior in June 2010.
The 8 Priority Pillars included in the national Action Plan 2010-2012 cover most of the fundamental aspects of integration, EU Directives and good practices, the 11 Common Basic Principles for the integration of migrants, the Common Agenda for Integration, the Stockholm Programme and the Pact for Migration and Asylum. The 8 Priority Pillars are the following:
1. Information – Services – Transparency;
2. Employment;
3. Education – Learning the language;
4. Health;
5. Housing – improving the quality of life, social protection and interaction;
6. Learning the Culture – civic participation, basic knowledge of the political and social life in Cyprus;
7. Participation;
8. Evaluation.
The Ministry of Interior is the relevant Government Authority for the implementation of the Action Plan for the Integration of Immigrants who are Legally Residing in Cyprus. Officers of the Ministry of Interior are participating in all EU bodies related to actions on the integration of migrants, as well as in the most important International Organisations. Moreover, within the framework of the Cyprus Presidency of the EU Council, the Ministry of Interior is organizing on the 20th of November 2012 an EU Experts' Conference on Integration of Immigrants.

RESC 19§1 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 19§1 of the Charter on the ground of the racist misleading propaganda against migrant Roma and Sinti indirectly allowed or directly emanating from public authorities.

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

The stigmatisation of a few ethnic or social groups has always been a source of concern for the central Government and local authorities in Italy.
Italian lawmakers intended to provide foreign citizens who are victims of discrimination with a preferential form of treatment, even before Community directive EC 2000/43 was adopted; they introduced a special procedure according to art. 44 of legislative decree No. 286/1998. This special procedure was immediately reiterated by art. 4 of legislative decree No. 215/2003 as a primary form of protection.
The aim of this instrument is providing an ad hoc civil jurisdictional protection, which is both immediate and effective, in cases of violations of fundamental rights caused by discriminatory

behaviours; the instrument is based on the pattern of the precautionary procedure and it makes it possible to remove the discrimination and to sentence the respondent to moral damages compensation, following a full trial confirming that the actual violation of the right did occur.
The civil action in a case of racial discrimination as envisaged by the above mentioned art. 44, par. 2 of legislative decree No. 286/1998 starts with the lodging of a petition , including personally by the applicant, at the office of the clerk of the Court in the place where the applicant has his/her domicile. The civil action is subdivided in a preliminary summary phase and in a subsequent full trial, which starts upon the adoption of the precautionary measure of either acceptance or rejection of the application. The full trial phase ends with a sentence. In these types of cases, the Ordinary (Civil) Judicial Authority retains its competence even when the discriminatory behavior is connected with the issuing of an administrative document. In such cases the Ordinary (Civil) Judge is entitled to order that the discriminatory act is removed, provided he is convinced that the discrimination actually exists.
UNAR has effectively intervened in all possible jurisdictional spheres. First of all, as UNAR has no standing to litigate, the relations with associations and bodies entitled to act in the name and on behalf or in support of discrimination victims were strengthened (art. 5 legislative decree No. 215 of 9.7.2003).
Furthermore, UNAR has started a fruitful cooperation with legal professionals to favour the access of victims to the civil action; to this end UNAR signed many memoranda of understanding with well-known associations of professionals in order to provide free legal aid to victims.
In connection with the Observatories on discrimination envisaged by art. 44, par. 12 of legislative decree No. 286/98, it is worth mentioning that thanks to the constant activity carried out by UNAR, the results in this sector have been extremely favourable in the last year.
In the years 2009 and 2010 UNAR initiated an organic system of interventions including guidelines, training pathways and strategic proposals aimed at the promotion and coordination of the Centres for the Observation, Information and Legal Assistance to foreigners who are victims of discrimination for racial, ethnic, national or religious reasons.
The final objective is achieving a governance of a Network of Territorial Antennas, based on public/private partnerships, promoted at regional and local level to spread the culture of non-discrimination.
As far as the situation of the Roma and Sinti in Italy is concerned, it is worth mentioning a synthesis of the initiatives taken in order to guarantee the respect of the fundamental rights of this population in terms of both the prevention and the fight of discrimination and in connection with the carrying out of awareness raising campaigns aimed at countering the most common prejudices and stereotypes.
The study of racial discrimination cases reported to the Contact Center of UNAR made it possible to focus the activity of UNAR towards the problems affecting Roma, Sinti and Travellers, as they have increased over the last few years and essentially referred to education and housing – two sectors in which the needs of these populations can be perceived. In some cases UNAR has given a decisive contribution towards the elimination of an unequal treatment; in other cases, as the facts reported to UNAR suggested that a crime might have been committed, UNAR reported them to the competent Judicial Authority, as it considered that no other type of intervention was possible.
The following interventions of UNAR are particularly important: removal of discriminatory measures or of administrative practices violating the principle of equal treatment.
In the framework of the National Strategic Framework of the Structural Funds for the period 2007-2013, the Department of Equal Opportunities has drawn up action plans that envisage structural interventions in favour of the Roma communities through ESF and ERDF Funds, which were agreed upon by the competent Managing Authorities.

As far as awareness raising is concerned, an important project launched by UNAR in 2010, which also continued in 2011, is the campaign “Dosta” promoted by the Council of Europe and aimed at the fight against prejudices and stereotypes against Roma and Sinti, the campaign implemented a global strategy based on interaction and mutual knowledge.
The campaign included initiatives addressing the general public at national level (media campaigns and national prizes), while awareness raising events addressing specific groups (journalists, local authorities, schools, young people) have been organized at local level.
Furthermore, it is worth mentioning that the Italian legal system includes specific criminal provisions aimed at countering racist and xenophobic expressions, including expressions of thoughts aimed at disseminating ideas based on racial or ethnic superiority or hatred as well as aimed at the incitement to commit acts involving discrimination or violence for racial, ethnic and religious reasons.
The present criminal regulatory system of racial and ethnic discrimination is laid down by Law No. 654 of 13 October 1975 which ratifies and implements the International Convention on the Elimination of All Forms of Racial Discrimination of 1966, with subsequent modifications (the so called Mancino Law No. 205 of 25 June 1993 and law No. 85 of 24 February 2006).
In addition to the above mentioned crimes, these provisions sanction the establishment of organizations, associations, movements or groups which pursue the incitement to discrimination or violence for racial, ethnic or religious reasons; furthermore they envisage a special circumstance of aggravation for all crimes committed with a view to discrimination or racial hatred.
The competent Judicial Authorities have passed judgments concerning events of xenophobic intolerance connected with well-known political representatives; one of them was sentenced to the payment of a fine and was forbidden to participate in public rallies for three years on account of the disparaging words he used against migrants; furthermore in 2009 the Court of Cassation finally confirmed the sentence to two months of imprisonment, suspended sentence, against a regional councilor because of the crime of racist propaganda.
On 13 May 2012 the Judge of Milan Tribunal convicted two political parties of discrimination because they put up posters and made declarations during the electoral campaign, in which they warned against the risk that the city might be turned into a “Town of Gypsies” (Zingaropoli in Italian) in case their political opponent should win. In his verdict the Judge stated the following: “The seriously offensive and humiliating meaning of these declarations is clear; their effect not only violates the dignity of Sinti and Roma ethnic groups, but also favours an intimidating and hostile attitude towards them”.
The protection of human rights and the fight against all forms of discrimination and inhuman and degrading treatment count among the most outstanding items covered during the training of members of the National Police.
The Italian National Police, in partnership with some NGO’s active in connection with the promotion and the protection of human rights, is participating in a project financed by the European Commission aimed at stepping up the respect of human rights and the fight against all forms of discrimination within the police forces of the involved Countries (Italy, Spain, Ireland, Sweden and Cyprus). In Italy the project has resulted in the drawing up of a handbook entitled “The Police Services in a Multicultural Society”. The volume includes, among others, many practical cases and life experiences as well as considerations on persons belonging to minority ethnic groups, in particular the Chinese, the Roma and the Nigerians. The handbook is intended for National Police officials who have a responsibility in managing and evaluating the work of staff members as well as for those having responsibilities, at various levels, in connection with the training and re-training of staff members.
On 2 September 2010, the Observatory for the Security against Discriminatory Acts (OSCAD) was set up; it is presided over by the Vice Director General of Public Security ; its aim is receiving reports from institutions, associations or private citizens concerning acts of discrimination committed against individuals belonging to minorities, initiating targeted

interventions on the territory, to monitor the progress of complaints, to summon the representatives of the involved minorities and the representatives of police forces, to train staff members, to ease and promote communication between citizens who were discriminated against and the security system and to favour the connections with the public or private institutions dealing with discrimination acts (particularly with UNAR, the Office for the Promotion of Equal Treatment and the Elimination of Discrimination based on one's Race and Ethnic Origin).

RESC 19§1 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 19§1 of the Charter on the ground that it has not been established that Slovenian authorities took appropriate steps against misleading propaganda relating to emigration and immigration.

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

Change in policy and the legal framework

The entry and residence of aliens in the Republic of Slovenia is governed by the new Aliens Act, which was adopted on 27 July 2012 and complies with the relevant EU legislation, such as the recently adopted directives on migration policy and other international treaties and agreements. The new Aliens Act brings the Republic of Slovenia even closer to the realisation of international standards of fair and equal treatment of migrant workers and their families and the prevention of all forms of discrimination, especially based on ethnic origin, gender, religion or race. The new legislation on aliens stipulates higher standards in dealing with aliens and their families in fact-finding procedures, with special emphasis on ensuring the protection of human rights for the most vulnerable groups, such as victims of trafficking in human beings, especially women, victims of illegal employment and children or unaccompanied minors. The new Aliens Act also reduces administrative barriers and establishes more efficient and fairer appeal procedures and procedures for the return and deportation of aliens illegally residing in the Republic of Slovenia.

Free services and information for migrant workers

As stated in the report of the Republic of Slovenia on the implementation of Article 19 of the European Social Charter as of December 2010, the Ministry of the Interior of the Republic of Slovenia annually organises educational programmes on communication skills and intercultural dialogue. The programmes are intended for employees in the public administration, the employment service and social work centres.

As regards accessibility of information to foreigners who wish to enter and reside in the Republic of Slovenia, the Ministry of the Interior already mentioned in its December 2010 report that since 2009, all the required information for foreigners is available from various sources, e.g. from the Ministry's official website (www.mnz.gov.si), from a special internet portal for foreigners which is available in six foreign languages (www.infotujci.si), from special brochures that are available at administrative units in 11 different languages, at diplomatic and consular missions of the Republic of Slovenia abroad, at social work centres, employment service offices, non-governmental organisations and various associations.

Measures against misleading propaganda relating to emigration and imigration

Regarding measures against misleading propaganda relating to emigration and immigration, which indicate necessity of action to provide for proper police conduct, please take the fact that all the police officers took part in special training related to police ethics and deontology as an addition to training in this field being part of basic police training and education. Monitoring of police conduct one of basic police supervision duties and it is performed by right to appeal

against police conduct, monitoring and guidance related to performance of police hierarchy. Cases of alleged misconduct are dealt accordingly.
Among the measures to counter misleading propaganda relating to emigration from, and immigration to, the Republic of Slovenia, the Ministry of the Interior, in cooperation with the European Fund for the Integration of Third-Country Nationals, financed a project entitled Raising the Awareness of Employees on the Importance of the Integration of Third-Country Nationals into Slovenian Society; the main aim of the project is to inform employees on the possibility of including employed third-country nationals in integration programmes, on the added value that these programmes offer to employees, and to study the possibility of employers cooperating in the process of integrating third-country nationals into Slovenian society. The project was organised in the form of various modules that focused on the legal and formal aspects of employing third-country nationals, the existing infrastructure for integrating third-country nationals, the prevention of discrimination in the labour market, active citizenship and the integration of employed third-country nationals and intercultural competency. The project constitutes a new and topical approach of the Republic of Slovenia to facilitating the active integration of third-country nationals into Slovenian society, i.e. through employers, as it simultaneously activates employers to recognise the positive aspects of integrating third-country nationals into Slovenian society and motivates employed third-country nationals to be included in integration programmes. With the help of the European Fund for the Integration of Third-Country Nationals, the Ministry of the Interior also finances programmes facilitating the social integration of female third-country nationals, with a special emphasis on integration in the labour market.

RESC 19§1 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 19§1 of the Charter on the grounds that:

- *it has not been established that free services are provided to migrant workers, particularly in obtaining accurate information;*
- *it has not been established that measures against misleading propaganda relating to emigration and immigration have been taken.*

First and second grounds of non-conformity

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

Yurt-Danış Bürosu (Home-Info Office)
Home-Info Office was established in 2001, within the administrative organisation of the General Directorate of External Relations and Services for Workers Abroad of the Ministry of Labour and Social Security to provide services, for the Turkish citizens who are still living abroad but temporarily staying in Turkey, and the Turkish citizens who have returned Turkey permanently and the members of their families.

Those citizens can apply to Home-Info Office either in person, by phone, fax or by e-mail to receive information and inquire about the solutions to the problems they encounter as well as issues concerning the labour and social security are enlisted below:
a) Of the foreign countries:
- Residence and work permits;
- Family unification;
- Sickness insurance;
- Industrial accidents and occupational diseases;
- Child benefits and family benefits;

- Recruitment and leaving employment;
- Unemployment insurance;
- Vocational education, career development, change of occupation;
- Legislation regarding retirement;

b) Rights arising from international law;
c) Issues caused by integration to the societies they live in.

The citizens who apply to Home-Info Office receive information from the experts who have foreign language skills, their questions on several issues are replied, their documents written in foreign languages are examined, they are informed on their rights, their petitions are typed if appropriate, they receive help on the issues which fall under the responsibility of the Ministry of Labour and Social Security and regarding other issues, they are guided to the competent persons and organisations that can help them. 796 by phone and 608 in person out of a total of 1,404 applications were made to the Home Info Office in 2010. The total number of applications was 1,679, 1,081 of which were by phone and 598 of which were in person in 2011.
An Annual Report that includes quantitative data regarding Turkish citizens working abroad, the services provided to them and the detailed information on the changes in relevant legislation concerning them is published by the Ministry of Labour and Social Security every year.

Providing services to the Turkish citizens both living abroad and permanent returnees through the web site published by the General Directorate of External Relations and Services for Workers Abroad to enable them to have access to more detailed and updated information more quickly is being carried out. 23 Attaché's offices and 15 Consultancies (in addition, two consultancies in the presence of EU and UN, one for each) provide services to the Turkish citizens abroad to help them to solve the issues they encounter regarding their working lives, social security, family unification/starting, residence fees/documents, recent integration approaches and tax applications, together with the competent authorities of the countries where they live in and better benefit from the rights and services they are entitled to. The foreign representatives, the staff of which is fluent in at least one foreign language, having good knowledge of both Turkish legislation and the legislation of the country where they are appointed to, expertise in International Law (Immigration Law), wide experience in the subjects of UN, CoE, ILO and OECD, are as follows: Germany (1 Consultancy, 13 Attaché's offices), France (1 Consultancy, 2 Attaché's offices), the Netherlands (1 Consultancy, 2 Attache's offices), Austria (1 Consultancy, 2 Attaché's offices), Switzerland (2 Consultancies, one of them before the UN, 1 Attaché's office), Belgium (2 Consultancies, one of them before the EU), Saudi Arabia (1 Consultancy, 1 Attaché's office), Denmark (1 Consultancy), Sweden (1 Consultancy), Australia (1 Consultancy), Kuwait (1 Consultancy), Libya (1 Consultancy), Turkmenistan (1 Consultancy), Azerbaijan (1 Consultancy), Kazakhstan (1 Consultancy), Turkish Republic of Northern Cyprus (1 Consultancy) and United Kingdom (1 Attaché's office).
Along with the nationals of Turkey, foreigners who want to work in Turkey or who had worked in Turkey and returned to their countries also can benefit from the services of the foreign representatives of the Ministry. They can gather information about following issues (preferably in their own language):
- Legal legislation of Turkey;
- Application process for work and residence permit;
- Issues related to social security;
- Their rights related to their previous work in Turkey.

As per Article 19§1 of the Charter that envisages providing free services and information for the migrant workers, there are detailed information and explanation about the formalities related to the work permit application of migrant workers and national legislation in the website

of the Ministry of Labour and Social Security (www.yabancicalismaizni.gov.tr). The website, which has been designed in line with the languages of the migrant workers applying officially for work permit in Turkey, offers service in English, Russian, Arabic and Chinese together with Turkish.

On the other hand, the experts working in ALO 170 service (the call centre of the Ministry of Labour and Social Security) provide free, instant and exact information on the frequently asked questions to the workers willing to come Turkey as migrants, specifically on the issues such as the social security and trade union rights of foreigners, information on the access to social and medical services, etc.

Besides, legally employed migrant workers enjoy on an equal basis with the Turkish citizens from the services of Turkish Employment Agency such as providing information, guidance and consultancy services, placement and occupational training. The legal and administrative regulations do not have any limitation for migrants regarding the presentation of these services.

There is ongoing cooperation with the countries of origin, transit and destination for preventing illegal migration. One of the most important instruments in this regards is readmission agreements. Furthermore, in order to inform and raise the awareness of the persons vulnerable in terms of illegal human trafficking and to save the victims of this crime, banners, pamphlets, hand books, free and easily accessible telephone lines (155,156, 157 etc.) are being used for (beginning from entrance point).

The measures taken in order to prevent smuggling of migrants and to fight against illegal migration are as follows:

- In line with the results of analyses on the methods of migrants' and smugglers' illegal entrance into our country, the investigations in the maritime and land borders are being intensified. The staff employed in passport and document control departments are being trained on the issue of identification of forged documents. The samples of the official documents of countries are sent to border gates in order to make it possible to efficiently check the originality of the documents used by comparing them.
- The surveys on the domestic routes of the illegal migrants and smugglers are also being made, and necessary measures are being taken accordingly.
- In the events of instant illegal transition into/from our country, coordination and intelligence sharing with the related countries' border units is ensured. The personnel employed in these areas are informed about up-to-date developments with the help of on-the-job-trainings activities.
- Repatriation Centres are established in order to keep a close watch on the detained illegal migrants until they are being deported.
- In order to prevent illegal migration originated from our country by bottoming out illegal entries and exits, the measures taken in land, maritime and airport borders are intensified and the staff working in these departments together with the staff of the foreigners and passport branches are trained in advanced specialization training programs.
- In addition to the legal reforms, 873,576 illegal migrants have been detained between the years 1995-2011 thanks to the efforts of the law enforcement officers and 12,074 smugglers have been brought in to court between the years 1998-2011 as a result of operations against illegal human trafficking organizations.

Article 19§3 – Co-operation between social services of emigration and immigration states

RESC 19§3 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 19§3 of the Charter on the ground that it has not been established that Slovenian authorities promoted co-operation between social services, public and private, in emigration and immigration countries.

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

In the beginning we would like to highlight that the issue of migration in Slovenia is an interministerial topic. All the ministries and other institutions dealing with migration from any of its perspectives (Ministry of Interior, Ministry of Foreign Affairs, Ministry of Labour, Family and Social Affairs, Ministry of Education, Science, Culture and Sport, Office for Slovenians Abroad, etc) work closely with corporate partners who have an interest in the field of migration. This commonly includes a number of non-governmental organisations, agencies and international organisations such as the International Organisation for Migration. In case these are contacted by the migrant workers they offer advice in terms of directing them to the responsible institutions, either governmental or non-governmental in the country of immigration or emigration.

In addition, the Ministry of Interior has taken a number of steps to ensure that people have access to the facts about migration, life in Slovenia and the terms on which they can come to Slovenia. For example, the Ministry of Interior has prepared special brochures with relevant information to foreigners who wish to enter and reside in the Republic of Slovenia, which are available in 11 languages at administrative units, at diplomatic and consular missions of the Republic of Slovenia abroad, at social work centres, employment service offices, non-governmental organisations and various associations. This material which is also available online serves to inform migrants about the support available to them in the Republic of Slovenia and their legal rights to assistance and various other forms of protection.

Among others, this brochure includes information on free legal aid. Free legal aid is regulated by the Free Legal Aid Act. The purpose of the free legal aid is to extend the right to the judicial protection according to the principle of equality, considering the social situation of the person who, without detriment to their livelihood and the livelihood of their family, could not exercise this right. Free legal aid means the right of the claimant to the whole or partial providing of funds for the coverage of expenses for legal aid and exemption of costs of court proceedings. In practice this means the cost of legal advice, legal representation before the general courts, special courts, the Constitutional Court of the Republic of Slovenia and before all authorities, institutions or persons in the Republic of Slovenia that are responsible for the extrajudicial settlement of conflicts and exemption of court proceeding costs. **The beneficiaries** of the free legal aid are persons who, when considering their financial position and the position of their family,would not be able to cover the costs of the proceeding on their own without compromising their financialpositionandthe position of their family. Thus free legal aid is granted to persons whose average monthly income per family member does not exceed 2 times the basic amount of the minimum income. **Application** for the grant of legal aid is made through a prescribed form, to which relevant documents have to be added, at the District Court, Labour Court or Administrative Court in which the applicant has a permanent or temporary residence. The application for legal aid can be obtained at specialist services for free legal aid and in bookshops. On the basis of the application, the competent authority decides on the eligibility for the free legal aid with a written order, which is handed in to the applicant. Legal aid is carried out by lawyers who are registered under the Attorneys Act in the directory of lawyers and law firms (establishe by the Attorneys Act Law),and byn otaries for matters which are performed under the Notary Act.

On the basis of regulations of the coordination of social security systems in the EU, much attention is paid to the co-operation of competent authorities of the Member States. The EU competent authorities and liaison bodies communicate with each other by using U-series portable documents and U-series paper structured electronic documents which provide in all offical EU languages the information necessary to identify and confirm the person’s entitlement to unemployment benefits and enable transfer of entitlement to unemployment benefits to other member states for a limited period of time. The plan for the future is a transition to the electronic exchange of data. With a view to modernising and facilitating the cooperation procedures of competent authorities of the member states and speeding-up the procedure of

examination of applications for social insurance benefits, the new regulation provides for a replacement of paper U-forms with the structured electronic documents, i.e. a transition to the electronic exchange of information which is planned to be operational by 1st May 2014.
In the field of EU social security coordination (issuing and retreiving U1/E301 forms from other liaison bodies, granting and receiving grants tp export of entitlement to unemployment benefits) the Employment Service of Slovenia has dealt with 824 cases in 2010 and with 1.382 cases in 2011 alltogether. In the first half-year of 2012 the Employment Service of Slovenia has issued 284 U1 forms for persons employed in Slovenia and granted 11 exports of unemployment benefits from Slovenia to other member states.
In the field of international treaties on social security Slovenia has signed with Croatia, Bosnia and Herzegovina, Serbia and Macedonia, the Employment Service of Slovenia has dealt with 1.397 cases in 2010 and with 1.669 cases in 2011 alltogether.
All cases regarding EU social security coordination and international treaties are processed in the Central Office of the Employment Service of Slovenia.
The Employment Service of Slovenia is the competent institution implementing the so-called Regulations on modernised coordination (Regulation (EC) 883/2004 and Regulation (EC) 987/2009) in the unemployment field, providing unemployment benefits to migrant workers who have last been employed in other EU or EEA member states or Switzerland, thus promoting the right of migrant workers to freely move, look for employment and work in all member states as well as their right to social security. The Employment Service of Slovenia cooperates with other respective institutions of foreign states as well as international organisations.
The Employment Service of Slovenia is also a part of the European Employment Services (EURES) network, providing information, advice and job-matching services for the benefit of migrant workers and employers in all EU or EEA member states and Switzerland. Currently, the Employment Service of Slovenia has five EURES advisors which provide migrant workers with more detailed information on vacancies in other member states, working and living conditions and labour market situation in other member states, free movement of workers and employment procedures in other member states, possibilities for education and vocational training in other member states, the EURES network and other advisors, as well as basic information on social security systems in other member states. The contact with EURES advisors working in follows a regional principle and is possible personally, via phone or e-mail and also through the electronic services of The European Job Mobility Portal.
The Employment Service of Slovenia also acts as a liaison body ensuring implementation of the Regulations on modernised coordination and international treaties on social security signed with non EU member states. As a liaison body the Employment Service of Slovenia provides through it's Central Office the U-series documents allowing persons last working in Slovenia to claim unemployment benefits in other EU or EEA member states countries or Switzerland and provides migrant workers with necessary information about procedures and rights of persons under the Regulations on modernised coordination. The Employment Service of Slovenia is also responsible for granting export of entitlement to unemployment benefits to workers seeking for employment in other member states and granting unemployment benefits to migrant workers returning to Slovenia after work in other member states. Under international treaties on social security Slovenia has signed with Croatia, Bosnia and Herzegovina, Serbia, Macedonia and Montenegro, the Employment Service of Slovenia collects data about migrant workers employment in the above mentioned states which increases social security of migrant workers coming from these states, since periods of employment in these states need to be added to periods of employment completed in Slovenia, thus providing for a longer entitlement to unemployment benefits under Slovenian legislation, and reciprocally communicates to liaison bodies in the above mentioned states data about migrant workers employment in Slovenia.
The Employment Service of Slovenia provides assistance to migrant workers coming from third states by establishing since October 2010 a Info Point for Foreigners project in Ljubljana which

is also operating through The Employment Service of Slovenia's Regional Offices. The goal of the Info Point for Foreigners project is to prevent exploitation and discrimination of third-state migrant workers, protect their social security rights during unemployment and increase accessibility to their new employment and competition value. The Info Point for Foreigners works in close connection and cooperates with responsible state institutions in Slovenia, non-governmental organisations and foreign social security institutions in the field of migrant workers and their families. So far the Info Point for Foreigners has had contact with migrant workers and has responded by providing counseling or information about work permits, residential permits, social security, job seeking, taxes and education in Slovenia in a total 33.628 cases until 1. October 2012.

The Central Unit for Parental Protection and Family Benefits (hereinafter CU) is authorised to determine first-level rights of EU citizens for insurance for parental protection and rights to family benefits and for the implementation of Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and their families moving within the Community, and Regulation (EEC) No 574/72 on fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and their families moving within the Community. CU is cooperating with several institutions via e-mail and is even in regular contact with some of these. This enables CU to resolve a certain matter or situation rapidly. In cases when the CU does not receive feedback from a competent institution, or in order to obtain data more quickly, the CU contacts the client directly, who then helps to attain required information.

At the international level, the Labour Inspectorate of the RS cooperates with other bodies through two systems: IMI and CIRCA.

CIRCA is an extranet tool developed within the framework of the European Commission’s IDA programme, and is adjusted to the needs of public administrations. It enables a certain community (e.g. committee, working group, project group, etc.), which is geographically dispersed all over Europe (or even outside Europe), to maintain a private space on the Internet where members can exchange information, documents and participate in discussion forums. With the aid of this tool, the Labour Inspectorate of the RS communicates with other labour inspectorates and accesses files which are stored in the library. CIRCA is primarily used in the area of safety and health at work.

The IMI system (internal market information) is a safe web application which enables rapid and simple mutual **communication** between **national, regional** and **local bodies**. The IMI system enables the **search for suitable bodies** in another state and mutual cooperation. The competent EU bodies, which work with workers seconded abroad, were able to start sending information in the pilot phase of the IMI system on 16 May 2011. In March 2011, the EU Council adopted decisions which confirmed the beginning of the pilot phase of the application of the IMI system relating to the **Directive concerning the posting of workers in the framework of the provision of services** (96/71/EC). Although it is in the pilot phase, the system is fully functional. We emphasise that, according to Directive 96/71/EC, the IMI system for posted workers can be used only for inquiries which relate to specific cases; the system does not permit requests for general information or data excluded from the aforementioned Directive. The Labour Inspectorate of the RS primarily communicates though the IMI system with inspectorates from the EU Member States responsible for labour.

Article 19§4 – Equality regarding employment, right to organise and accommodation

RESC 19§4 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 19§4 of the Charter on the ground that it has not been established that migrant workers enjoy treatment which is not less favourable than that of nationals with respect to:

- *remuneration, employment and other working conditions;*
- *membership of trade unions, enjoyment of the benefits of collective bargaining;*
- *access to housing.*

First, second and third ground of non-conformity

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

Remuneration, employment and other working conditions
The legislative framework, as well as the policy designed in the field of employment of foreign workers is based on the principle of the equality of treatment as regards terms and conditions of employment between Cypriot citizens and foreign workers.
For the third country nationals holders of work permit for specific post and specific employer, the equality of treatment is being ensured through the model contract of employment that a third country national has to sign upon his arrival in the country. The contract is prepared according to the principle of the equality of treatment between Cypriot citizens and foreign workers and each employer is responsible for its implementation. In case of violation of the contract of employment by the employer he is liable to sanctions including prohibition to re-employ foreign workers.
The workers´ unions are engaged in both the adoption and the implementation of the policy on employment of third country nationals.
European citizens and third country nationals who have the right to stay and work in Cyprus because of their status, such as persons married with Cypriots or EU citizens, persons with permanent stay permits, refugees, etc, enjoy full access to the labour market and have the same rights as Cypriot citizens.

Membership of trade unions, enjoyment of the benefits of collective bargaining
As regards the right to actively participate in unions and specifically in employment negotiations, foreign workers enjoy equal rights with Cypriot citizens. Moreover, each union has a specific department responsible to manage the employment issues of foreign workers and also, a number of foreign workers are employed by workers´ unions in an effort to assist specific groups of workers.

Access to housing
With regards to accommodation facilities of the third country nationals, holders of work permit for specific post and specific employer, their provisions are defined by the basic criteria for the employment of third country nationals according to which each employer is obliged to offer suitable accommodation to the foreign worker and in this case the employer is allowed to deduct up to 10 % from the employees' wages.
Cyprus provides some Housing Schemes to Cypriot Citizens (mostly to persons displaced from the occupied area of Cyprus which is not under the effective control of the Government of the Republic of Cyprus) and EU Nationals which are not extended to third country nationals legally residing in Cyprus. At this point it should be noted that despite the fact that Cyprus is small in terms of area and population, it hosts large numbers of third-country nationals compared to other EU Member States. In addition to this, 35.2 % of its territory is unlawfully occupied since 1974. These two factors together with the lack of available financial resources at national level do not allow Cyprus to include third country nationals into these schemes. Yet, as it has already been mentioned, third-country nationals are offered through the aforesaid Action Plan the opportunity to participate in programmes and actions implemented by various state departments. Moreover, the basic aims of the 5th priority pillar of the first National Action Plan 2010-2012 for the Integration of Third Country Nationals legally residing in Cyprus on the migrants' housing policy are the creation of a supportive structure for dealing with

emergencies, the reception and temporary housing of migrants, the guarantee of migrants' access to adequate and safe housing and the improvement of migrants' quality of life.

RESC 19§4 FRANCE

The Committee concludes that the situation of France is not in conformity with Article 19§4 of the Charter on the grounds that:

- *it has not been established that in respect of access to employment, working conditions and accommodation migrant workers enjoy treatment which is not less favourable than that of nationals;*
- *the housing conditions of Roma migrant workers in a legal situation are not adequate.*

First and second grounds of non-conformity

502. The representative of France provided the following information in writing:

La lutte contre la discrimination raciale dans l'emploi et l'égal accès à l'emploi des personnes quelles que soient les origines nationale, raciale ou ethnique demeurent une préoccupation des pouvoirs publics français.

Label Diversité
Il s'adresse à tous les employeurs, publics comme privés, quelle que soit leur taille. Il concerne leur politique de recrutement et de gestion des carrières. Il porte sur la prévention de toutes les discriminations reconnues par la loi et donc notamment l'origine des personnes et leur religion.
Le Label, propriété de l'État, est délivré en son nom par un organisme tiers, AFNOR-Certification, sur avis d'une commission de labellisation de 20 membres (représentants de l'Etat, du patronat, des syndicats, et experts désignés par l'ANDRH) présidée par le directeur de l'accueil, de l'intégration et de la citoyenneté (DAIC).
En mars 2011, au terme de 2 ans d'existence, les résultats témoignent de l'intérêt rencontré par le « Label diversité ». **255 labels ont été attribués** à des entreprises privées et publiques ou à des organismes publics. Il concerne plus de **15 000 sites** de travail et près de **770 000 salariés**.

Défenseur des droits
Le Défenseur des droits est une institution novatrice instituant une compétence intégrée en charge de la lutte contre les discriminations. Conformément à la loi organique n°2011-333 et la loi ordinaire n°2011-334 du 29 mars 2011, il succède au Médiateur de la République, au Défenseur des enfants, à la Haute autorité de lutte contre les discriminations et pour l'égalité (HALDE) et à la Commission nationale de déontologie de la sécurité (CNDS) à compter du 1er mai 2011.
Le Défenseur des droits est une autorité constitutionnelle indépendante qui veille au respect des droits et libertés par toute personne, publique ou privée. Il est chargé de défendre les droits et libertés dans le cadre des relations avec les services publics, de défendre et de promouvoir l'intérêt supérieur et les droits de l'enfant, de lutter contre les discriminations prohibées par la loi et de promouvoir l'égalité, de veiller au respect de la déontologie par les personnes exerçant des activités de sécurité.
Il peut être saisi par toute personne s'estimant lésée par le fonctionnement d'une administration ou d'un service public et notamment par toute personne s'estimant victime d'une discrimination, directe ou indirecte, prohibée par la loi ou un engagement international, que l'auteur présumé de cette discrimination soit une personne privée ou publique.
Le Défenseur des droits peut en outre se saisir d'office ou être saisi par les ayants droit de la personne dont les droits et libertés sont en cause.

Logement

Toute personne de nationalité française bénéficie des droits au logement existant pour les personnes dépourvues de logement et qui ne sont pas en mesure d'accéder par leurs propres moyens à un logement décent et indépendant. Elles peuvent, après avoir effectué des démarches préalables, exercer un recours amiable devant la commission de médiation pour obtenir soit un logement, soit l'accueil dans une structure d'hébergement ou un logement de transition, en application de la loi n° 2007-290 du 5 mars 2007 instituant le droit au logement opposable.

Celle-ci précise que le droit à un logement décent et indépendant est également garanti par l'Etat à toute personne qui, résidant sur le territoire français de façon régulière et dans des conditions de permanence définies par décret, n'est pas en mesure d'y accéder par ses propres moyens ou de s'y maintenir. Le décret n°2008-908 du 8 septembre 2008 a fixé les conditions de permanence de la résidence des bénéficiaires du droit à un logement décent : les citoyens des Etats membre de l'Union Européenne ne sont pas tenus de détenir un titre de séjour, sauf en cas d'exercice d'une activité professionnelle par un Européen originaire d'un Etat membre soumis à des mesures transitoires. Cependant, ils doivent, ainsi qu'en dispose l'article R300-1 du code de la construction et de l'habitation, remplir l'une des conditions exigées pour bénéficier d'un droit de séjour sur le fondement de l'article L.121-1 du code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA). Le droit de séjour existe dans l'un des cas suivants :

- exercice d'une activité professionnelle en France (y compris descendant direct âgé de moins de vingt et un an, ascendant direct, conjoint) ;
- ressources suffisantes pour l'ensemble de la famille ;
- inscription dans un établissement fonctionnant conformément aux dispositions législatives et réglementaires en vigueur pour y suivre à titre principal des études ou, dans ce cadre, une formation professionnelle (y compris le conjoint ou un enfant à charge).

Les Roms en situation régulière peuvent donc bénéficier de ce droit.

Bien souvent, les Roms étrangers s'installent sans autorisation sur des terrains non aménagés. Leurs conditions de vie sont très précaires. Face à ces situations difficiles, certaines collectivités volontaires ont apporté une solution, en collaboration avec l'Etat qui a apporté un fort investissement : après une première étape permettant l'accueil temporaire de ces familles. L'Etat est intervenu en finançant des maîtrises d'œuvre urbaine et sociale (Mous) pour effectuer le diagnostic social des familles et la recherche des solutions de logement durable. En région Ile-de-France, le département de Seine St Denis qui compte plusieurs campements édifiés spontanément par des familles Roms a favorisé le développement de villages d'insertion pour ceux qui sont appelés à vivre durablement en France. Plusieurs villages d'insertion ont été ouverts à Saint Denis, Aubervilliers, Saint Ouen, Bagnolet et Montreuil. Une telle collaboration permet de concrétiser des projets pour l'insertion durable des familles aussi bien sur le plan économique et social que sur le plan du logement. En 2010, six Mous ont été engagées en Seine Saint Denis pour ces villages d'insertion, pour un montant total de 844 000 €. Les villes de Lille, Marseille et Lyon réfléchissent également à la réalisation de villages d'insertion.

La liberté d'installation et d'aller et venir, essentielle dans tout Etat de droit, doit néanmoins être encadrée afin d'assurer le respect des autres libertés individuelles et de l'intérêt général. A cet égard, la Recommandation (2005)4 du Comité des Ministres (Conseil de l'Europe) aux Etats membres relative à l'amélioration des conditions de logement des Roms et des Gens du voyage en Europe précise, en son point II.3 concernant le « choix de vie » que, si « les autorités nationales, régionales et locales devraient faire en sorte que chacun bénéficie de toutes les conditions nécessaires à la pratique du mode de vie choisi », cela doit néanmoins se faire « **en fonction des ressources disponibles et des droits des tiers, dans le cadre**

juridique relatif aux constructions, à l'aménagement du territoire et à l'accès à des terrains privés ».

RESC 19§4 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 19§4 of the Charter on the grounds that:

- *it has not been established that migrant workers enjoy treatment which is not less favourable than that of nationals with respect to enjoyment of the benefits of collective bargaining and access to housing;*
- *the forced evictions of Roma migrant workers were carried out without due respect of the necessary procedural safeguards guaranteeing that in respect of housing for such workers treatment is not less favourable than that of nationals.*

First and second ground of non-conformity

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

Enjoyment of migrant workers of the benefits of collective bargaining
Italian legislation establishes that all EU workers and foreigners, with a resident permit, enjoy equal rights as those of nationals (article 1 Act n° 943 dated 30 December, 1986), hence the general terms and conditions laid down by collective agreements are applicable to all workers. To conclude, in the case of an employment relationship, regulated by a contract, all the rights of the subordinate worker must always be respected, such as: minimum wage; working hours; Social security contributions (article 2099 of the civil code); health and safety protection in the workplace; female employment; employment of minors and the principle of non-discrimination.
In the case that individual rights are violated, migrant workers can bring a case before a court on an equal basis with Italian citizens.

Migrant workers access to public housing
Section 6 of article 40 Legislative Decree n° 286 dated 25 July, 1998 (Single Text concerning provisions on immigration), amended by Law n°189 dated 30 July, 2002 establishes that "foreigners with a EC long-term resident permit and those lawfully resident with at least a two-year permit of stay that are regularly employed or self-employed, with regards to public housing, for such workers treatment is no less favourable than Italian nationals". Furthermore they will also enjoy all those initiatives taken by the different Regions and Local Bodies to facilitate such access. Public residential housing refers to houses that are built with public funds.
The various requirements to be fulfilled to access Public Housing are the following: Italian citizenship or EU citizen; and according to the above mentioned law", foreigners with a EC long-term resident permit and those lawfully resident with at least a two-year permit of stay, that are employed or self-employed. Access to housing is also extended to individuals with refugee or subsidiary protection status; Those people who want to live in public housing must submit an application to the Municipality where they reside, or, by virtue of a public notice, to the Municipality where they are employed or run their business.
Applicants must not have previously been granted public housing or if previously awarded with public housing have yield it to someone else; occupy and reside illegally in public housing; have "property rights" or "right of occupancy" above 50 %, with regard to real estate or various kinds of accommodation in the municipality where they reside; Must have an overall family level of income, not higher than the one established by the various Regions to have access to Public Housing.

Finally, we lead back to the last written response on article 31§3 of the Revised European Charter (equal treatment with regard to the right to housing) dispatched recently.

RESC 19§4 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 19§4 of the Charter on the ground that it has not been established that with respect to accommodation migrant workers enjoy treatment which is not less favourable than that of nationals.

504. The representative of Norway provided the following information in writing which is relative to Article 19§4 and 19§10 (see under RESC 19§10 Norway in this document):

> Migrant workers as such is not a group with special rights in Norway, but they are, as everyone else with a resident and work permit, entitled to apply for different welfare services, subsidized housing and housing aids, such as loans or other allowances, provided that the individual satisfies the criteria's for the different measures. This includes public social housing.
> The majorities of housing policy instruments are means tested benefits, and are targeted for disadvantaged groups that cannot get into the housing market without public aid. Public social housing is one of several means. Prioritized groups are often handicapped and elderly with needs for adequate housing, mentally handicapped, refuges, etc.
> Assigning or rejection of public social housing is a decision that has to be made in accordance to certain procedures and regulations. Within the legal framework, the municipalities are free to use the different housing measures in accordance with their needs and rescore available, i.e. the availability of public or private rental housing. Many municipalities have strict criterias and prioritization of public social housing.
> Several municipalities practice residence requirements as part of their criterias for public social housing. This includes everyone that wants to apply, also Norwegian citizens moving from one municipally to another.
> A survey made by the University of Trondheim (NTNU) in 2011, states that it varies how many municipalities that have residence requirements, and how many years they require being eligible for public social housing. Municipalities with resident's requirements state that it is necessary to limit the demand for public social housing, for instance to secure housing for refugees. Residence requirement does not apply to refugees from asylum reception centers.
> The public social rental housing sector is relatively small in Norway. Statistics from Statistics Norway show that the municipalities have about 101 600 public social houses at their disposal. Municipalities with few public social houses, have to use other means to support disadvantaged groups, e.g. different loans, grants and/or allowance. This can help people into the private housing market.
> The private housing market, including rental housing, is regulated through different legal frameworks. All of them have a non-discrimination clause.

RESC 19§4 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 19§4 of the Charter on the grounds that:

- *it has not been established that concerning remuneration, employment and other working conditions, the treatment of migrant workers is not less favourable than that of nationals;*
- *it has not been established that concerning membership of trade union and enjoyment of the benefits of collective bargaining the treatment of migrant workers is not less favourable than that of nationals;*

- *equal treatment and adequate conditions are not secured for migrant workers with respect to access to housing.*

First and second grounds of non-conformity

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

> Article 6 of ZDR explicitly prohibits discrimination based on nationality. In accordance with Article 6 of ZDR, employers must ensure for job seekers in gaining employment or workers during their employment relationship and in connection with the termination of employment contracts equal treatment irrespective of ethnicity, race or ethnic origin, national or social background, gender, skin colour, state of health, disability, faith or conviction, age, sexual orientation, family status, membership of unions, financial standing or other personal circumstance in accordance with this Act, the regulations governing the fulfilment of the principle of equal treatment, and the regulations governing equal opportunities for women and men. Employers must ensure equal treatment in respect of personal circumstances referred to in the preceding paragraph for candidates for employment and workers especially in gaining employment, promotion, training, education, retraining, pay and other receipts from the employment relationship, absence from work, working conditions, working hours and the cancellation of employment contracts.
> In addition, Article 7 of the Aliens Act (Official Gazette of the Republic of Slovenia, No. 26/11, hereinafter referred to as ZZDT 1) explicitly determines that aliens who are employed in the Republic of Slovenia in accordance with the provisions of this Act are equal to Slovenia citizens in regard to the rights and obligations arising from the employment relationship.
> Article 42 of the Constitution of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, Nos. 33/91-I, 42/97, 66/2000, 24/03, 69/04 and 68/06) stipulates that everyone has the right to freedom of association with others. Furthermore, Article 76 of the Constitution of the Republic of Slovenia actualizes freedom of trade unions by determining that the freedom to establish, operate and join trade unions shall be guaranteed. Based on both Articles, the fundamental right to association and the actual right to freedom of trade unions are not restricted to citizens of the Republic of Slovenia only.
> Here we should mention that the Representativeness of Trade Unions Act (Official Gazette of the Republic of Slovenia, No. 13/93), regulating acquiring the properties of a legal person of a union and its representativeness, does not infringe upon the freedom of joining trade unions.
> In accordance with Article 2 of the Collective Agreements Act (Official Gazette of the Republic of Slovenia, Nos. 43/2006 and 83/2009 Constitutional Court Decision: U-I-284/06-26) collective agreements are concluded between trade unions or associations of trade unions as a party on the side of workers and employers or associations of employers as a party on the side of employers.
> In accordance with Article 10 of this Act, a collective agreement is valid for the parties to a collective agreement or its members, and Article 11 of this Act determines that a collective agreement is valid for all persons employed by an employer or employers to whom the collective agreement applies if the collective agreement is signed by one or more representing trade unions.

Third ground of non-conformity

506. Slovenia is aware that suitable accommodation and the issue of adequate housing for foreign workers has become a highly topical and prominent issue in recent years, mainly due to the large increase in the employment of third country migrant workers. The Government believes that migrant workers should have access to adequate housing conditions and has adopted a regulation which covers both residential standards and minimum standards of hygiene. The primary purpose of the Regulation laying down minimum standards of accommodation and hygiene is, on the one hand, for the protection against exploitation of migrant workers and, on the other, setting minimum standards of living and hygiene.

The demand for non-profit rental housing still exceeds the supply – particularly in bigger municipalities. Due to lack of resources to acquire more non-profit housing facilities, this issue is indirectly also regulated by making citizenship a condition for housing. Citizens of the state parties that are not members of the EU are thus only entitled to a living unit. However, the waiting period has shortened in recent years from 7 to 3-5 years which shows that the situation is improving.

The National Housing Programme which is in the final stage of preparation will contribute to solving the lack of non-profit housing for rent and the increase of such housing is one of the main goals. The Programme is scheduled to be adopted by the end of this year and the access to public housing for rent will no longer be conditioned by citizenship. The details regarding the National Housing Programme will be explained in more detail under Article 31.

507. The representative of Slovenia, in reply to questions from the Chair and the ETUC concerning planned changes to legislation, said that the National Housing Programme specifies measures for strategic aims, providing the basis for all changes to be made to the Housing Act.

508. The representatives of Turkey and Belgium pointed out that the main obstacle behind the situation of non-conformity was the law of 2003 and asked if there is a political willingness to change this legislation.

509. The representative of Slovenia replied that the National Housing Programme must first go through the formal procedure of adoption by the National Assembly.

510. The representative of the ETUC pointed out that promises of modification to the legislation had already been made on previous occasions.

511. In reply to a question by the Chair concerning the waiting period of 3-5 years, the representative of Slovenia said that non-EU citizens were entitled to temporary housing in the form of mobile living units.

512. In accordance with its Rules of Procedure, the Committee voted on a Recommendation, which was rejected (3 in favour, 24 against). The Committee then voted on a Warning, which was also rejected (8 in favour, 13 against).

513. The Committee encouraged the Government of Slovenia to modify its legislation and to bring its situation into conformity with the European Social Charter.

RESC 19§4 TURKEY

The ECSR concludes that the situation in Turkey is not in conformity with Article 19§4 of the Charter on the ground that it has not been established that migrant workers may become founding members of trade unions.

514. The representative of Turkey stated that immigrant workers cannot be founding members of a trade union in Turkey under Law N° 2821 on trade unions which stipulates, under Article 5, that founding members must having Turkish nationality and be literate in Turkish. It is considered, not only by the ECSR but also by the International Labour Office and the European Union that such conditions interfere with the internal proceedings of trade unions and are contrary to trade union freedoms. Taking into consideration such criticisms and at the request of social partners, the provision prohibiting immigrant workers to be founding members of Trade Unions has been eliminated in the Turkish draft law on collective labour relations, drafted in 2011. This draft law was put before the Turkish Grand National Assembly on 31 January 2012 and is on the agenda of the Assembly convened on 1st October 2012. It is likely to be adopted within the following months and implemented shortly afterwards. With the adoption of this law, migrant workers will be able to become founding members of Trade Unions under the same conditions as Turkish nationals.

515. The representative of Turkey, in reply to a question from the representative of the ETUC, replied that the draft law was tabled in the Turkish parliament a year ago and following much discussion concerning some of the provisions, a consensus has emerged. The social partners are bringing pressure to bear that the draft law is adopted and the Government has made a public statement that it will give priority to it.

516. The Committee took note of the draft law and asked the Government of Turkey to bring the situation into conformity with the European Social Charter.

Article 19§6 – Family reunion

RESC 19§6 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 19§6 of the Charter on the ground that the requirement for foreign workers wishing to be joined by their close relatives to have been residing lawfully in Cyprus for at least two years is excessive.

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

> In December 2009 the Aliens and Immigration Law has been amended [amending Law 143(I)/2009] in order to grant more favourable treatment to persons exercising the right to family reunification as follows:
> a. staff employed by companies of international interests are exempted from the provision according to which third country nationals have to reside in the Republic for two years prior to their application for family reunification; and
> b. family members of staff employed by companies of international interests are exempted from the requirement of residing in a third country when an application is filed by its sponsor.
> The implementation of the amended Law commenced in 2010. The Ministry of Interior intends to re-examine the provision according to which the rest of third country national workers have to reside in the Republic for two years prior to their application for family reunification, in collaboration with the Director of Civil Registry and Migration Department.
> All foreigners employed in the Republic, have the right to family reunification, resulting from the Directive 2003/86/EC of 22 September 2003, concerning the right to family reunification. The Directive has been transposed into national legislation with the Aliens and Immigration (Amendment) Law 2007 [N.8 (I)/2007].

RESC 19§6 ESTONIA

The ECSR concludes that the situation in Estonia is not in conformity with Article 19§6 of the Revised Charter on the ground that a two years residence requirement which is imposed on migrant workers who are not citizens of members States of the European Union, nor citizens of the European Economic Area is excessive.

518. The representative of Estonia provided information which also applies to Article 19§10. The Estonian Parliament decided, on 21 February 2012, that it does not currently deem it possible to reduce the 2 year residence requirement in the regulation for family reunion. Estonia is in conformity with EU Directive 2003/86/EC, Article 8(1), which provides for a period not exceeding two years, and the Government considers that its legislation is not in contradiction with the Social Charter. Article 19§6 of the Social Charter established an obligation for Estonia to facilitate as far as possible the reunion of the family of a foreign worker on its territory.

The term for settling with the spouse established in the Aliens Act was amended in 2006, with the introduction of the two year requirement. Under section 186 of the Aliens Act, a temporary residence permit for employment shall be issued for a period of validity of up to two years. It is justified to establish a prior period of the same length in order to ensure that the alien and any spouse admitted for family reunification will remain in Estonia. The reunification of families should, above all, concern those third-country nationals whose stay in the country is of a permanent nature. Reference is also made to the exceptions to the prior two year residence requirement provided for under paragraphs 137(3)1 to 7 and subsection 137(4) of the Aliens Act.

On the basis of statistics which show signs of abuse of the existing regulation and recent cases of misconduct concerning residence permits, the Ministry of the Interior is of the opinion that reducing the residence period requirement to one year may result in further abuse.

Data shows that the number of applications for temporary residence permits is growing from year to year, as does the number of rejected applications. This fact gives grounds to conclude frequent non respect of the current regulation and making the requirements/restrictions currently stipulated therein more lenient is therefore not justified. For instance, in 2010, applications for settling with a spouse were received from 459 persons and during the year, the Police and Border Guard Board revoked 441 applications for a residence permit. In 2011, applications were received from 598 persons and 470 applications were revoked. Statistics for the extension of temporary residence permits also indicates that the existing requirements cannot be removed from the currently applicable legislation. In 2010, 1,219 applications received out of which 1,047 were revoked; in 2011, 1,334 applications were received out of which 1,115 were revoked.

519. Given the geopolitical location of Estonia, in Eastern Europe and close to wealthier Nordic countries, people with residence permits often move to other countries, which is a reason for monitoring whether they are living in Estonia or not.

520. The Chair said that the situation was complicated when the European Union entitled states to lay down a two year period whilst the ECSR considers one year as a reasonable requirement. She asked whether Estonia had any intention to change its legislation.

521. The representative of Estonia said that the Government was monitoring statistics and the situation would be discussed again by the Social Committee and the Parliament. Given the current levels of abuse, there is little likelihood of a change in legislation at this stage but there are on-going discussions.

522. The Chair, following a proposal by the representative of Turkey for the ECSR to review the question, suggested that the issue be discussed at the meeting of the Joint Bureau in the more general context of EU directives which do not meet the standards of the ECSR.

523. The representative of the Netherlands supported such a discussion, particularly as more member states were becoming both members of the Council of Europe and the European Union.

524. The representative of the ETUC pointed out that a general discussion did not mean that a general solution is required at this stage and, in the interests of the protection of social rights, suggested that solutions be found on a case by case basis. He added that the conclusions of the Helsinki Seminar on the anniversary of the European Social Charter referred to a study on the accession of the EU to the Social Charter. Nothing can be excluded and it was important not to lose sight of this dream.

525. The representative of Belgium supported the importance of upholding the values of the European Social Charter and said that the ECSR no doubt supports the important step of compliance by states to EU directives. It is an interesting subject for discussion between the two Committees which concerns a number of Articles. In the meantime, he suggested that countries concerned should provide additional information as to why they find it difficult to reduce the length of time in respect of residence permits for family reunification.

526. The Committee took note of the information and encouraged the Government of Estonia to provide all the necessary information in its next report and bring the situation into conformity with the European Social Charter.

RESC 19§6 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 19§6 of the Charter on the ground that the requirement for foreign nationals wishing to be joined by their close relatives to have been residing lawfully in France for at least eighteen months is excessive.

527. The representative of France provided the following information in writing:

L'article 8 de la directive 2003/86/CE du Conseil du 22 septembre 2003 relative au droit au regroupement familial indique que « Les États membres peuvent exiger que le regroupant ait séjourné légalement sur leur territoire pendant une période qui ne peut pas dépasser deux ans, avant de se faire rejoindre par les membres de sa famille. […] ».
Par conséquent, l'article L. 411-1 du code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA), qui fixe à 18 mois la durée de séjour régulier préalable à toute demande de regroupement familial, est respectueuse de la directive 2003/86/CE.
La France, qui avait envisagé en 2006 de fixer cette durée à deux ans, comme le permet la directive, s'est conformée à la décision du Conseil constitutionnel n° 93-325 DC du 13 août 1993 (concernant la loi relative à la maîtrise de l'immigration et aux conditions d'entrée, d'accueil et de séjour des étrangers en France), qui reconnaissait conforme à la Constitution – et notamment au dixième alinéa de son préambule disposant que : « La Nation assure à l'individu et à la famille les conditions nécessaires à leur développement » - l'exigence d'une durée de séjour préalable et régulier en France de deux années. Cette reconnaissance était conditionnée à ce que la demande de regroupement puisse être formulée avant l'expiration de ce délai de deux années pour que ce droit soit effectivement susceptible d'être ouvert à son terme.
Grâce à l'indication de l'article L. 421-4 du CESEDA, qui fixe à 6 mois maximum le délai dans lequel l'autorité préfectorale doit statuer sur une demande de regroupement familial, la France est conforme à la décision du conseil constitutionnel (Extrait de la décision du 13 août 1993 : « Considérant en premier lieu que pour l'ouverture du droit au regroupement familial le législateur a exigé une durée de séjour préalable et régulier en France de deux années ; qu'il importe que la demande de regroupement puisse être formulée avant l'expiration de ce délai pour que ce droit soit effectivement susceptible d'être ouvert à son terme ; que sous cette réserve d'interprétation, cette condition est conforme à la Constitution »).
L'article L. 411-1 du code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA) fixe à 18 mois la durée de séjour régulier préalable à toute demande de regroupement familial.
Grâce à l'indication complémentaire de l'article L. 421-4 du CESEDA, qui fixe à 6 mois maximum le délai dans lequel l'autorité préfectorale doit statuer sur une demande de regroupement familial, le droit français est en conformité à la fois avec :

- l'article 8 de la directive 2003/86/CE du Conseil du 22 septembre 2003 relative au droit au regroupement familial, qui indique que « Les États membres peuvent exiger que le regroupant ait séjourné légalement sur leur territoire pendant une période qui ne peut pas dépasser deux ans, avant de se faire rejoindre par les membres de sa famille. […] » ;
- la décision du Conseil constitutionnel n° 93-325 DC du 13 août 1993 (concernant la loi relative à la maîtrise de l'immigration et aux conditions d'entrée, d'accueil et de séjour des étrangers en France), qui reconnait conforme à la Constitution – et notamment au dixième alinéa de son préambule disposant que : « La Nation assure à l'individu et à la famille les conditions nécessaires à leur développement » - l'exigence d'une durée de séjour préalable et régulier en France de deux années. Cette reconnaissance est conditionnée à ce que la

demande de regroupement familial puisse être formulée avant l'expiration de ce délai de deux années pour que ce droit soit effectivement susceptible d'être ouvert à son terme.

RESC 19§6 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 19§6 of the Charter on the ground that it has not been established that migrant workers receiving social benefits are not precluded from the right of family reunion.

528. The representative of Ireland provided the following information in writing:

Family Reunification

Before addressing the specific questions posed by the Committee it may be helpful to provide some context.

First of all family reunification is not an absolute right. Moreover Ireland does not participate in the EU directive on family reunification. Accordingly family reunification for non-EEA nationals is a matter of national law, guided additionally by Ireland's international obligations.

The needs of the migrant worker and his/her family need to be balanced against that of society in general and prevailing economic conditions cannot be ignored. Nevertheless, Ireland recognises the importance of family reunification in assisting the migrant worker to integrate in their new country and the role that it plays in the decision making process for a person contemplating working in Ireland.

Indeed, Ireland's family reunification practice in the case of workers is in many instances a liberal one and goes well beyond our obligations. High skilled workers who get the green card work permit have access to immediate family reunification for spouse and minor children. Partners, same sex or heterosexual, will also qualify provided that their relationship is of sufficient duration. The salary levels and the desirability of their skills gives the necessary confidence that they will be able to support themselves without needing the State to supplement their income.

Ordinary work permit holders with lower skill/salary will also be able to avail of family reunification if their salary level is at a threshold that gives confidence that they will be able to support their dependents. It should be borne in mind that since family reunification is potentially granted before the worker has even started his/her contract the financial assessment is made solely on the basis of projected as opposed to actual earnings. For visa required countries a one year waiting period is applied and accordingly actual earnings can be assessed. Where a worker is already well established in Ireland for a number of years and then seeks to be joined by family then amongst other things the workers earnings are looked at to see if he/she has an employment history that would suggest ability to support family members.

Each family reunification case must be considered on its merits. For example a very highly paid professional with few dependents is clearly a different proposition to a low paid worker in precarious employment seeking to be joined by a large family. A general indicator is that the worker should be earning at a level that would not entitle them to family income supplement (a top up payment for low income households). While there is no absolute definition of what constitutes public funds, it is generally regarded as applying to transfer payments from the State to the individual to increase their income to a level that makes their existence viable. It does not generally include such matters as access to primary or secondary school for dependent children nor receipt of those public services routinely available to all persons living in the State. However such matters, while of secondary importance, could be considered in the case of a more marginal application.

Even then access to public funds as defined above is not an absolute bar to family reunification. The application is considered in the round but the ability of the migrant to provide for his/her dependents without undue reliance on State support is a vital consideration. Other

matters to be considered include the length of time the migrant worker has been residing in the State and their employment history.
Allowances are made for temporary periods of unemployment and in those circumstances the worker may have been entitled to certain welfare payments. There are also universal payments such as child benefit that would not cause a particular concern. However if the worker presents an overall profile of sustained or significant dependence on state supports then the conclusion to be reached is likely to be that he/she lacks the capacity to make adequate provision for dependents seeking to join him her.
The Irish Naturalisation and Immigration Service is currently reviewing its policy on the issue of family reunification so as to provide more guidance and transparency.
In conclusion therefore Ireland would respectfully submit that it is in full compliance with this provision.

RESC 19§6 ITALY

The Committee concludes that the situation in Italy is in not conformity with Article 19§6 of the Charter on the ground that the requirement relating to the income is likely to hinder family reunion rather than facilitate it.

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

Under Legislative Decree n° 160 dated October 3, 2008 that intervenes on section 29 of the Single Text concerning provisions on immigration, Legislative Decree n° 286 dated July 28, 1998, amended by Legislative Decree n° 5 of January 8, 2007 “Enforcement of the European Union Directive 2003/86/EC on the Right to Family Reunification” these measures set forth that the foreign national that has submitted the application for family reunion must be able to provide evidence, of an annual minimum income (where the origin of such income is not unlawful or immoral), not inferior to the yearly amount of the welfare support allowance (assegno sociale). The level of income requirement increases by 50 % for every family member to be reunited.
Furthermore, Legislative Decree n° 160/2008 sets forth that for family reunion of two or more children aged under 14 or two or more family members with subsidiary protection status, the income required, must be at least double the yearly amount of the welfare support allowance (assegno sociale). In the end, the provisions establishing the level of income required also on the basis of the overall annual income for family members living with the applicant remain unchanged.
The Committee deems that this income requirement is likely to hinder family reunion rather than facilitate it, and at the same time recalls that “the level of means required by States to bring in the family or certain family members should not be so restrictive to prevent any family reunion” (Conclusions XIII-1 The Netherlands).
On this subject, herein it is specified that the level of income required to obtain the residence permit for family reasons is not particularly high, considering the fact that the referred welfare support allowance (assegno sociale), in Italy, as for 2012, amounts to monthly 429 €, plus en extra month pay. Therefore, it is deemed that the aforesaid Law provisions do not hinder in anyway family reunion, but, on the contrary, should be considered to be a mean of protection for the migrant worker and his family, since they assure a minimum but satisfying standard of living in the hosting country. The Italian Legislation rather aims to facilitate family reunion since, as a case in point, in order to assess the level of income required, the total annual income of family members already present, is also taken into consideration and not just the applicant’s personal income.
In such a way should be interpreted the last legislative amendment made on article 29 § 5 of Legislative Decree n° 286 dated July 25, 1998 established by Act n° 94 of July 15, 2009 which

allows the under-age child, lawfully resident in Italy with the other parent, to reunite to the natural parent who gives evidence to hold income and housing prerequisites, considering that the other parent holds the required legal conditions. On the contrary, the prior legislation (Leg. Decree n° 5 dated January 8, 2007) allowed the natural parent entry to reunite with the under-age child lawfully residing in Italy, only if he/she could give evidence to hold the housing and income requirements within one year from his/her entry in Italy, thus the family reunion was conditioned to the possessions of the two requisites within a restrictive period of twelve months.

The study shows that foreign nationals, lawfully residing in Italy as to the first of January 2011, are more than three and a half million. These are all those foreigners not members of the European Union holding a valid permit of residence and under-aged children registered on the adult's permit. From 2008 to 2011 an increase equal to 35 % of lawful residents in Italy has been registered.

With reference to the permits of residence in 2010 almost 600 thousand new permits have been issued, 60 % of which for working reasons and the remainder for family reasons.

RESC 19§6 NETHERLANDS (KINGDOM IN EUROPE)

The Committee concludes that the situation in the Netherlands is not in conformity with Article 19§6 of the Charter on the grounds that:

- *the exclusion of the 'welfare support benefits' from the calculation of the income level is likely to hinder family reunion rather than facilitate it;*
- *the imposition of a language and integration test is likely to hinder family reunion rather than facilitate it.*

First ground of non-conformity

530. The representative of the Netherlands provided information which also applies to Article 19§10 (see under RESC 19§6 Netherlands (Kingdom in Europe) in this document). The Immigration Law and the policy based upon this legislation require, as a condition for immigration, that the applicant has independent, stable and sufficient financial resources to support his/her family and does not claim any social assistance financed by tax funds of the Netherlands. This policy is in conformity with EU Directive2003/86/EC on the right of family reunification. However, exceptions are made if the applicant receives social assistance on the grounds that he or she is considered to be unable to work. In that case, reunification with his/her family is not denied on financial grounds. This means that applications will be judged on a case by case basis and also in cases where the applicant has only social assistance a source of income. Migrants who are lawful residents are entitled to claim social benefits. Whether a lack of independent means will have consequences for the residence permits of the family members, is also determined on a case by case basis, in compliance with Article 8 of European Convention of Human Rights.

From 2004-2010, the Netherlands applied different conditions for family reunification and family formation. For family reunion both partners must have reached the age of 18 years whilst for family formation both partners must have reached the age of 21 years. The reason for those different ages was that people who wanted to start a family in the Netherlands should be able to make an independent decision to do so and be old enough to have finished their education in order to earn an income to support their family. For family reunion, an income of at least 100 per cent of the legal Dutch minimum wage was required, while for family formation, an income of at least 120 per cent of the legal minimum age was required. The ruling of the European Court of the EU in Luxembourg, in the case of Chakroun versus the Netherlands case (in 2010) made the Netherlands change both of these conditions. The Court ruled that there should be no difference between family reunification and family formation. The Court also ruled that 100 per cent of the legal minimum wage should be the

income standard in both cases. Since 2010, the present conditions are 21 years of age for both partners and 100 per cent of the standard minimum wage for both cases (family reunification and family formation). The Netherlands complies to EU standards, Article 8 of the European Convention of Human Rights and the Government believes it also complies with the Social Charter.

531. The representative of the Netherlands, in reply to a question by the Chair, said that it was irrelevant whether the applicant is working full time or part-time. In reply to a question by the Turkish representative, he said that the source of income as such is not the only determining factor, because all cases are judged on a case by case basis. He confirmed that a person receiving social benefits can also have a right to family reunification, providing they meet the condition of 100 per cent of the standard minimum wage. All situations are decided on a case by case basis, so if a person has convincing reasons for not being able to work or has to work part-time due to a particular medical condition, for example, then this is taken into consideration.

532. In reply to a question by the Chair, the representative of the Netherlands said that if the person has a good reason why he/she cannot work full time, it is normal practice to receive supplementary social assistance until the so-called "social minimum level" for his/her household is reached. The reception of social assistance as such is not a reason for refusal of family reunification.

533. The representative of Belgium said that the explanations appeared to be acceptable and it would be necessary to see results in the next report.

534. The Committee took note of the information provided and asked the Government of the Netherlands to provide all relevant details in its next report and to bring the situation into conformity with the European Social Charter.

Second ground of non-conformity

535. The representative of the Netherlands provided the following information in writing:

> The text of article 19§6 reads as follows: "to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory".
> In the Netherlands there are no preconditions on entry for third country labour migrants and their family members (spouses/partners) in the form of obligatory following and testing of an integration/language course before the family reunion is allowed.
> Regarding the civic integration examination abroad, the Dutch legislation contains an exemption for (see p. 17, enclosed brochure Immigration Service):
> Anyone intending to stay in the Netherlands on a temporary basis-e.g. for the purposes of work, study, a student or staff exchange, medical treatment or to work as a registered au pair- and their immediate family.
> For those immigrant-categories who are not exempted from the civic examination abroad:
> The preconditions imposed upon them are certainly not aimed at hindering family reunion, but at providing migrant families with optimal tools to participate in the Dutch society and labour market, and to prevent forced marriages and human trafficking.
> And, in this way, to promote the social advancement and well-being of migrant workers and members of their families.
> (This text corresponds to the Conclusions adopted in 2012 by the Council of Europe's Consultative Committee of the Convention on the Legal Status of Migrant Workers, on the 8th Dutch Report on this Convention (2009).

RESC 19§6 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 19§6 of the Charter on the ground that it has not been established that the requirements imposed on migrant

workers, notably with respect to health, are reasonable and likely to facilitate as far as possible the reunion of their family.

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

Family is provided cover on the article 41 of our constitution. From this point of view, the needful performance is delivered for protecting the unity of family to a foreigner married to a Turkish citizen or a foreigner who entitled to the right of legal residence in Turkey. Pursuant to Article 8 of the Passport Law No. 5683, those people carrying a disease jeopardizing the public health and the health of family are not allowed to enter Turkey. However those providing evidence that they are healed and those who are acknowledged to undergo the treatment in company with a hospital attendant in Turkey are allowed to enter the country.
Article 8 (2) entitled as “Persons restricted to enter Turkey” comprises “persons disabled through insanity or contagious diseases” and regulates those people detected to be contagious are not allowed to enter Turkey.
The mentioned diseases acknowledged as contagious are indicated below:
1) Sexually transmitted diseases (Gonorrhea, BV, NGS, Candida, etc.);
2) Diseases transmitted by blood transfusion (HIV, AIDS, A.HCV);
3) Diseases transmitted by respiration.
By taking into consideration whether she/he jeopardizes the public health or not, it’s decided on not giving the foreigner permission to enter our country or whether making her/him leave the country or not.
In this context, the foreigner is given the permission for entry within the scope of Act No. 5682, if it is determined that he/she has a contagious disease with the research and doctor’s report carried out at the border crossings, as explained above.
The foreigners who are subject to deportation process as a result of the above mentioned contagious diseases or not allowed to enter the country have the right for judicial remedy against this administrative act.
In addition to these, the persons who are caught because of prostitution and deported but entered the country again by changing their personal identity information and passport are not allowed when they try to enter the country once again, through marriage with a Turkish citizen as a last ditch.

Article 19§8 – Guarantees concerning deportation

RESC 19§8 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 19§8 f the Charter on the ground that during the reference period Roma were expelled for reasons not permitted by the Charter.

537. The representative of France provided the following information in writing:

A titre liminaire, afin d’éviter toute confusion dans l’esprit des membres du Comité, il est opportun de rappeler les régimes juridiques applicables aux gens du voyage et aux Roms.
Les gens du voyage sont, en quasi-totalité, des citoyens français qui, en raison de leur mode de vie **itinérant**, sont soumis aux dispositions de la loi n° 69-3 du 3 janvier 1969 relative à l'exercice des activités ambulantes et au régime applicable aux personnes circulant en France sans domicile ni résidence fixe.
Les Roms, en revanche, sont des personnes **sédentaires**, ressortissantes de pays de l’Europe orientale, admises à résider en France dans le respect des dispositions sur le séjour et la libre circulation. Les textes relatifs aux gens du voyage ne leur sont pas applicables.

Par ailleurs, le Comité pourra être informé que la France a récemment adopté un Plan national d'action contre le racisme et l'antisémitisme (PNACRA) qui aborde la législation applicable aux gens du voyage, dans des développements sur l'attention à porter aux spécificités de certaines populations. Le PNACRA renvoie, en outre, à la « Stratégie du gouvernement français pour l'inclusion des Roms »[10], établie en réponse à une demande de la Commission européenne et adressée par la France, à la fin de l'année 2011. Cette stratégie, faisant état du caractère inopérant de la notion de Roms en droit français, traite dans une première partie des « priorités pour toutes les populations marginalisées, y compris lorsqu'elles sont Roms » ; une deuxième partie est consacrée aux « dispositifs spécifiques à destination des gens du voyage », notamment pour ceux connaissant des difficultés d'exercice de leurs droits, notamment en matière d'éducation, d'accès à l'emploi, aux soins ou au logement.

Article 19 relatif au « *Droit des travailleurs migrants et de leurs familles à la protection* et à l'assistance »

L'article 19 de la Charte sociale européenne révisée, relatif au « Droit des travailleurs migrants et de leurs familles à la protection et à l'assistance », prévoit à son § 8 que : « En vue d'assurer l'exercice effectif du droit des travailleurs migrants et de leurs familles à la protection et à l'assistance sur le territoire de toute autre Partie, les Parties s'engagent : […] à garantir à ces travailleurs résidant **régulièrement** sur leur territoire qu'ils ne pourront être expulsés que s'ils menacent la sécurité de l'Etat ou contreviennent à l'ordre public ou aux bonnes mœurs ».

A titre principal, le ministère de l'intérieur souhaite que la représentante de la France rappelle au Comité qu'il devrait, dans ses analyses et recommandations, respecter le champ d'application de l'article 19§8, lequel ne vise que les étrangers en situation régulière et menaçant la sécurité publique, contrevenant à l'ordre public ou aux bonnes mœurs.

En effet, dans ses conclusions[11], le Comité semble assimiler les éloignements dont ont fait l'objet certains ressortissants d'origine roumaine ou bulgare en situation **irrégulière** avec le régime de l'expulsion qui concerne, sauf exceptions, **tout** étranger (en situation régulière ou irrégulière) dont la présence sur le territoire français constitue une menace grave à l'ordre public (article L. 521-1 et s. du CESEDA).

L'article 19§8 de la Charte ne concernant que les travailleurs migrants en situation **régulière**, il est nécessaire de rappeler au Comité la distinction existant entre :

- les mesures **d'éloignement pour séjour irrégulier** (dont le régime juridique est déterminé par l'article L. 511-1 du code de l'entrée et du séjour des étrangers et du droit d'asile – CESEDA), **qui n'entrent pas dans le champ d'application de l'article 19§8 de la Charte** ;
- les **mesures d'expulsion pour motif de menace grave à l'ordre public**, appelées arrêtés d'expulsion (dont le régime juridique est déterminé par les articles L. 521-1 sqq. du CESEDA) **qui entrent dans le champ d'application de l'article 19§8 de la Charte pour les seuls étrangers en situation régulière**.

A titre subsidiaire, je vous transmets les éléments suivants, qui pourront être, si besoin, portés à la connaissance des membres du Comité.

Informations complémentaires et statistiques sur le régime de l'expulsion

[10] Cette stratégie qui dépend plus particulièrement du ministère des solidarités et de la cohésion sociale, est disponible sur le site suivant de la Commission européenne: http://ec.europa.eu/justice/discrimination/roma/national-strategies/index_fr.htm.

[11] Le Comité débute ses observations en relevant « que depuis sa dernière conclusion (Conclusions 2006), le Comité a statué sur le bien-fondé de la réclamation Centre sur le droit au logement et les expulsions (COHRE) c. France, réclamation n° 63/2010, décision sur le bien fondé du 28 juin 2011, et a conclu à une violation de l'article 19§8 en raison des expulsions collectives des Roms d'origine roumaine et bulgare pendant l'été 2010. Cette décision a été adoptée en dehors de la période de référence : son suivi ne peut donc pas avoir lieu dans cette conclusion ».

Le Comité souhaite recevoir des informations sur la fréquence des recours contre les ordres d'expulsion, et la proportion desdits recours qui aboutissent. Il demande également si les personnes qui ne peuvent pas être expulsées se voient octroyer un titre de séjour.
Aucune statistique portant sur la fréquence des recours contre les mesures d'expulsion pour motif d'ordre public et la proportion de ces recours qui aboutissent, n'est disponible. Les statistiques suivantes portant sur le nombre de mesures d'expulsions prononcées par année peuvent toutefois être portées à la connaissance du Comité :

2003	385
2008	237
2009	220
2010	218
2011	201

Par ailleurs, le Comité peut être informé que l'étranger qui fait l'objet d'un arrêté d'expulsion pour motif d'ordre public et qui justifie être dans l'impossibilité de quitter le territoire français en établissant qu'il ne peut ni regagner son pays d'origine ni se rendre dans aucun autre pays[12] fait l'objet d'une mesure d'assignation à résidence. L'étranger assigné à résidence se voit généralement octroyer une autorisation provisoire de séjour pouvant être assortie d'une autorisation de travail (articles L 523-3 et ss, R 561-1 et s. du code de l'entrée et du séjour des étrangers et du droit d'asile).

Régime juridique de l'éloignement des ressortissants d'origine roumaine et bulgare évoqué par le Comité

Le Comité évoquant l'éloignement de ressortissants roumains ou bulgares pendant l'été 2010, il parait opportun que la représentante de la France devant le Comité dispose des éléments suivants rappelant le fondement juridique de ces éloignements.
Le droit de l'entrée et du séjour des citoyens de l'Union et des membres de leurs familles est régi par la directive 2004/38/CE.
En vertu de l'article 5 de la directive 2004/38/CE, les citoyens de l'Union disposent d'un droit d'entrée sur le territoire des Etats membres et aucun visa d'entrée ni obligation équivalente ne peuvent leur être imposés.
Par ailleurs, en vertu de l'article 6 de la directive 2004/38/CE, les citoyens de l'Union ont le droit de séjourner sur le territoire d'un autre Etat membre pour une période allant jusqu'à trois mois, sans autres conditions ou formalités que l'exigence d'être en possession d'une carte d'identité ou d'un passeport en cours de validité.
En revanche, en vertu de l'article 7 de la directive 2004/38/CE, le droit au séjour de plus de trois mois du citoyen de l'Union est soumis à un certain nombre de conditions. **Ainsi, disposent de ce droit au séjour les personnes ayant la qualité de travailleur salarié ou non salarié dans l'Etat membre d'accueil, celles disposant de ressources suffisantes afin de ne pas devenir une charge pour le système d'assistance sociale de l'Etat membre d'accueil, ou encore celles inscrites dans un établissement d'enseignement et disposant d'une assurance maladie et de ressources suffisantes**.
Il en résulte qu'un ressortissant de l'Union peut faire l'objet d'une mesure d'éloignement s'il ne remplit plus les conditions lui conférant un droit au séjour.
Ainsi, compte tenu notamment des dispositions transitoires de l'acte d'adhésion, si un ressortissant roumain ou bulgare ne remplit plus ces conditions, il peut faire l'objet d'une mesure d'éloignement.

[12] Par exemple, s'il bénéficie du statut de réfugié ou d'apatride et n'est pas admissible dans un pays tiers, ou encore si son état de santé nécessite une prise en charge médicale dont le défaut pourrait entraîner pour lui des conséquences d'une exceptionnelle gravité, sous réserve qu'il ne puisse effectivement bénéficier d'un traitement approprié dans le pays de renvoi.

L'aide au retour

Le Comité considère que certains ressortissants d'Europe centrale et orientale ont été contraints de consentir à l'aide au retour.

Cette allégation doit être contestée, au regard notamment des conditions d'octroi de cette aide, rappelées ci-après.

S'agissant des mesures d'éloignement pour séjour irrégulier, l'étranger qui en fait l'objet peut, en effet, **pendant le délai de départ volontaire** d'un mois qui lui est accordé, demander à bénéficier d'une **aide au retour**, consistant, selon le cas, en une prise en charge des frais de transports pour le pays d'origine (billet d'avion, coût des bagages), un pécule et une aide à la réinsertion, si un projet en ce sens a été élaboré par l'étranger.

Dans le cas le plus fréquent, l'aide au retour consiste en une prise en charge des frais de transports et en une aide financière, au minimum de 300 euros par adulte. Cette aide est accordée **sur demande de l'étranger**, présentée auprès de l'Office français de l'immigration et de l'intégration (OFII), établissement public placé sous la tutelle du ministre chargé de l'immigration.

La procédure d'octroi de l'aide au retour suit les étapes suivantes :

- l'étranger volontaire pour quitter la France (à la suite de visite sur un campement par les agents de l'OFII, s'il s'agit de Roumains ou de Bulgares par exemple, ou spontanément) vient à l'antenne locale de l'établissement, appelée Direction territoriale. Il doit fournir les documents requis prouvant qu'il remplit les conditions d'éligibilité (preuve de présence en France depuis plus de trois mois ou OQTF, pièces d'identité pour lui-même et ses enfants (carte d'identité ou passeport). Si le dossier n'est pas complet lors du premier passage à l'antenne locale, il doit revenir avec les documents ;
- une fois que toutes les pièces sont présentes, le dossier est enregistré et instruit par les agents de l'OFII ;
- si la Direction Territoriale a un vol affrété programmé avec des places vacantes une convocation leur est donnée pour le vol, le délai minimal est de 10 jours et maximal de 1 mois ; si aucun vol affrété par l'OFII n'est disponible, l'étranger est invité à se représenter 15 jours plus tard pour recevoir une convocation pour un vol commercial ;
- pour les vols affrétés vers la Roumanie, un lieu de rendez-vous est en général donné avec un plan et des cars sont à leur disposition pour aller à l'aéroport, deux interprètes sont présents ;
- à l'aéroport les formalités d'enregistrement auprès de la compagnie aérienne sont effectuées avec l'aide des agents de l'OFII tant pour les vols affrétés que pour les vols réguliers. Le pécule est remis lors de l'embarquement.

A toutes les étapes de la procédure, les étrangers reçoivent les explications nécessaires, au besoin grâce à un **interprète**. **Ils peuvent à tout moment revenir sur leur demande et refuser l'aide**.

Ainsi, le consentement au bénéfice de l'aide au retour est nécessairement répété à plusieurs reprises et il n'y a aucune obligation pour les étrangers à l'accepter.

Protections contre les mesures d'éloignement pour séjour irrégulier ou pour menace grave à l'ordre public

Diverses protections existent contre les mesures d'éloignement pour séjour irrégulier ou pour menace grave à l'ordre public, que l'on trouve respectivement aux articles L. 511-4 du CESEDA et L. 521-2 et L. 521-3 du même code). Ces protections sont pour l'essentiel fondées :

- sur l'âge (un mineur ne peut être éloigné seul du territoire français) ;
- sur l'état de santé;
- sur l'ancienneté du séjour en France ;
- sur le droit au respect de la vie privée et familiale en France.

L'autorité administrative appelée à prendre l'une ou l'autre de ces décisions doit d'une part vérifier d'abord si l'étranger soit est en séjour irrégulier, soit constitue une menace grave pour l'ordre public, **par un examen au cas par cas de sa situation**, et d'autre part s'il bénéfice d'une des protections instituées par la loi.
Avant de prendre une décision d'éloignement, il est ainsi procédé par l'administration à un **examen individuel et circonstancié de la situation personnelle de l'étranger**, sur la base principalement :
- des **auditions menées par le service interpellateur** (police ou gendarmerie), en fonction des déclarations faites par l'étranger, en cas d'interpellation sur la voie publique ;
- des **données enregistrées dans le fichier national des étrangers**, si l'étranger est connu de l'administration et déjà enregistré dans le fichier (existence ou non d'une demande de titre de séjour, existence d'un précédent refus de titre de séjour, situation au regard de l'asile, éventuelle mesure d'éloignement antérieure).
Une fois ces vérifications faites, l'autorité administrative prend une **décision individuelle, motivée, signée par l'autorité administrative compétente**, et qui peut faire l'objet d'une **traduction orale** si l'étranger le demande, et qui **mentionne les voies et délais de recours** devant le tribunal administratif.
Les mesures d'éloignement pour séjour irrégulier peuvent donner lieu à un **recours, pleinement suspensif**, devant le tribunal administratif, qui statue à l'issue d'une **audience publique**. L'étranger peut demander **l'assistance gratuite d'un avocat et celle d'un interprète**. Tant que le tribunal n'a pas statué, l'éloignement est suspendu.
Les mesures **d'éloignement pour menace grave à l'ordre public sont en principe**, sauf dans les cas où le comportement de l'étranger est particulièrement grave (activités terroristes, provocation à la haine, à la discrimination ou à la violence contre des personnes déterminées), précédées **d'une procédure contradictoire devant une commission composée de trois magistrats qui émettent un avis consultatif pour l'autorité administrative**. L'arrêté d'expulsion peut être contesté par **référé devant le tribunal administratif**, qui peut en suspendre l'exécution sous un délai de 48 heures.

RESC 19§8 IRELAND

The ECSR concludes that the situation in Ireland is not in conformity with Article 19§8 of the Revised Charter on the grounds that migrant workers have no right of appeal against a deportation order.

538. The representative of Ireland read out a long statement, which could be summarized as follows:

539. Ireland would contend that it is in full compliance with Article 19§8 both in its legislative framework and as measured by its actions. Ireland does not expel lawfully resident persons, be they migrant worker or otherwise, save in exceptional cases and these exceptions are in the nature envisaged by Article 19§8. Otherwise Ireland expels only persons who are not lawfully resident.

The statement then gave rather detailed information to demonstrate that even then the expulsion was not an arbitrary act of law enforcement but was subject to a formal procedure outlined in the 1999 Immigration Act.

On the basis of all the explanation given, the representative of Ireland concluded that the judicial review process as operated in the Irish legal system in the sphere of immigration, asylum and citizenship was an effective remedy and consequently was in conformity with the requirements of Article 19§8.

540. The Committee recalled that the ECSR ruled that the judicial system as operated in the Irish legal system was not equivalent to a right of appeal as requested by the ECSR. It added that the

situation of non-conformity existed since 1975 and had been subject of two Recommendations, one in 1995 and one in 1999.

541. The Committee invited the Irish Government to seek for a meeting with the ECSR. The discussion on judicial review vs. appeal system should be resolved before the next ECSR assessment.

542. The representative of Ireland said that the new Government in office since 2011 was about to review the immigration legislation. During this review, the Authorities would take into consideration the ECSR's comments on this matter.

543. The Committee decided to call for another vote on a Recommendation, which was rejected (7 votes in favour, 11 against). Although this call for a Recommendation was rejected, the Committee considered its vote on the previous Recommendations still valid until compliance of the Irish Government with the provisions of the European Social Charter.

RESC 19§8 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 19§8 of the Charter on the grounds that during the reference period "security measures" representing a discriminatory legal framework target Roma and Sinti, making it very difficult for them to obtain identification documents in order to legalise their residence status and, therefore, permit even the expulsion of Italian and other EU citizens.

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

> As it is known, the ruling of the Council of State No. 6050 of 16 November 2011 repealed the declaration of the state of emergency and of the ensuing ordinances of civil protection with the appointment of the delegated Commissioners. As there are no reasons to renew the state of emergency, the Government adopted and forwarded to the European Commission a plan containing an overall strategy on Roma, Sinti and Travellers; in the present framework of competences, the plan is aimed at favouring inclusive policies of integration with particular reference to the respect of the fundamental rights of individuals. In connection with the operations directed at dealing with the serious situation of hygienical, medical and social-environmental decay existing in irregular and authorized settlements, the collection of data necessary to identify the concerned individuals was carried out fully respecting the ordinary provisions, without any form of ethnic or racial discrimination whatsoever. As a result the activity led to the issuing of a large number of residence permits for humanitarian reasons and other types of authorizations were renewed. In consideration of the fact that the above mentioned activity was mainly devoted to families with small children, adequate forms of support were provided, particularly meals and assistance. It is worth mentioning that the activity of the authorities was carried out according to the above mentioned modalities, as shown by the fact that over the last few months many associations with a social focus have accompanied families of Yugoslav origin to the competent offices of the Police Headquarters to submit their applications of international protection, which are processed by the ad hoc working group.

RESC 19§8 NETHERLANDS (KINGDOM IN EUROPE)

The ECSR concludes that the situation in the Netherlands is not in conformity with Article 19§8 of the Charter on the ground that a migrant worker's family members who have settled in the Netherlands as a result of family reunion may be expelled when the migrant worker is expelled.

545. The representative of the Netherlands said that whether a migrant worker and his family can be denied further residence depended on their immigration status. Indeed the fact that workers with a temporary residence permit lose their work can have consequences for their legal status and that of their families.

546. The representative of the Netherlands said that family members of a migrant worker could apply for an independent residence permit after a period of three years. Within the first three years family members must leave the Netherlands together with the migrant worker if he/she loses the right to stay. Questioned about the reason for imposing three years, the representative of the Netherlands said that this had been introduced to avoid any misuse of the system for instance by arranging "marriages of convenience" just for the purpose of getting a residence permit.

547. Given that the situation was not in conformity with the European Social Charter since 2002, the Committee called for a vote on a Recommendation, which was rejected (0 votes in favour, 18 against). The Committee then called for a Warning which was also rejected (4 votes in favour, 13 against).

RESC 19§8 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 19§8 of the Charter on the grounds that migrant workers may be expelled if they abusively interfere with the exercise of rights of political participation that are reserved to Portuguese citizens and there are serious reasons to believe that they have committed serious criminal acts, or intend to commit such acts, particularly within the territory of the European Union, which as such go beyond what is permitted by the Charter.

548. No information was received from the Government of Portugal.

RESC 19§8 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 19§8 of the Charter on the grounds that:

- *it has not been established that the grounds for the expulsion of a migrant worker are those permitted by the Charter;*
- *it has not been established that there are adequate rights to appeal against a decision to expel a migrant worker;*
- *it has not been established that members of a migrant worker's family may remain in the territory.*

<u>First, second and third ground of non-conformity</u>

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

> Tenant compte de la nécessite d'établir un cadre juridique sur la libre circulation et l'immigration des étrangers sur le territoire de la République de Moldova, d'assurer un mécanisme complet, uniforme et continu de réglementation du régime des étrangers sur le territoire du pays, d'appliquer une procédure uniforme de leur documentation et d'adopter un nouveau cadre normatif en conformité avec la législation communautaire, le 16 juillet 2010 on a adopté la Loi n 200-XVII sur le régime des étrangers dans la République de Moldova (Monitor Oficial de la République de Moldova, 2010, n 179-181, art.610), qui est entré en vigueur le 24 décembre 2010.
> La Loi n 200 régit l'entrée, le séjour et la sortie des étrangers sur/du territoire de la République de Moldova, l'octroi et la prolongation du droit de leur séjour, rapatriement et documentation,

stipule les mesures de contrainte en cas de non-respect du régime de séjour et les mesures spécifiques d'évidence de l'immigration, en conformité avec les engagements pris par la République de Moldova par les traites internationaux auxquels la République de Moldova avait adhéré.
Conformément à l'article 4 de la Loi 200 les étrangers qui se trouvent légalement sur le territoire de la République de Moldova bénéficient des mêmes droits et libertés que les citoyens de la République de Moldova, garantis par la Constitution de la République de Moldova et d'autres lois, ainsi que les droites prévus dans les traites internationaux avec les exceptions établies par la législation en vigueur.
En même temps l'article 62 stipule que l'expulsion peut être disposée seulement contre un étranger qui a commis une contravention ou une infraction sur le territoire de la République de Moldova. L'expulsion peut être disposée seulement par l'instance judiciaire.
Conformément aux prévisions de l'article 40 du Code contraventionnel l'expulsion est une mesure de déplacement imposé du territoire de la République de Moldova de citoyens étrangers et des apatrides qui ont violé les règles de séjour sur le territoire du pays. L'expulsion a comme but l'élimination d'une situation de danger et la prévention de l'accomplissement par cette personne des actions socialement dangereuses.
L'article 333 du Code contraventionnel décrit les situations de violation des règles de séjour par les étrangers et notamment : le non-départ du territoire du pays à l'issus de la durée de séjour accorde, le séjour sans actes d'identité, avec des documents non-authentiques ou dont le délai de validité a expiré ; le non respect des règles d'entrée et de sortie de la République de Moldova ; l'évasion de l'examen médical pour dépister le virus immunodéficitaire (HIV) ; par la déclaration de données fausse en vue d'obtenir le visa, du permis de séjour ou du document d'identité.
L'article 465 stipule également que les décisions des instances judiciaires contraventionnelles peuvent être attaquées.
L'article 105 du Code pénal de la République de Moldova stipule également les motifs quand un étranger peut être expulsé du territoire de la République de Moldova. Par suite les étrangers qui ont été condamnés pour l'accomplissement des infractions ils peuvent se voir interdire de rester sur le territoire du pays. Lors de la prise de la décision sur l'expulsion des personnes on doit tenir compte du droit de respecter leur vie privée.
Comme on l'a déjà mentionné supra, la mesure d'expulsion ne peut être dispose que par l'instance judiciaire, tandis que le Ministère de l'Intérieur est responsable seulement de l'exécution de la mesure d'expulsion de l'étranger.
Par conséquent, en conformité avec les prévisions des p.p. 54 et 55 du Règlement sur les procédures de retour, d'expulsion et de réadmission des étranger du territoire de la République de Moldova, approuve par la décision du Gouvernement n 492 du 7 juillet 2012, l'autorité compétente pour les étrangers est responsable de l'exécution de a meures d'expulsion de l'étranger qui a commis une contravention ou une infraction sur le territoire de la République de Moldova et par rapport à qui il existe un décision judiciaire définitive. Dans ce sens l'autorité compétente pour les étrangers émettra une décision qui notifiera l'étranger, dans la langue d'état ou dans une langue de circulation internationale qu'il comprend, la décision de l'instance judiciaire sur son expulsion du territoire de la République de Moldova. En cas où cela est impossible, on va recourir aux services d'un interprète autorisé, chose qui sera consignée dans la décision.
En ce qui concerne les droits des membres de famille des travailleurs expulsés il faut mentionner que l'article 8 du Code contraventionnel institue le principe du caractère personnel de la responsabilité contraventionnel, selon lequel seule la personne qui a accompli sciemment ou par imprudence une action prévue par la loi contraventionnelle est soumise à la responsabilité contraventionnelle et comme suite la décision d'expulsion ne se reflète pas sur les membres de famille.

En même temps le 12 avril 2012 le Parlement a adopté la Loi n 76 pour la modification et de complètement de la Loi 23-XVI du 16 février 2007 sur la prophylaxie de l'infection HIV/SIDA, qui stipule de manière expresse le fait qu'il est interdit toute restriction de voyage, le passage de la frontière, le refus de délivrance du permis de séjour a la base du statut de HIV positif. Dans ce contexte, le Ministère de l'Intérieur a élaboré le projet de Loi sur la modification et le complètement de certains actes normatifs amendant l'article 333 du Code Contraventionnel, dans le contexte de l'exclusion de la responsabilité contraventionnelle par rapport aux étrangers qui s'esquivent de l'examen médical pour pouvoir dépister le virus immunodéficitaire (HIV). Actuellement ce projet passe la procédure de consultation.

RESC 19§8 SWEDEN

The ECSR concludes that the situation in Sweden was not in conformity with the Article 19§8 of the Charter during the reference period on the ground that migrant workers expelled on account of national security have no right of appeal to an independent body.

550. In the absence of the representative of Sweden, the Secretariat read out a written statement, which is summarised as follows:

551. Pursuant to changes in the law which entered into force on 1 January 2010, security cases are under the Aliens Act (2005:716) now examined essentially in the same manner as other cases under the same law. Hence, appeals against decisions in security cases are dealt with by the migration courts and the Migration court of appeal, not the Government.

Exceptional cases where the outcome is of special importance to national security, e.g. where the state itself is being exposed to a serious threat, may if certain conditions are met be processed under the Aliens Controls (Special Provisions) Act (1991:572). Pursuant to the mentioned amendments, the scope of this Act has been reduced by stricter prerequisites and the legal safeguards surrounding the procedures under the Act have also been enhanced. In cases relating to expulsion under this Act, the Government is still the instance of appeal. However, when an appeal is made, the Migration Board shall expeditiously also transfer the documents in the matter directly to the Migration Court of Appeal. The court is required to state its own opinion, not only as to the issue of impediments to enforcement of the expulsion order (the risk of torture, inhumane or degrading treatment or punishment etc.) but on all matters of the case. The court has investigative duties and the alien is assured the right to present his or her own evidence. The court is also required to hold an oral hearing before expressing its opinion.

If the court considers that there are impediments to enforcement of the expulsion order, the Government is not allowed to deviate from that assessment. In this case, the Government shall order that enforcement shall not be allowed until further notice (inhibition) or grant the alien a temporary residence permit. An expulsion order may not be enforced during the time a residence permit applies.

The Aliens Controls (Special Provisions) Act was – even prior to the amendments – very rarely applied. In fact it has only been enforced once since 2008. In this particular case, the individual concerned was granted a temporary residence permit.

This information in relation to the safeguards now surrounding the expulsion procedures was not clear in the initial report provided by the Government and examined by the ECSR.

552. The Committee took note of the developments made and invited the Government of Sweden to bring the situation into conformity with the European Social Charter.

RESC 19§8 TURKEY

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

- *it has not been established that grounds for expulsion of a migrant worker are limited to those permitted by Article 19§8 of the Charter;*
- *Section 21 of the Travelling and Residence of Foreigners Act provides that "the Ministry of Internal Affairs is authorized to expel stateless and non-Turkish citizen gypsies and aliens that are not bound to the Turkish culture".*

First and second grounds of non-conformity

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

The committee concluded that the situation in Turkey is not in conformity with the Social Charter on the grounds that Article 19 of Act No. 5683 regarding Residence and Travel of the Foreigners gives broad authority to the Ministry of Interior because the list of reasons for deportation is not mentioned in the Act, and the information requested has not been sent. Our Government's response is presented below.

The authority given to the Ministry of Interior with Article 19 of Act No. 5683 consists of the lawful use of authority of taking measures and deportation, described in the first three articles of the European Convention on Establishment and in Article 2 of Protocol no. 2 of European Convention on Human Rights.

It is also observed that the conclusions regarding the indefiniteness of the reasons for deportation are lacking, as Article 8 of Act No. 5683 describes the scope of the foreigners who are not allowed to enter the country and Article 7 of the same act describes the foreigners who are not to be given residence permit.

During the process of decision making for deportation for foreigners, the factors of situation of residence permit, attendance in education, work permit and family togetherness are considered and the decision for deportation is not taken immediately for the foreigners who fulfill one of these conditions, in other words, the foreigners who have had a residence permit for a long time in our country and they are let using their residence permits. Besides, every foreigner has the right for judicial remedy in the court, against the decision of deportation taken by the Ministry of Interior.

In the scope of the protection of the social rights of the migrant workers, the residence permits of these workers are not cancelled or they are deported unless they commit a crime requiring penal servitude, their work contracts are cancelled or their work permits expire/cancelled.

Article 19§10 – Equal treatment for the self-employed

RESC 19§10 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 19§10 of the Charter on the same grounds for which it is not in conformity with paragraphs 11 and 12 of the same Article.

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

In a large number of secondary schools of Armenia there are additional language educational programmes (English, French, German, Italian, Spanish, Persian, Georgian, Russian) where the children of migrant workers/self-employed migrants can take part.

Besides, the International Organization of Migration in cooperation with state bodies organizes Armenian language courses for those migrants who applied for such course.

RESC 19§10 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 19§10 of the Charter on the same grounds for which it is not in conformity with paragrphs1, 4 and 6 and of the same Article.

555. The representative of Cyprus provided information in writing (see under RESC 19§1 Cyprus, RESC 19§4 Cyprus, and RESC 19§6 Cyprus of this document).

RESC 19§10 ESTONIA

The ECSR concludes that the situation in Estonia is not in conformity with Article 19§10 on the same ground for which it is not in conformity with paragraph 6 of the same Article.

556. The representative of Estonia referred to his statement under Article 19§6.

557. The Committee referred to its decision under Article 19§6 (see under RESC 19§6 Estonia of this document).

RESC 19§10 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 19§10 of the Charter on the same grounds for which it is not in conformity with paragraphs 4, 6 and 12 of the same Article.

558. The representative of France provided information in writing (see under RESC 19§4 France, RESC 19§6 France, and RESC 19§12 France of this document).

RESC 19§10 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 19§10 of the Charter on the same grounds for which it is not in conformity with paragraph 12 of the same Article.

559. The representative of Georgia provided the following information in writing:

> There are no restrictions on foreign ownership of property or assets in Georgia. Foreigners can freely enter in entrepreneurial activities as well as engage in formal employment or self-employment. Norms and regulations governing labor relationships in the country are applicable to foreigners to the same extent as to Georgian nationals.

RESC 19§10 IRELAND

The ECSR concludes that the situation in Ireland is not in conformity with Article 19§10 of the Charter on the same grounds for which it is not in conformity with paragraphs 6, 8 and 12 of the same Article.

560. The representative of Ireland referred to his statement under Article 19§8.

561. The Committee referred to its decision under Article 19§8 (see under RESC 19§8 Ireland of the present document).

RESC 19§10 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 19§10 of the Charter on the same grounds for which it is not in conformity with paragraphs 1, 4, 6 8 and 12 of the same Article.

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

> Substantially the Committee, on the basis of the information contained in the X Report, submitted by the Italian Government, acknowledges that there continues to be no discrimination between migrant employees and self-employed migrants, as well as between self-employed nationals and self-employed migrants, however a finding of non-conformity under paragraphs 1,4,8,12 of article 19 leads to a finding of non-conformity under paragraph 10, since the same grounds for non-conformity as described under the aforementioned paragraphs applies to the self-employed workers.
> Without dealing with each case of non-conformity, duly and separately dealt with, concerning this paragraph the complete absence of discrimination amongst the different categories of migrant wage-earners and self-employed, as well as between self-employed nationals and self-employed migrants, is herein confirmed.
> Anyway, it is considered inappropriate the extension of non-conformity to paragraph 10 of article 19 on the equal treatment for self-employed migrants, referring to paragraph 4 of the same article such as equal treatment in respect of employment, trade union membership and accommodation. In particular, the first motive of non-conformity mentioned by Conclusions 2011, concerning the equality of treatment between migrant and national workers referred to the extension of the benefits offered by collective labour agreements (collective employment contracts), since they are not enforceable on self-employed workers, but only for all those workers in the workplace belonging to the categories that the contract refers to.
> Finally, with reference to the legislative discipline relevant to self-employed migrants, in particular the grant of the permit to stay and all the prerequisites, formalities required to EU citizens and foreigners, in order to carry out self-employment activity in Italy, we lead back to the last Report on article 18 of the revised European Charter, dispatched this year.

RESC 19§10 NETHERLANDS (KINGDOM IN EUROPE)

The ECSR concludes that the situation in the Netherlands is not in conformity with Article 19§10 of the Charter on the same ground for which the situation is not in conformity with paragraphs 6 and 8 of the same Article.

563. The representative of the Netherlands referred to his statements under Articles 19§6 and 19§8.

564. The Committee referred to its decisions under Articles 19§6 and 19§8 (see under RESC 19§6 Netherlands (Kingdom in Europe) and 19§8 Netherlands (Kingdom in Europe) of the present document).

RESC 19§10 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 19§10 of the Charter on the same grounds for which it is not in conformity with paragraphs 4, and 11 of the same Article.

565. The representative of Norway provided information in writing (see under RESC 19§4 Norway of this document).

RESC 19§10 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 19§10 of the Charter on the same ground for which it is not in conformity with paragraph 8 of this same Article.

566. No information was received from the Government of Portugal.

RESC 19§10 SLOVENIA

The ECSR concludes that the situation in Slovenia is not in conformity with Article 19§10 of the Charter on the same ground for which it is not in conformity with paragraphs 1, 4 and 11 of the same Article.

567. The representative of Slovenia referred to her statement under Article 19§4.

568. The Committee referred to its decision under Article 19§4 (see under RESC 19§4 Slovenia of this document).

RESC 19§10 SWEDEN

The ECSR concludes that the situation in Sweden is not in conformity with Article 19§10 of the Charter on the same ground for which it is not in conformity with paragraph 8 of the same Article.

569. The representative of Sweden referred to her statement under Article 19§8.

570. The Committee referred to its decision under Article 19§8 (see under RESC 19§8 Sweden of this document).

RESC 19§10 TURKEY

The ECSR concludes that the situation in Turkey is not in conformity with Article 19§10 of the Revised Charter on the same grounds for which it is not in conformity with paragraphs 1, 4, 6 and 8 of the same Article.

571. The representative of Turkey referred to his statement under Article 19§4.

572. The Committee referred to its decision under Article 19§4 (see under RESC 19§4 Turkey of this document).

Article 19§11 – Teaching language of host state

RESC 19§11 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 19§11 of the Charter on the ground that there are no measures in place to enable migrant workers and their families to learn the Armenian language.

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

In a large number of secondary schools of Armenia there are additional language educational programmes (English, French, German, Italian, Spanish, Persian, Georgian, Russian) where the children of migrant workers/self-employed migrants can take part.
Besides, the International Organization of Migration in cooperation with state bodies organizes Armenian language courses for those migrants who applied for such course.

RESC 19§11 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 19§11 of the Charter on the grounds that it has not been established that migrant workers not citizens of EU/EEA are entitled to free language training when they are unable to pay the fees for compulsory language training.

574. The representative of Norway provided the following information in writing:

Migrant workers and members of their families might have an equal need for Norwegian language training and social studies, as other immigrants. Language skills and knowledge of the Norwegian society are considered of great importance for immigrants' integration into society and working life. Despite this, the circumstances of the migrant workers and their families differ from those having been granted asylum, residence permit on humanitarian ground, or collective protection. The last groups mentioned are seen as being a particular responsibility of the Norwegian authorities.
The point of departure is different for immigrant workers who according to their residence permit after the immigration act § 8, first paragraph, must have a wage income. On these grounds it is considered that immigrant workers, who are wage-earners, are able to pay for expenses related to public services, such as language training. Thus, the argumentation has not changed since Norway's 8th report.
If immigrants cannot meet the costs, they may apply for economic support from the local social services in the municipality where they live. Persons who are not able to care for their own living are entitled to economic aid from the municipality in which they are present. Cost connected to language classes may be covered after an individual assessment, if such classes are considered likely to improve the person's possibilities to get work or to overcome or adapt to a difficult situation. There are no available statistics indicating the amount of such applications.
Legal immigrants having difficulties in finding work due to lack of knowledge of Norwegian language can get language classes as part of a qualification program. The courses are free, and the participants in the qualification program are paid for their participation.
It is important to stress that in general municipalities as well as employers are free to organize language training free of charge for persons without such rights. We have knowledge of municipalities doing so, although we lack concrete statistic material.
Over the last couple of years both public and non-public actors have started developing online language courses in Norwegian. Some of these innovations have been led or funded by Vox, Norwegian Agency for Lifelong Learning, a subordinate agency of the Norwegian Ministry of Education and Research. Online language courses are meant to be used as a part of the ordinary training courses, as well as on its own basis. Online language courses are believed to give increased flexibility and adaptability to the needs of the students and employers wanting to offer training to their employees. By now, most online courses charge a fee from participants without rights to free training. The exception is one online course in Norwegian on entry level (NoW), developed at the Norwegian University of Science and Technology, NTNU. This course is designed for foreign students at NTNU, but it is open to anyone wanting to learn Norwegian.

Furthermore, it is necessary to stress that the right or obligation ro participate in a Norwegian language training course and social studies, shall not apply if it is documented that the person concerned has adequate knowledge of Norwegian or Sami. If special health or other weighty reasons warrant doing so, the municipality may exempt an individual from the obligation to participate.

RESC 19§11 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 19§11 of the Charter on the grounds that a two year residence requirement for access to free Slovenian language classes is excessive.

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

The Ministry of the Interior of the Republic of Slovenia analysed the efficiency of implementing integration measures. The analysis showed that integration programmes (Slovenian language courses and courses on Slovenian history, culture and constitutional order) should be provided sooner or soon after entry into the state. Therefore, the Decree on Aliens Integration was amended in 2010. Slovenian language courses and courses on Slovenian history, culture and constitutional order are available free of charge to newly arrived third-country nationals who live in the Republic of Slovenia based on a temporary residence permit issued for a period of at least one year. This amendment enables free language courses and courses on Slovenian society for all who intend to reside in the Republic of Slovenia for at least one year.

Article 19§12 – Teaching mother tongue of migrant workers

RESC 19§12 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 19§12 of the Charter on the ground that there are no programmes for the teaching of the migrant worker's mother tongue to the children of migrant workers.

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

In a large number of secondary schools of Armenia there are additional language educational programmes (English, French, German, Italian, Spanish, Persian, Georgian, Russian) where the children of migrant workers/self-employed migrants can take part.
Besides, the International Organization of Migration in cooperation with state bodies organizes Armenian language courses for those migrants who applied for such course.

RESC 19§12 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 19§12 of the Charter on the grounds that it has not been established that France promotes and facilitates the teaching of the migrant worker's mother tongue to the children of migrant workers.

577. The representative of France provided the following information in writing:

1. Il convient de rappeler que le principe en France est que les élèves non francophones, qui arrivent tout au long de l'année en France, dont la maîtrise de la langue française ou des

apprentissages scolaires est insuffisante pour intégrer immédiatement une classe du cursus ordinaire, bénéficient d'un dispositif d'accueil particulier d'adaptation au système scolaire.
2. Les ELCO sont un dispositif particulier qui permet de continuer à apprendre la langue maternelle du migrant, dans le cadre du système scolaire.
Ce dispositif vise, à travers la valorisation de la langue et de la culture d'origine, un épanouissement personnel de l'enfant ou de l'adolescent. Par ailleurs la maîtrise de la langue maternelle est considérée par les linguistes comme un préalable nécessaire à la réussite de l'apprentissage d'une langue seconde. Les cours d'ELCO concourent donc à structurer la langue que parlent le plus souvent les enfants concernés dans leur famille.
L'ELCO est mise en œuvre sur la base de neuf accords bilatéraux désormais : l'Algérie, la Croatie, l'Espagne, l'Italie, le Maroc, le Portugal, la Serbie, la Turquie, et la Tunisie.
Le dispositif des ELCO est en constante amélioration.
3. Par ailleurs, il convient de noter que 19 langues sont enseignées dans le système scolaire français.
4. La conclusion du Comité – que l'on peut considérer comme excessive – concerne le soutien qui existerait hors du système scolaire. Or un bilan des activités péri-scolaires fournies par le réseau associatif est difficile à obtenir.

RESC 19§12 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 19§12 of the Charter on the grounds that no measures to promote the teaching of the migrant worker's mother tongue have been taken.

578. The representative of Georgia provided the following information in writing:

Foreigners in Georgia have the right to enjoy their cultural values to the full extent. They are guaranteed the right to use their native languages, observe and develop their national culture and traditions, provided that this does not endanger the national security or law and order in Georgia.
Georgia promotes the establishment and functioning of diaspora organizations. There are Azeri, Greek, Bulgarian, German, Jewish, Estonian, Latvian, Lithuanian, Polish, Osetian, Russian, Armenian, Ukrainian and many other diasporas in the country. They not only help protecting the rights of respective nationals entering and residing in the country but also play an important role in maintaining mother tongue, native culture and traditions of the migrant workers in Georgia.
In addition, a number of secondary schools offer education in foreign languages (such as Ukrainian, Russian, Azeri, Armenian, etc.), whilst almost all secondary schools teach major foreign languages (English, French, German, Spanish, Russian, etc.) on a mandatory or facultative basis. Since education in public schools is free either for Georgian nationals as well as foreigners, children of migrant workers have the opportunity to receive education in their native languages or to study their native and / or other languages along with Georgian language.

RESC 19§12 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 19§12 of the Charter on the grounds that it has not been established that Ireland promotes and facilitates the teaching of the migrant worker's mother tongue to the children of migrant workers.

579. The representative of Ireland provided the following information in writing:

Ireland is currently prioritising proficiency in the host language. There are over 160 nationalities represented in our second level schools. To provide opportunities to promote teaching of mother tongue for all would be very resource-intensive. Instead, students are able to take the following subjects in the terminal school examination (Leaving Certificate): English, Irish, French, German, Spanish, Italian, Russian, Japanese, Arabic and Ancient Greek. To cater for the particular needs of EU migrants they can also present for a non-curricular examination in any of the other EU languages. These non-curricular languages do not appear as part of the normal school curriculum but students may opt to be examined in them if they are from a member state of the EU, speak the language as a mother tongue, are presenting for the Leaving Certificate examination and for Leaving Certificate English. This non-curricular language initiative contributes to encouraging students to maintain proficiency in their heritage language.

RESC 19§12 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 19§12 of the Charter on the ground that it has not been established that Italy promotes and facilitates the teaching of the migrant worker's mother tongue to the children of migrant workers.

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

The teaching of the migrant workers' mother tongue to their children as envisaged in paragraph 12 of article 19 of the Charter is, as known, already quoted in the European Convention on the migrant worker's legal status, put into effect in Strasburg on November 24, 1977 (article 15), ratified by Act n° 13 of January 2, 1995 (Annexe of the Official Gazette n° 14 dated 01.18.1995)
Furthermore the European Union directive dated July 25,1977 on the migrant workers' children education (77/486/EEC) sets forth that the member States take appropriate measures to promote the teaching of the mother tongue and the culture of the country of origin; the most recent Resolution of the European Parliament dated April 2, 2009 on the migrants' children education (2008/2328 (INI) 2010/C 137 E/01), requires that member State Governments assure education to legal migrants' children, by also promoting their language and native culture and focusing on the importance for migrant children to learn their mother tongue. Besides, the Resolution acknowledges that the EC Directive 77/486/EEC current provisions do not correspond to the new social reality of the European Union, and hopes for its modification as to foresee the teaching of foreigners and non-members of the EU parents' children.
That being stated, with reference to the presumed Italian situation of non-conformity with Article 19, paragraph 12 relevant data are provided, excerpted from the survey launched by the Ministry of Education, University and Research at territorial schools offices, regarding the teaching of the migrant worker's mother tongue to his/her children attending Italian schools. This survey will enable the assessment concerning each Italian regional territory.

Campania
In some schools within the first and second cycle of studies, the Arab and Chinese languages are taught. 85 students of the Second cycle of studies learn the Arab language, whilst 72 students of the Second cycle of studies and 55 students from the First cycle learn the Chinese language. Agreements for the teaching of the mother tongue to foreign students, during extra school hours have never been reached.

Friuli Venezia Giulia
During the academic years 2010-2011 and 2011-2012, Romanian culture and language courses were held in schools, for those students belonging to the Romanian communities,

settled in Italy and studying in the national schools of any stage and degree. Such project was agreed in conjunction with the Romanian Ambassador in Italy Razvan Rusu, who showed his interest in increasing and enriching the courses of Romanian language, culture and civilization in Italian schools also for the academic year 2012-2013.
Up to now about 150 students have attended the lessons, divided into 10-11 language courses held in five different schools differently distributed on the regional territory. The courses are held by teachers who teach mother tongue abroad and are funded by the Romanian Ministry of Education, Research, Youth and Sports- Institute for the Romanian language.
The schools bear the operating expense for organizing classes for the students concerned, and the additional salary of the ATA staff (Technical and Administrative Reserves) employed during outside normal teaching hours.
Another project was launched this year, born and started in an experimental way, at the request of a group of Albanian parents whose children attend schools of the province of Trieste. Even in this case a possibility has been given to Albanian-Kosovar children of primary school, to attend afternoon classes in order to learn correctly their mother tongue and maintain their family cultural identity. A teacher, working on a voluntary basis, has been entrusted with the teaching of the Albanian language. The course has about 30 students.

Lazio
From 2007 the region has started a plan for the teaching of the Romanian language, culture and civilization (RLCC), in 72 schools of the First cycle of studies, thus enforcing the agreement between the Italian and Romanian Ministries of education. The teachers are selected by the Romanian Ministry of Education.

Liguria
In this region Spanish is the most spoken language amongst the migrant population, and the regional authority has made sure of keeping the teaching of the Spanish language in secondary Schools of the First cycle of studies, to facilitate the inclusion of Hispano-American students.
Plans to enhance native languages are going to be implemented in cooperation with the University of Genoa and several Cultural associations and/or Associations run by migrants residing on the territory.

Lombardy
In the recent years this region has witnessed an increase of migration of great proportions.
Various projects have been launched regarding the teaching of the mother tongue and native culture, in nurseries, primary schools and secondary schools.
For the academic year 2011-2012 curricular and extra-curricular courses have been organized to teach Chinese (112), Japanese (11), Arab (46), Romanian (19) and Russian (40), for an overall of 1561 Chinese students, 340 Japanese students, 597 Arabian students, 298 Romanian students and 622 Russian students.

Piedmont
In schools of First and Second cycles of studies they have started:
- 15 courses of Arab language teaching for 205 students of the First cycle, on the grounds of a bilateral agreement with the General Consulate of Morocco;
- 17 courses of Romanian language for 362 students funded by the Romanian Ministry of Education;
- 8 courses of Chinese language for 486 students, held with the cooperation of local associations;
- 1 course of Russian language for 28 students.

Puglia
In schools of First and Second Cycles we have:
- 6 courses of Arab language for 45 students;
- 7 courses of Chinese language for 45 students;
- 1 course of Spanish language for 1 student;
- 7 courses of Russian language for 68 students;
- 5 courses of Albanian language for 35 students;
- 1 course of neo Greek language for 2 students;

Local cultural association run all of the language courses.

Sardinia
Two courses relating to the teaching of the Arabian language to 12 students of the First Cycle of studies have started, on the basis of a bilateral agreement with the General Consulate of Morocco who selects and pays for the teachers wages.
Furthermore, a Chinese language course for 10 students of the First cycle of studies has also been launched. The council of Oristano Social Assistance Centre has selected the teacher who works at no extra cost.

Umbria
A course of Chinese language, for 17 students in a Secondary school has started. Also on the basis of an agreement with the Ministry of Education of Morocco, there are 4 courses of the Arabian language for 145 students of primary and secondary school.

Sicily
In this Region we have one course of Chinese language for 22 children in the city of Palermo, organized by a local cultural association. There is also an Arab language course for students of the First cycles of studies in agreement with the Tunisian Embassy.
A Romanian language course is also present for 15 students of the First cycle of studies, and the Consulate of Romania at the request of local schools, has offered a two hours weekly course devoted to Romanian students residing in Sicily, starting from next year.
The Consulate will provide the teachers and text books, the schools the classrooms and surveillance.

Veneto
Territorial agreements are under way in all the provinces of the Region (thanks to the continuous cooperation between Italy and Romania), concerning specific projects of the teaching of Romanian language and native culture for a total of 13 courses, already started, for 142 students. Amongst the languages taught, apart from the communitarian languages since they are compulsory subjects of study, Chinese and Russian are to be pointed out.

Finally, besides the initiatives started by the schools, it is further registered the implementation on the National territory of mother tongue courses for migrant workers and their families, promoted by Cultural Associations in each Municipality, where the presence of migrant workers is particularly high.

Article 27§1 – Participation in working life

RESC 27§1 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 27§1 of the Charter on the ground that periods of parental leave are not taken into account in the calculation of pension.

581. The representative of Ireland provided the following information in writing:

Pension Entitlements and Parental Leave

There are provisions within the social code which are designed to protect the State Pension entitlements of those who take unpaid parental leave/leave the workforce entirely, to care for children or incapacitated people. Recognition of parental leave under occupational/private pension schemes depends upon the rules of the individual scheme but, in the main, unpaid leave does not count as reckonable service under such schemes. In order to qualify for a State Pension (Contributory) a person must satisfy a number of conditions as follows:

- Commence payment of insurance at least 10 years before retirement age;
- Pay a minimum of 520 contributions at an appropriate rate;
- Achieve a yearly average of at least 10 contributions paid or credited from the time they join insurance until the end of the contribution year before pension age. An average of 48 contributions is required for a maximum pension.

The social welfare pension entitlements of those who take time out of the workforce to care for children or an incapacitated person on a full-time basis are protected through the Homemakers Scheme which came into effect in 1994 and covers periods since then. This scheme allows for periods spent out of the workforce on caring duties to be disregarded when a person's insurance record is being averaged for pension purposes. Credited contributions are also awarded for the periods remaining in the contribution years when the caring starts and finishes. The scheme covers periods caring for children up to 12 years of age, or an incapacitated person, up to a maximum period of 20 years. Therefore, a person can be on parental type duties without their pension being affected. Unless a person is caring for an incapacitated person there should be no need for a formal application as the disregard is linked to a person's claim for Child Benefit. Generally speaking a gap in an insurance record which coincides to a period covered by a Child Benefit claim can be assessed as a Homemaking period for pension purposes.

Under the National Pensions Framework, published in 2010, consideration is being given to the replacement of the disregard system with the award of actual credited contributions.

Article 27§2 – Parental leave

RESC 27§2 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 27§2 of the Charter on the ground that the law does not provide fathers with a right to parental leave.

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

In Turkey, civil servants (employees) are not entitled to the right to parental leave with pay. Nevertheless, the Law No. 6111 which was entered into forced on 2011, brings new arrangements regarding maternity leave for civil servants.

Article 104 of the Act no. 657, indicating three days of leave to be given to male civil servant on his own request owing to his wife's giving a birth, was amended by the Act no. 6111 and dated 13/02/2011. As a result of the amendment, the duration of paid paternal leave is extended to ten days.

Besides, Article 108 of the Act no. 657 was amended by the Act no. 6111. The amendments are as follows:
1. The non-paid leave of 12 months which was given to the civil servants is extended to 24 months on their own requests;
2. The civil servants whose wives are giving birth is entitled with an unpaid leave up to twenty-four months as of the date of birth upon their own request;
3. Civil servants who adopt a child younger than three years old together with his wife or individually and civil servant spouses whose non-civil servant spouses adopt individually can be granted with an unpaid leave up to twenty-four months as of the definite consent date of the parents of the child or consent date of the probate administration. If both of the spouses adopting the child are civil servants, the spouses may be entitled with the said leave period upon their request in two consecutive periods provided that such shall not be longer than twenty four months.
These afore-mentioned arrangements do not cover employees covered by the Labour Law no. 4857. However, Works to harmonise the arrangements in these issues and to take these rights into scope of Labour Law are being continued.

Article 27§3 – Illegality of dismissal on the ground of family responsibilities

RESC 27§3 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 27§3 of the Charter on the ground that legislation makes no provision for the reinstatement of workers unlawfully dismissed on account of their family responsibilities.

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

The Article 171 of the Labour Code envisages the following types of leaves for special-purposes:
1) pregnancy and maternity leave;
2) leave for the care of a child under 3 years of age;
3) educational leave;
4) leave for fulfilment of state or public duties;
5) unpaid leave.
According to the Article 176 of the Labour Code unpaid leave is granted at the request of the employee in the following cases:
1) to the husband of a woman who is at maternity leave, as well as if she takes care of a child under 1 years of age and duration of that leave cannot be longer, than two months;
2) to the disabled employee or to the employee taking care of a sick member of the family within the terms established by the medical conclusion, however, not longer, than within 30 calendar days in a year;
3) for a marriage – three calendar day;
4) for funerals of a family member – at least three calendar days.
Unpaid leave for other reasons may be provided following the procedure stated by the collective contract.
According to the Article 171 of the Labour Code (amendment in 2010) during the period of leaves for special-purposes (including the above-mentioned unpaid leaves) the working place should be maintained by the employer.
Thus, during the period, while the workers are in leave for taking family responsibilities, they cannot be dismissed.

RESC 27§3 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 27§3 of the Revised Charter on the ground that legislation does not sufficiently protect workers with family responsibilities against dismissal.

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

> En ce qui concerne la protection préalable contre le licenciement pendant le congé non rémunéré pour enfant de moins de 8 ans (art. 167a du Code du travail), nous voudrions éclaircir que d'après l'art. 333, paragraphe 1, point 4 du Code du travail l'employeur ne peut licencier qu'après avoir obtenu une autorisation préalable de l'Inspection du travail pour chaque cas individuel, un employé qui a commencé à utiliser un congé autorisé.
> Par conséquent, nous croyons que la législation bulgare protège à un degré suffisant les travailleurs ayant des responsabilités familiales contre le licenciement, conformément à l'art. 27§3 de la Charte révisée.
>
> **Recours effectifs**
> Le rapport précise que l'indemnisation due par l'employeur en cas de licenciement est régie par l'article 331 du code du travail et doit représenter quatre salaires mensuels bruts, sauf si les parties conviennent d'un montant supérieur. Le Comité demande confirmation que le montant des indemnités qui peuvent être accordées n'est pas plafonné.
> Conformément à l'art. 331 du Code du travail (Résiliation du contrat de travail à l'initiative de l'employeur avec une indemnité convenue), l'indemnité ne peut être inférieure à quatre fois le dernier salaire mensuel brut reçu, sauf si les parties se sont mises d'accord d'un montant plus élevé.
> D'après ce texte, il est clair que la loi ne définit que la limite inférieure du montant de cette indemnité. Sa limite supérieure est déterminée par accord entre les parties, ce qui signifie qu'il n'y a pas de limite du montant de l'indemnité. Par conséquent, nous considérons que la situation en Bulgarie est conforme à l'art. 27§3 sur ce point.

RESC 27§3 CYPRUS

The ECSR concludes that the situation in Cyprus is not in conformity with Article 27§3 of the Charter on the grounds that courts may only order reinstatement of an unlawfully dismissed employee in cases where the enterprise concerned has more than 20 employees.

585. The representative of Cyprus, referring to the previous submission to the Committee recalled that an amendment of the Termination of Employment Law had been under consideration. She reported that the Ministry of Labour and Social Insurance had submitted amendments to the Labour Advisory Board, a tripartite social dialogue body composed of employers' associations, workers' associations and government representatives. The amendments included article 3 of the Termination of Employment Law so as to provide for the reinstatement of an unlawfully dismissed employee to his/her previous position irrespective of the total number of employees. However, the discussion of the amendments was interrupted due to the global economic recession on the labour market and the increasing rate of unemployment. It had been decided to take up the subject matter at a later stage.

586. The representative of ETUC expressed his concern that the situation was blocked since 2005. The representative of Cyprus specified that amendments were discussed only since November 2011.

587. In reply to a question from the representative of Lithuania, the representative of Cyprus stated that in cases of unlawful dismissal compensation was an option. The level of such compensation is determined by the Labour Dispute Court which takes into account the age of the dismissed, his/her

loss of earnings, career etc. If the level of compensation is not deemed satisfactory by the dismissed person, he/she may apply to the District Court for his/her claim.

588. The Chair said that the level of compensation had to be very high to provide a satisfactory alternative to reinstatement.

589. In reply to a question from the representative of Turkey, the representative of Cyprus added that there were a significant number of family businesses in Cyprus. In order to comply with the ground of non-conformity referred to, her Government had already proposed an amendment of the law in order to remedy the situation.

590. The Secretariat specified that the ECSR did not require reinstatement, but that the law should provide the alternative of compensation.

591. The Committee took note of the situation. It urged the Government of Cyprus to change its legislation so as to provide all workers with the choice between reinstatement or compensation and to bring its legislation into conformity with the European Social Charter.

RESC 27§3 FINLAND

The ECSR concludes that the situation in Finland is not in conformity with Article 27§3 of the Charter on the grounds that legislation makes no provision for the reinstatement of workers unlawfully dismissed on grounds of their family responsibilities.

592. The representative of Finland referred to her statement under Article 8§2.

593. The Committee referred to its decision under Article 8§2 (see under RESC 8§2 Finland in this document).

Article 31§1 – Adequate housing

RESC 31§1 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 31§1 of the Charter on the following grounds:

- *excessive length of residence requirement to be entitled to submit an application to the committee in charge of the DALO procedure;*
- *considerable unfit housing and lack of suitable amenities for a large number of dwellings;*
- *failure to create a sufficient number of stopping places and the poor living conditions and operational failures on such sites;*
- *lack of access to housing for settled Travellers;*
- *insufficient progress as regards the eradication of substandard housing conditions for a large number of Roma.*

First ground of non-conformity

594. The representative of France provided the following information in writing:

> La loi du 5 mars 2007 prévoit que le droit à un logement décent et indépendant, mentionné à l'article 1er de la loi n° 90-449 du 31 mai 1990 visant à la mise en œuvre du droit au logement, est garanti par l'État à toute personne qui, résidant sur le territoire français de façon régulière et dans des conditions de permanence définies par décret en Conseil d'État, n'est pas en mesure d'y accéder par ses propres moyens ou de s'y maintenir.

Lors des débats à l'Assemblée nationale, le ministre en charge du logement avait indiqué : « Nous prévoyons donc le principe d'un décret en Conseil d'État, présenté dans les trois ou quatre semaines, et dont les dispositions seront semblables à celles retenues pour le contrat d'accueil et d'intégration… »

Le décret n°2008-908 du 8 septembre 2008 a fixé à deux ans la durée minimum de séjour, sous couvert de l'un des titres de séjour qu'il cite, qui permet de remplir la condition de permanence prévue par la loi. Les différentes catégories de titres, qui sont listées à l'article R 300-2, sont grosso modo les mêmes que celles prévues par l'article R 311.19 actuel du code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA). Il s'agit des titres de séjour dont la délivrance donne lieu à la conclusion du Contrat d'Accueil et d'Intégration, le CAI. Le contrat d'accueil et d'intégration est systématiquement proposé aux étrangers hors Union européenne autorisés à s'installer durablement en France. L'article L 311.9 dispose ainsi que : « l'étranger qui souhaite se maintenir durablement en France doit préparer son intégration dans la société française et conclure à cette fin avec l'Etat un contrat d'accueil et d'intégration, traduit dans une langue qu'il comprend, par laquelle il s'oblige à suivre une formation civique et, lorsque le besoin en est établi, linguistique ». Lors du premier renouvellement de la carte du séjour, il est tenu compte par le Préfet du non-respect manifesté par une volonté caractérisée par l'étranger des stipulations du contrat d'accueil et d'intégration. Le CAI est donc l'instrument par excellence de l'intégration des étrangers qui ont vocation à résider durablement sur le territoire national. Il était donc cohérent de calquer la liste des catégories d'étrangers qui bénéficient du droit au logement opposable sur la liste des catégories d'étrangers qui sont soumis au contrat d'accueil et d'intégration.

A cette première condition, être en possession d'un des titres de séjour cité ci-dessus, le décret en ajoute une autre qui a trait à la durée de résidence en France, sous couvert de ce titre. « L'étranger devra justifier avoir résidé en France au moins deux années, sous couvert de l'un de ces titres au terme d'au moins deux renouvellements consécutifs ».

Le décret du 8 septembre 2008 a fait l'objet d'un recours en annulation. Le Conseil d'État vient d'annuler ce décret pour les motifs suivants :

- différence de traitement envers les travailleurs immigrés alors que la France a pris des engagements internationaux pour une égalité avec ses nationaux – méconnaissance de la convention OIT n°97 ;
- exclusion de 3 cartes de séjour temporaires : étudiant, salarié en mission, compétences et talent – méconnaissance du principe d'égalité.

L'annulation ne prendra toutefois effet qu'au 1er octobre 2012.

Second ground of non-conformity

595. The representative of France made a statement providing the following information:

596. The standard of housing in France had improved in recent decades. Only 1.3 % of dwellings did not meet the three basic amenities criteria of the INSEE national institute for statistics (running water, bathrooms and indoor toilets). They were mainly old houses in rural areas occupied by elderly persons and/or very poor households. The INSEE standards were no longer the only indicator for poor housing and some problems remained, in particular in population groups suffering most hardship. To tackle these problems, the Government had taken steps to help private owners with the renovation of their dwellings and force landlords to provide their tenants with decent housing:

- in the case of potentially unfit private housing (400 000 to 600 000 dwellings), every year, orders were issued in respect of 4 000 dwellings requiring their owners to carry out refurbishment work. At the same time, the top priority of the National Housing Agency (ANAH) was the renovation of unfit or very substandard dwellings: in 2011, funding had been provided for work on 15 000 such dwellings, with a total of 198 million € in assistance being granted;
- in the case of the 800 000 to 1 million dwellings in blocks of flats (flats owned individually, buildings jointly) where difficulties were being experienced (according to the FILOCOM housing

occupancy database), including 10 000 where serious difficulties were being experienced, the National Housing Agency funded the survey and work phases of assistance programmes on a priority basis. In 2011, 87 million € in assistance had been granted for almost 29 000 flats here. The proposals from the project were currently being studied by the Government and focused on expanding preventive measures to avoid housing in this category deteriorating and becoming substandard;

- the Government had launched a programme ("Better Living") designed to help 30 000 households a year to reduce their costs by 25 % through work to improve the energy efficiency of their dwellings.

597. In reply to a question by the representative of Poland, the representative of France said that the funding sources for these measures were both national and local.

598. The Committee noted that the situation was improving and congratulated France on the progress made in tackling poor housing. It invited the Government to continue its efforts to ensure conformity with the European Social Charter.

Third ground of non-conformity

599. The representative of France said that replies to the ECSR concerning this ground were set out in the follow-up to collective complaints No. 51/2008, European Roma Rights Centre (ERRC) v. France, and No. 39/2006, Federation of National Organisations Working with the Homeless (FEANTSA) v. France.

The representative of France then said that the Act of 5 July 2000 required municipalities to provide facilities for Travellers whose traditional dwellings were mobile homes. Département plans set out the geographical sectors in which stopping places for Travellers were to be set up so as to give them access to properly developed and maintained sites. Under the act, municipalities with over 5 000 residents which had complied with the requirement to set up stopping places for Travellers were allowed to ban them from parking elsewhere within the municipalities. By the end of 2011, financial commitments had been made for 68 % of the stopping places provided for in these plans.

600. In reply to questions from the representative of Turkey, the representative of France said that Travellers had chosen to lead a nomadic life and that the French Government respected their choice. However, the consequences of this lifestyle (irregular or no employment, poor school attendance and problems with integration, etc.) had to be dealt with.

601. In reply to a question by the representative of Lithuania about the existence of programmes for the social integration of Travellers, the representative of France said that Travellers were French citizens and therefore had the same rights and duties as other nationals.

602. The Committee thanked the representative of France for the information provided and invited the Government of France to continue its efforts to set up stopping places so that the situation was brought into conformity with the European Social Charter.

Fourth ground of non-conformity

603. The representative of France said that replies to the ECSR concerning this ground were set out in the follow-up to collective complaints No. 51/2008, European Roma Rights Centre (ERRC) v. France, and No. 39/2006, Federation of National Organisations Working with the Homeless (FEANTSA) v. France.

In the case of settled Travellers, rented family plots had been made available throughout France. By the end of 2011, 733 such plots had been funded in 30 départements: Gironde, Lot et Garonne, Pyrénées Atlantiques, Puy de Dôme, Yonne, Finistère, Cher, Doubs, Seine et Marne, Yvelines, Val d'Oise, Aude, Hérault, Corrèze, Meurthe et Moselle, Moselle, Vosges, Haute Garonne, Manche, Loire

Atlantique, Vendée, Oise, Charente Maritime, Vienne, Vaucluse, Ain, Isère, Rhône, Savoie and Haute Savoie.

Good progress was being made with the revision of the département plans provided for in the Act of 5 July 2000. As at 1 September 2012, 45 départements had revised plans. The funding which could be granted under the revision exercise concerned rented family plots for settled Travellers and stopping places built in additional municipalities with over 5 000 residents.

604. The Committee took note of the information provided, invited the Government of France to include any relevant details in its next report and agreed to await the next assessment by the ECSR.

Fifth ground of non-conformity

605. The representative of France said that replies to the ECSR concerning this ground were set out in the follow-up to collective complaints No. 51/2008, European Roma Rights Centre (ERRC) v. France, and No. 39/2006, Federation of National Organisations Working with the Homeless (FEANTSA) v. France.

She said that all French nationals were entitled to housing. Under Law No. 2007-290 of 5 March 2007 establishing an enforceable right to housing, individuals who were unable to find decent independent housing on their own could appeal to the Mediation Board in order to obtain either housing or accommodation in a reception centre or temporary housing. The state also secured this right for all persons living lawfully in French territory. Beneficiaries of the right to decent housing had to fulfil one of the conditions for entitlement to a residence permit (Article L.121-1 of the Code of Entry and Residence of Aliens and Right of Asylum):

- exercise of an occupation in France (including direct descendants under the age of 21, direct ascendants and spouses);
- sufficient resources for the whole family;
- registration with an establishment operating in accordance with current legislative and statutory provisions in order to study or, in this framework, to obtain vocational training (including for spouses and dependent children).

The representative of France underlined that this right also applied to Roma who were lawfully resident. To address the problem of foreign Roma who often set up camps on undeveloped land without authorisation, some local authorities had come up with their own solutions in co-operation with central government: after temporary accommodation was provided, the state intervened in particular by funding urban and social studies (MOUS) to assess families' social circumstances and identify long-term housing solutions.

In the Ile-de-France region, the département of Seine St Denis, where there were several camps set up by Roma families of their own accord, had supported the development of "integration villages" in places including Saint Denis, Aubervilliers, Saint Ouen, Bagnolet and Montreuil for persons who would be living in France on a long-term basis. Such co-operation had made it possible to implement several projects for the long-term integration of families, both economically and socially and in terms of housing. In 2010, six "MOUS" were carried out in Seine Saint Denis for these integration villages, costing 844 000 altogether €. The cities of Lille, Marseille and Lyon were also considering the possibility of establishing integration villages.

With regard to non-EU migrant workers, the representative of France said that the Conseil d'État had issued a ruling on 11 April 2012 setting aside the provisions of Decree No. 2008-908 of 8 September 2008, in particular on the grounds that the decree breached Article 6 of International Labour Convention 97 on Migration for Employment. A new draft decree which was in the process of being signed would give all migrant workers an enforceable right to housing identical to that enjoyed by French nationals.

606. In reply to a question by the representative of Poland, the representative of France said that, in principle, all Roma were foreigners in France. In reply to a question by the representative of the United Kingdom, she said that Roma children born in France became French citizens.

607. The Committee took note of the information provided and invited France to continue its efforts to bring the situation into conformity with the European Social Charter.

RESC 31§1 ITALY

The ECSR concludes that the situation in Italy is not in conformity with Article 31§1 of the Charter on the ground that measures taken by public authorities to improve the substandard housing conditions of most Roma in Italy are inadequate.

608. The representative of Italy said that the Government had signed up to a new strategy in the framework of the European Union which would be of benefit to Roma communities. Under the strategy, Italy was seeking to develop a comprehensive approach to the economic and social integration of Roma. There were four strands in the strategy: education, employment, health and housing. The objectives concerning housing were as follows:

- promoting integrated policies for inter-institutional co-operation in the area of providing housing for Roma;
- promoting housing which met the specific needs and requirements of Roma families;
- making the most of the economic resources and administrative arrangements available under housing policies and of potential housing stock for Roma families.

The objectives were due to be implemented over the period from 2012 to 2020. Action was planned at both national and local level. By way of example, she mentioned Naples, where large Roma camps had been divided up into “villages”. Such “villages” or micro-camps had also been set up in Florence, Prato, Modena and other towns. In Padua, the municipal authorities had supported the building of 11 flats with the self-build method. They now housed 32 Roma, some of whom had been involved in the building work after receiving appropriate training.

Roma integration plans had been drawn up in many municipalities and their implementation should, in particular, help to solve the problem of illegal camps. There was active dialogue with Roma community representatives in terms of agreeing and achieving the objectives.

609. In reply to a question by the ETUC representative on statistical data concerning the strategy, the representative of Italy said that the previous Government had set aside a sum of approximately 100 million € for Roma integration programmes, around 60 million € of which had been passed on to local authorities as grants.

610. In reply to a question by the representative of Turkey, the representative of Italy said that the Roma, Sinti and Camminanti communities in Italy, who were distinguished by their different dialects and specific cultures, numbered approximately 120 000 to 150 000. Half of them were Italian nationals. Although the other half were foreign nationals, they mostly lived in Italy on a permanent basis. The last two influxes into Italy had been after the war in Yugoslavia and after the accession of Romania and Bulgaria to the European Union. The largest Roma camps were on the outskirts of major urban areas in the northern central and northern regions of the country. A large Roma community from the former Yugoslavia had settled in Scampia (Naples). In Sicily, the Camminanti community were the largest group, while Sinti were in the majority in northern Italy.

611. The strategy drawn up and carried out within the framework of the European Union would be a great help in improving the housing conditions of the groups concerned, as well as tackling various problems involving education, health and employment. Various national and private bodies such as

the National Antidiscrimination Office and the Bar Association were involved in implementing the strategy.

612. The Committee took note of the developments presented, urged the Government of Italy to continue its efforts to bring the situation into conformity with the European Social Charter.

RESC 31§1 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 31§1 of the Charter on the grounds that:

- *it has not been established that the right to adequate housing is effectively guaranteed;*
- *insufficient measures were taken by public authorities to improve the substandard housing conditions of most Roma in Lithuania.*

First and second ground of non-conformity

613. The representative of Lithuania provided the following information in writing:

> The Constitution of the Republic of Lithuania provides that a person's dwelling place shall be inviolable.
> The Lithuanian housing sector is governed by the following key laws: the Civil Code of the Republic of Lithuania, the Law of the Republic of Lithuania on the Associations of Multi-Family Apartment House Owners (No.I-7981 of 21 February 1995), the Law on State Support to Acquire or Rent Housing and Modernization of Blocks of Flats, the Law on the Restoration of the Rights of Ownership to the Existing Real Property (Law No VIII-359, 1 July 1997), the Law of the Republic of Lithuania on Land (Law No I-446, 26 April 1994) and the Law of the Republic of Lithuania on Construction (No. I-1240, 19 March 1996).
> The right to housing is provided to all the citizens of the Republic of Lithuania, however public support to acquire or rent a dwelling is granted only to the most needy families, and single individuals having no private housing property and if, during the year preceding the year of public support, the annual income and assets are not above the limit established by the Government of the Republic of Lithuania.
> Under the Law on State Support to Acquire or Rent a Housing and Modernization of Blocks of Flats low-income persons (families) are provided with public support in purchasing a dwelling (by covering from 10 to 20 % of the housing mortgage credit as prescribed by the Government of the Republic of Lithuania), and in renting social housing.
> Lithuania has developed a favourable mortgage lending system. Commercial banks selected by the Government of the Republic of Lithuania offer a facility of state-supported housing credit. UAB Paskolų draudimas (CJSC "Mortgage Credit Insurance") assume a part of state-sponsored credit insurance premiums.
> The housing-related requirements and standards are set forth in the Law of the Republic of Lithuania on Construction, as well as operational technical construction regulations. The impact of harmful factors on health in the living environment is regulated by orders of the Minister of Health in the form of the Lithuanian hygiene standards, which also include requirements in relation to allowed minimum concentration of hazardous substances.
> The Civil Code of the Republic of Lithuania provides for conditions and procedures of renting accommodation (including state and municipal housing), as well as rights and duties of lessors, tenants and their family members, also payment arrangements in relation to fees and other expenses for the services provided to the tenant, and the arrangements for the termination of the accommodation rental contract.

Prevention of any form of eviction relating to children, as well as children's right to housing are established, protected and defended by the Law on the Fundamental Children's Rights Protection.

The Law of the Republic of Lithuania on Housing amending the previous Law on Housing, which came into effect on 1st January 2003, provides for state housing assistance for home acquisition, construction or reconstruction to be granted to natural entities (families), who hold permanent residence in the territory of the Republic of Lithuania and whose annual income and property before the year of granting the state assistance is below the highest rate of income and property established by the Government of the Republic of Lithuania, and if this has been the first adequate residence they have acquired, i.e. if these entities (families) have not owned any residence in the territory of the Republic of Lithuania or they have owned the residence whose average useful floor area per capita was below 14 m², or currently owned residence, irrespective of its useful floor area, has higher than 60 % depreciation, or it is not adjusted to the needs of the disabled with movement disorders.

The state housing assistance for home acquisition, construction or reconstruction is provided through subsidies covering housing credit insurance in full or in part, or through housing credit subsidies. A right to a subsidy of 20 % is granted to adult orphans under 35, disabled persons or families with the disabled. A right to a subsidy of 10 % is granted to young families with one or more children (adopted children), families with three or more children (adopted children), families with one of parents dead. The compensation of housing credit insurance payment allows for 5 % off advance payment.

In 2007, the state granted LTL 9.0 m. in subsidies and LTL 449.7 thousand in insurance premiums to persons (families) entitled to state housing assistance.

Persons (families) who received state-supported housing credits

	Number of persons (families)	Amount of credit (thousand LTL)	20 per cent subsidy		10 per cent subsidy		The insured	
			Number of persons (families)	Amount of subsidies (thousand LTL)	Number of persons (families)	Amount of subsidies (thousand LTL)	Number of persons (families)	Insurance premium (thousand LTL)
2004	1047	72730,9	116	1700,7	655	4624,5	748	868,1
2005	1007	96274,9	108	2309,4	573	5495,1	678	545,6
2006	914	105860,6	103	2427,0	510	5949,8	598	504,6
2007	698	100326,0	104	2669,6	448	6373,2	423	449,7

Table 31.1

Social housing

State social rental housing assistance is provided to a person (family) who has had no housing property in the territory of the Republic of Lithuania, or the average useful floor area of the current home is below 10 m², per capita and whose annual income and property before the year of granting the state assistance is below the highest rate of income and property established by the Government of the Republic of Lithuania. The rate of the rent is established by local authorities following the provisions of Resolution No 472 of the Government of the Republic of Lithuania of 2 April 2001 (amended by Resolution No 138 of the Government of the Republic of Lithuania of 9 February 2004) laying down the procedure for the calculation of the public housing rent.

The registry of individuals (families) entitled to municipal social housing or improvement of its conditions is held with competent local authority. The following lists are available:

- young families;
- families with three or more children (adopted children);

- orphans and persons deprived of parental care. This list includes orphans and persons (families) deprived of parental care, who on the expiry of the period of care or freedom deprivation are not older than 35 years of age;
- disabled persons (families). This list includes individuals who, according to the Law of the Republic of Lithuania on Social Integration of the Disabled (Law No I-2044 of 26 November 1991 amended by Law No IX-2228 of 11 May 2004), have been recognized through established procedure as unable or partially able to work, or who have reached the retirement pension age and have been recognized as people with special needs, as well as families that have a person who, according to the Law of the Republic of Lithuania on Social Integration of the Disabled, has been recognised as disabled or as unable or partially able to work or who has reached the retirement pension age and has been recognized as having special needs, as well as persons suffering from chronic diseases included on the list approved by the Government of the Republic of Lithuania or its authorised body, and families that have a family member suffering with the mentioned diseases;
- general list. It includes all individuals outside the above lists;
- social housing tenants entitled to improvement of housing conditions.

Data of Department of Statistics on state subsidized housing credits and social rental housing between 2003 and 2007

Year	Persons (families) who received state supported housing credits	Number of persons on the list for social rental housing	Municipal housing rented to persons (families)
2003	1284	8818	562
2004	1047	11130	775
2005	1007	13475	956
2006	914	16314	890
2007	698	20305	922

Table 31.2

Government of the Republic of Lithuania in 2011 entitled Ministry of Social Security and Labour to prepare in 2012 the draft with legal amendments providing state support for housing, including reimbursement of housing rent. The Program on the Social Housing Development for the year 2013-2019 has been drafted giving priority to reimbursement of housing rent (totally or partially).

RESC 31§1 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 31§1 of the Charter on the ground of discrimination against migrant workers in the Norwegian housing market.

614. The representative of Norway provided the following information in writing:

As pointed out in our report on Article 19§4 migrant workers in Norway are supposed to have working conditions and wages that may not be lower than the wage agreements or regulation which normally apply to the type of work involved. They are therefore not in general defined as an economic disadvantaged group in the housing market.
The state assists in the provision of housing for disadvantaged and marginalized persons through the Norwegian State Housing Bank. The bank offers several types of loans and grants to individuals and municipal authorities, as well as to organizations and institutions providing housing for disadvantaged and marginalized persons and in general low-income groups.

The housing allowance system is a government-financed support scheme for partial coverage of housing expenses for households with low income and high housing expenses. The housing allowance scheme was strengthened in 2009 by simplifying the requirements. The scheme is now available for all households within given limits of low income and high housing expenses. Some municipalities also provide municipal housing allowances. There are approximately 2 140 000 households in Norway. Everybody registered in the national register and has residence permit can apply for housing allowance.

Start-up loans are housing loans administered by the municipalities, and offered to enhance owner-occupation among young people and low income households. People who fail to receiving mortgages from private banks, are offered only high-interest mortgages, or lack equity capital, may apply for start-up loans. The borrowers must prove an ability to pay fpr the mortgage, and if they are, the will be offered a mortgage with an interest rate close to market rate. Everybody registered in the national register and has residence permit can apply for start-up loans.

The housing grant for individuals has the objective of assisting especially disadvantaged households to buy and remain in acceptable homes. A housing grant may be given for the purpose of making housing accessible and habitable for persons with special housing needs, such as older persons and persons with disabilities. Housing grants are strictly means-tested in relation to one's financial situation. Only those suffering the severest hardship can expect to receive housing grants.

The Committee on Housing policy presented their rapport "NOU 2011:15 Rooms for all – a social housing policy for the future" in August 2011. The rapport address discrimination on the Norwegian housing marked and suggests measures to prevent discrimination and improve the situation for disadvantaged groups. The rapport will be followed up by a White Paper in 2013.

RESC 31§1 PORTUGAL

The ECSR concludes that the situation in Portugal is not in conformity with Article 31§1 of the Charter on the ground that the measures taken by public authorities to improve the substandard housing conditions of most Roma in Portugal are inadequate.

615. In accordance with Article 20 of its Rules of Procedure, the Committee agreed to examine the situation in the absence of a representative of Portugal.

616. In the absence of written information from the Portuguese Government, the Committee agreed to send a strong message to the Government of Portugal indicating that the presence of a representative at the meeting of the Committee was a prerequisite for the proper conduct of its discussions.

RESC 31§1 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 31§1 of the Charter on the grounds that:

- *the criteria for adequate housing concerning size do not apply to housing available for rent on the free market resulting in substandard housing conditions for some migrant workers;*
- *insufficient measures were taken by public authorities to improve the substandard housing conditions of a a considerable number of Roma in Slovenia;*
- *inadequate legal solutions for tenants of denationalised flats prevent them from effectively exercising their right to housing.*

First and second grounds of non-conformity

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

Spatial standards for accommodation facilities of migrant workers

Article 10 of the Housing Act determines “adequate housing”, which has to meet the minimum space-per-person standards as specified by the Rules on renting non-profit apartments.

The spatial standard which a flat has to meet in order to be marked as adequate applies equally to all flats (profit and non-profit).

On 1 January 2012, the Rules on setting minimum standards for the accommodation of aliens who are employed or work in the Republic of Slovenia came into force.

These Rules lay down the minimum living and hygiene standards for the accommodation of aliens who are employed or work in the Republic of Slovenia. The minimum living and hygiene standards as defined in these Rules must be ensured by employers by whom the alien is legally employed, by foreign employers assigning the alien to work in the Republic of Slovenia, or by legal or natural persons with a permit to conduct business who have entered into a work contract with that alien, provided they are letting to the alien a living space owned or rented by them, or, alternatively, owned or rented by natural or legal persons who are affiliated with the aforementioned employers, foreign employers, or legal and/or natural persons.

The Rules also determine the spatial standards. With regard to the number of people living in a facility, each person must have at least 6 m² for sleeping, 1 m² for the kitchen and 1 m² for daily activities, excluding sanitary facilities.

Number of persons	Minimum area
1	8 m²
2	10 m²
3	18 m²
4	20 m²
5	28 m²
6	30 m²

Housing conditions for the Roma population

The Government of the Republic of Slovenia has adopted the National Programme of Measures for Roma for the period 2010-2015. One of the implementing bodies of the NPM for Roma 2010-2015 is the former Ministry of the Environment and Spatial Planning, i.e. as the implementing body for measures 4.1.2.1 and 4.1.2.2.

With the Act Amending the Government of the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia, no. 8/2012) coming into force, these two measures of the NPM for Roma 2010-2015 came under the jurisdiction of the Spatial Planning Directorate within the Ministry of Infrastructure and Spatial Planning. However, we need to emphasise that the direct implementing bodies for both of these measures are only self-managed local communities (municipalities).

Measure 4.1.2.1.: Setting up a comprehensive strategic framework as the basis for specific programmes and projects for the urban planning of Roma settlements. Identification of areas with Roma settlements and delineation of their rehabilitation within the framework of the process of drafting a municipal spatial plan – MSP (Legalisation of Roma Settlements)

This measure of the NPM for Roma 2010-2015 has already been implemented.

In the years 2010 and 2011, the expert group for resolving spatial issues related to Roma settlements (appointed by the Minister of the Environment and Spatial Planning by a decision issued on 15 March 2010) among other tasks also prepared the **Concept for Modernising**

Roma Settlements or Principles of Good Practice to be used in the resolution of spatial issues related to Roma settlements. This document comprises:

- the modernisation and development of Roma settlements and provision of infrastructure for settlements;
- spatial and programme connections of Roma settlements with surrounding settlements;
- the participation and inclusion of the Roma population in the urban planning of their settlement;
- the preservation and development of Roma culture.

The objective in resolving spatial issues is the complete integration of the Roma population into Slovenian society, i.e. a gradual formal, infrastructural and social integration of Roma settlements into the Slovenian settlement system, with a parallel rehabilitation of these areas. This process can be successfully implemented only in **partnership between municipalities, the Roma population and government institutions** in which all of the players have to fulfil the obligations under their jurisdiction.

The expert group for solving spatial issues related to Roma settlements presented the Concept for Modernising Roma Settlements or Principles of Good Practice at the 12th session of the Government Commission for the Protection of the Roma Ethnic Community on 18 November 2011. The Government Commission confirmed the concept and resolved that the concept would become the guideline for the future work of all competent state bodies, municipalities and other institutions.

The objective of this measure in the NPM for Roma 2010-2015 is to identify areas with Roma settlements (delineation of development areas and "legalisation" of existing illegal settlements) within the framework of municipal spatial plans (hereinafter referred to as the MSPs). The purpose of the measure is for municipalities to verify, as part of the process of preparing MSPs, whether the locations of existing Roma settlements are acceptable. The urban planning of Roma settlements falls under spatial arrangement and planning, and in accordance with Article 21 of the Local Self-Government Act (Official Gazette of the Republic of Slovenia, no 94/2007 – ZLS-UPB2, hereinafter referred to as the ZLS), this falls under the jurisdiction of self-governed local communities or municipalities. In consideration of the Spatial Planning Act (Official Gazette of the Republic of Slovenia, no. 33/07 and 108/2009; hereinafter referred to as the ZPNačrt), the delineation of Roma settlements as areas of building land can be carried out only as part of the process of preparing and adopting the MSPs of individual municipalities. The delineation of a Roma settlement as an area of building land is the prerequisite for all further urban and public utility planning.

The majority of municipalities are currently handling procedures for preparing and adopting MSPs. By the end of April 2012, 36 municipalities had adopted MSPs, including municipalities with Roma populations. Thus far, only 5 of the 20 municipalities where there is a Roma councillor have adopted the MSP plan. In light of the dynamics of preparing MSPs and in order to facilitate the resolution of spatial issues relating to Roma settlements, at its session on 18 November 2011 the Government Commission for the Protection of the Roma Ethnic Community resolved, **quote: "In procedures for preparing MSPs, municipalities shall treat Roma settlements in their areas as a priority. Municipalities which have not yet included Roma settlements in their spatial documents should do so immediately".**

In order to serve as an aid to municipalities in solving the housing problems of the Roma population and thus ensure a more successful implementation of the NPM for Roma 2010-2015, the expert group also prepared:

1. the **Spatial Issues of Roma Settlements in Slovenia** report, which serves as a basis for concrete programmes and projects for the urban planning of Roma settlements;
2. **an update of the analysis of the status of Roma settlements** dating back to 2007, as a follow-up of activities carried out by ministries and other government bodies in the past (November 2010).

The ministry sent both documents to all municipalities with Roma populations.

On the initiative of the expert group, the Spatial Planning Directorate implemented a course for Roma councillors on spatial planning, setting up public utility infrastructure, construction and housing, with an emphasis on the legislation governing the regulation of the status of Roma settlements. In addition to the Roma councillors who were invited, the courses were also attended by employees of the administration in all municipalities with Roma populations.

Measure 4.1.2.2.: The implementation of solutions, goals and tasks identified by the expert group for solving spatial issues related to Roma settlements in the process of drafting detailed municipal spatial plans (DMSPs) for individual Roma settlements

The objective of this measure of the NPM for Roma 2010-2015 is the comprehensive urban planning of Roma settlements in close cooperation with the Roma and the neighbouring population, resulting in improved living conditions for the Roma.

The prerequisite for preparing the detailed municipal spatial plan for an individual Roma settlement (hereinafter referred to as the DMSP) is for the Roma settlement already to be included in the MSP – i.e. that the area of the Roma settlement is already specified as building land and that the municipality has determined in its MSP whether the Roma settlement is to be regulated with the DMSP. The DMSP is an implementation plan which specifies the manner of urban and public utility infrastructure planning of an individual Roma settlement. For individual facilities and the construction of public utility infrastructure, a building permit is required.

One way in which it is planned to implement the Concept for Modernising Roma Settlements or Principles of Good Practice in solving spatial problems of Roma settlements, which was prepared by the expert group for solving spatial issues related to Roma settlements, is the implementation of a public tender for co-financing municipalities in preparing expert bases in drafting DMSPs plans for the urban planning of Roma settlements.

The Ministry of the Environment and Spatial Planning, i.e. the Spatial Planning Directorate, planned a public tender to be implemented in order to provide municipalities with co-financing in preparing expert bases in drafting DMSPs for the urban planning of Roma settlements. In the 2011 and 2012 work programme of the Spatial Planning Directorate, the preparation and publication of such a tender were planned, as well as the required financial resources. The Terms of Reference for the implementation of the public tender were prepared and harmonised with the proposal for the public tender prepared by the former Government Office for Local Self-Government and Regional Policy for allocating regional incentives – assistance to municipalities in public utility planning of Roma settlements (for infrastructure projects: providing settlements with water, electricity and sewage installations, new construction or reconstruction of local roads and purchase of land required to consolidate Roma settlements).

On 21 June 2011, the Ministry informed all municipalities with Roma populations about the planned public tender and the public tender planned by the former Government Office for Local Self-Government and Regional Policy for providing assistance to municipalities in the public utility planning of Roma settlements (NPM for Roma 2010-2015, measure 4.1.2.3), while simultaneously announcing a forthcoming consultation in order to present the two public tenders in more detail.

Regardless of the budget freeze, the former Government Office for Local Self-Government and Regional Policy considered the recommendations that the Government Commission for the Protection of the Roma Ethnic Community made at its 11th session on 28 September 2011, i.e. **quote: "The commission recommends that the Ministry of the Environment and the Office for Local Self-Government and Regional Policy publish a tender for financing the basic infrastructure in Roma settlements as soon as possible".**

Regardless of the above recommendation of the Commission, the Ministry of the Environment and Spatial Planning, the Spatial Planning Directorate, decided not to publish the public tender for co-financing municipalities in preparing expert bases for drafting detailed municipal spatial plans for the urban planning of Roma settlements, as the implementation of this measure is conditional upon the implementation of the first measure of the NPM for Roma 2010-2015.

However, we did participate actively in the implementation of the public tender of the former Government Office for Local Self-Government and Regional Policy for allocating regional incentives – assistance to municipalities in the public utility arrangement of Roma settlements. Given the reduced funding and budget freeze, and especially since the implementation of the measure is conditional upon the implementation of the first measure of the NPM for Roma 2010-2015, the Ministry decided not to publish this tender. Considering the dynamics of municipalities with Roma populations drafting and adopting MSPs which enable the legalisation and future development of Roma settlements, the Ministry decided that the implementation of the public tender would be reasonable only if the majority of municipalities with Roma populations have already adopted MSPs. Nevertheless, the Ministry plans to publish the public tender when the 2013 budget is adopted and the co-financing of municipalities for 2013 and 2014 has been foreseen.

Third ground of non-conformity

618. The representative of Slovenia pointed out that the progress should be noted, in particular regarding tenants living in denationalised flats, which have been made outside the reference period. The Rules on Renting Non-profit Apartments were amended on 15 September 2011. Now, those tenants who, for whatever reason, wish to obtain other rental housing should be awarded housing considerably faster: they are classified in the category of applicants who are placed on the priority list among applicants for non-profit rental housing. In this way, non-profit rental housing owned by municipalities, housing funds, non-profit housing organisations and the state will be provided considerably more quickly than before.

A high-level inter-ministerial group that was to be established with the aim of thoroughly analysing the existing situation of tenants in denationalised dwellings wasn't formed, which was on one hand due to early parliamentary elections in 2011 and on the other hand because of the fact that new housing policy was formulated by the Slovenian Government through the National Housing Programme (NHP).

In April 2012, the Ministry for Infrastructure and Spatial Planning set up a working group responsible for preparing a National Housing Programme (NHP) for period 2013-2022. Professional support to this group was given by representatives of other relevant governmental agencies and ministries. Experts in housing and representatives of NGOs, including representative of tenants of denationalised dwellings, were all invited to take an active part in drafting the housing programme. A final draft of the programme will be publicly presented, presumably, at the end of this month. The National Housing Programme will be adopted by the National Assembly of the Republic of Slovenia.

Furthermore, the representative of Slovenia informed the Committee that the Programme is focusing on four main goals: balanced supply of adequate housing, accessibility of housing to all, housing refurbishment and greater mobility of residents.

As regards housing in Slovenia, the main weakness is a shortage of rental dwellings. Housing prices in urban areas are very high, the majority of housing stock is owner occupied (approximately 91 %) and the rental stock is undersupplied and is mainly leased illegally. For this reason, the main focus in NHP is given to assuring enough rental dwellings by: building new publicly owned rental housing through public-private partnership, filling up housing units that are currently formally vacant (with fiscal measures for owners and by improving the supervisory work), refurbishment of existing housing stock so it can be re-activated.

619. The representative of Slovenia confirmed that a detailed content of NSP 2013-2022 will be presented in the next reports.

620. The Committee took note of the information provided, regretted that the high-level working group was not established, invited the Government of Slovenia to include all relevant information in the next report and to bring its situation into conformity with the European Social Charter.

RESC 31§1 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 31§1 of the Charter on the grounds that:

- *measures taken by public authorities to improve the substandard housing conditions of most Roma in Turkey are inadequate;*
- *insufficient measures were taken by public authorities to improve the substandard housing conditions of most internally displaced persons.*

First and second ground of non-conformity

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

1. Le droit au logement des citoyens d'origine Rom

Dans notre pays les citoyens Turcs d'origine rom bénéficient au même titre que d'autres citoyens Turcs et sans aucune discrimination de tous les types de service public offert par l'État. En outre, cette communauté est considérée comme l'un des groupes les plus désavantagés. En tenant compte de leurs situations et de leurs besoins spécifiques, plusieurs projets et programmes sont élaborés et mis en œuvre tant au niveau national qu'au niveau des collectivités locales pour améliorer leurs situations par l'égal accès aux droits sociaux surtout au droit de logement.

Pour nos citoyens Roms comme pour ceux à faible revenu qui résident dans des conditions difficiles, l'Administration de Logement collectif (TOKI) et les collectivités locales s'efforcent de construire des logements sociaux d'un nombre suffisant et avec des standards adéquats dans le cadre de travaux de « la transformation et la rénovation urbaine ».

Pour résoudre les problèmes des Roms, assurer leurs intégrations sociales, développer leurs statuts sociaux, en particulier améliorer les conditions de vie dans différents domaines, notamment dans le domaine de logement, les divers projets sont élaborés et les mesures sont prises dans différents départements de notre pays.

Avec ces projets mis en œuvre, nos citoyens d'origine rom bénéficient de l'aide et des services proposés ci-dessous :

- Projet de construction de logement collectif réalisé et en cours de réalisation destinée aux citoyens d'origine rom par l'Administration de logements collectifs (TOKI) ;
- Les prestations d'emploi telles que la mise en place d'emplacement réservé aux Roms dans la place du marché où seuls ces derniers peuvent faire des ventes, l'embauche des Roms dans les travaux temporaires résultant des besoins des municipalités et organisé avec la collaboration de l'Agence national de l'emploi (İşKur) ;
- L'ouverture des cours de formation professionnelle ainsi que la délivrance de certificat de maitre dans afin que les Roms acquièrent une profession ;
- La mise en valeurs de l'identité musicienne des Roms dans la fanfare, les chorales municipales et dans les activités culturelles et artistiques locales ;
- L'allocation de logement, l'attribution d'emplacement, la fourniture des services tels que l'eau, la route pour les associations et les maisons de culture créées pour perpétuer la culture Rom ;
- Les festivités reflétant la culture Rome (la fête de Roman du 8 avril, Dudelange, le festival de Kakava, etc.), le mariage officiel de couples romans vivant en concubinage, l'organisation de la circoncision collective pour leurs enfants dont ils ont besoin, l'ouverture de cours de danse reflétant la culture Rome par les municipalités ;
- L'ouverture de centre de jeunesse, de complexes sportifs et des aires de jeux pour enfants dans les zones où les Roms sont majoritaires ;
- Des aides alimentaire, vestimentaire, de charbon, de santé, de médicaments, de matériel de cours, de papeterie et d'école destinées à l'éducation.

Les travaux entrepris pour faire bénéficier les Roms de logements plus moderne et plus salubre, avec des conditions de paiements abordables ne pourrait quelquefois aboutir en raison que nos citoyens d'origine Rome ne veulent pas quitter l'endroit où ils vivent et que l'on ne trouve pas d' endroit convenable dans leur lieu de vie habituel et que même si l'on en trouve l'expropriation représente des coûts élevés.

2. Les gens qui ne peuvent pas ou ne veulent pas retourner dans leurs villages
Dans les grandes villes comme Istanbul, Ankara et Izmir, les projets spécifiques ont été élaborés et mis en œuvre ou en cours d'élaboration pour répondre aux problèmes des gens qui ne peuvent ou ne veulent pas retourner dans leurs villages tels que la pauvreté, l'exclusion sociale, les logements insalubres, le chômage, l'inadaptation à la vie urbaine et pour assurer leur intégration à la culture urbaine.

RESC 31§1 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 31§1 of the Charter on the grounds that:

- *it has not been established that the right to adequate housing is effectively guaranteed;*
- *insufficient measures were taken by public authorities to improve the substandard housing conditions of many Roma and Crimean Tatars.*

First and second ground of non-conformity

622. The representative of Ukraine provided the following information in writing:

First ground of non-conformity: Additional information
It should be noted that the Ministry of Culture of Ukraine has developed the draft Strategy of Protection and Integration of Roma up to 2020. The relevant Ministries have been involved in preparation process with the circulation of relevant documents. The draft Strategy defines the tasks in the following priority areas: legal protection, education, health, housing, employment, culture and information.
Updated information will be provided in the next report

Second ground of non-conformity: Additional information
In pursuance of the Decree of the President of Ukraine № 615/2010 of 14 May concerning additional measures to integrate Crimean Tatars the Ministry of Social Policy of Ukraine has developed the Program for resettlement and rehabilitation of deported Crimean Tatars and other nationalities who have returned to live in Ukraine, their adaptation and integration into Ukrainian society for the period until 2015 approved by the Regulation of the Cabinet of Ministers of Ukraine № 514/2012 of 6 June. The implementation of the Program will improve the level of social infrastructure of Crimean Tatars.
Updated information will be provided in the next report.

Article 31§2 – Reduction of homelessness

RESC 31§2 FRANCE

The ECSR concludes that the situation in France is not in conformity with Article 31§2 of the Charter on the grounds that:

- *the measures to reduce the number of homeless persons are insufficient;*

- *the implementation of the legislation on the prevention of evictions and the lack of measures to provide rehousing solutions for evicted families is not satisfactory;*
- *Travellers' human dignity was not respected while carrying out eviction procedures.*

First ground of non-conformity

623. The representative of France said that a plan to improve conditions in accommodation centres and shelters had been launched in 2008. For the years 2008 to 2011, central government had provided funding of 191.3 million € under the plan for refurbishment work and the provision of additional places. In addition, over the same period, ordinary appropriations for housing totalling 72.2 million € had been used for accommodation projects, along with National Housing Agency appropriations totalling 59.1 million € for refurbishment work. Under the programme, a total of 12 374 places had been refurbished and 4 221 new places or dwellings provided. Overall, by the end of 2011, 474 projects involving 16 595 places or dwellings had been covered by the improvement plan.

624. The programme had also identified 380 facilities requiring renovation, representing a potential of 9 000 places which could be covered by the programme, and 90 projects for the provision of new places for the purpose of relieving pressure on existing facilities (representing over 2 200 places).

625. The Committee took note of the information provided, invited the Government of France to include in its next report any relevant information on measures designed to reduce homelessness and agreed to await the next assessment by the ECSR.

Second ground of non-conformity

626. The representative of France said that France had recently adopted a national action plan to combat racism and anti-Semitism (PNACRA), which addressed the legislation applicable to Travellers and referred, inter alia, to the French Government's Roma inclusion strategy. The strategy set out priorities for all marginalised groups, as well as specific measures for Travellers, in particular those who encountered difficulties in exercising their rights regarding education, employment, health care or housing.

627. The representative of France then referred to the decision of 8 December 2004 on the merits of complaint No. 15/2003 (European Roma Rights Centre v. Greece), in which the ECSR had stated that "illegal occupation of a site or dwelling may justify the eviction of the illegal occupants". However, the conditions were that the "the criteria of illegal occupation must not be unduly wide" and that the eviction should take place "in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned". Evictions could therefore take place, in particular in the event of illegal occupation of a site or infringements of individual or collective interests.

628. The Committee took note of the information provided and agreed to await the next assessment by the ECSR.

Third ground of non-conformity

629. The representative of France began by presenting the legal basis for the evictions from the sites occupied illegally by Travellers (Act of 5 July 2000). In particular, she said that the provisions of sections 9 and 9-1 of the Act of 5 July 2000, which had been introduced by the Act of 5 March 2007, gave prefects the power to give the owners of Travellers' mobile homes notice to leave illegal sites and then, if necessary, order forced evictions.

Prefects could order such forced evictions only if the following conditions were met:

- the municipality must have complied with the rules on providing facilities for Travellers,
- the mayor must have issued a ban on parking outside official stopping places,
- there was a risk of the illegal parking jeopardising public health, safety or order.

Moreover, the notices to leave were administrative decisions against which appeals for stays of execution could be lodged with administrative courts.

The representative of France challenged the ECSR's position that the eviction of Travellers' or Roma camps by law enforcement agencies violated Article 31§2 of the Charter, for the following reasons:

- the Committee's interpretation of the provisions of sections 9 and 9-1 of the Act of 5 July 2000 and of Article 322-4-1 of the Penal Code was incorrect;
- the National Commission for Police Ethics (CNDS) had issued only a single opinion on evictions from an illegal Roma camp and none on any evictions from Travellers' camps;
- the fourth report by ECRI referring to the confiscation or destruction of evicted Roma's personal property amounted to unfounded allegations which could not be refuted without further clarification;
- the case studied by the CNDS was a concrete example of how an eviction had been carried out.

630 The representative of France added that the Act of 25 March 2009 on action for housing and against exclusion had made committees to co-ordinate action to prevent the eviction of tenants (CCAPEXs) mandatory in all départements, and all such committees had now been set up.

631. The new committees examined the difficult files on a case-by-case basis, with the involvement of the bodies concerned, in particular officials from prefectures, département councils and family allowance funds (CAF and CMSA), in order to help households in difficulties to find solutions to their situations as early as possible in the proceedings. The committees issued opinions and recommendations on assistance from the housing solidarity fund (FSL), welfare support, the continuation or discontinuation of housing benefit payments, rehousing and accommodation arrangements and, if prefects so wished, on calling in the police.

632. The disparity between the number of households for which eviction orders were issued and the number evicted with the assistance of the police was the result both of tenants leaving voluntarily during the proceedings and of the triggering of preventive measures which enabled the difficulties to be resolved and tenants to stay in their dwellings. Closer monitoring would be necessary to determine more accurately the number of households who had actually been evicted. Systematic monitoring was not possible with the existing tools, but efforts were being made to assess the problem more accurately.

633. The Committee took note of the clarification provided.

RESC 31§2 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 31§2 of the Charter on the grounds that:

- *the initiatives undertaken to reduce the number of homeless persons are insufficient;*
- *evictions of Roma and Sinti continue to be carried out without respecting the necessary procedural safeguards to guarantee full respect of every individual's human dignity and without alternative accommodation being made available;*
- *intervention in Roma and Sinti settlements by the police, has not been respectful of the dignity of their inhabitants and those responsible for destroying the personal belongings of the inhabitants of the settlements have not always been investigated nor have they, if identified, been condemned for their acts.*

First ground of non-conformity

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

En réponse au cas de non-conformité soulevé par le Comité qui a jugé insuffisantes sur le plan quantitatif les initiatives entreprises afin de réduire le nombre de personnes sans-abri, on renvoi au tableau ci-dessous indiquant les dépenses engagées pour chaque intervention et service en faveur des personnes sans domicile fixe ainsi que les aides finalisés à l'affectation de logements dans la période 2006-2009.

Interventions et services sociaux des Communes – Pauvreté, adultes défavorisés et SDF : usagers, dépenses et dépenses par usager e par chaque intervention et service social. Total Italie. Années 2006-2009.
DEPENSES (en milliers d'euros)

Interventi e servizi sociali dei Comuni - Area povertà, disagio adulti e senza fissa dimora: utenti, spesa e spesa per utente per singoli interventi e servizi sociali. Totale Italia - Anni 2006-2009

SPESA (migliaia di euro)

	2006	2007	2008	2009
Interventi e servizi	**10.600**	**20.330**	**22.252**	**23.013**
Intermediazione abitativa e/o assegnazione alloggi	4.052	14.658	16.163	16.662
Servizio di residenza anagrafica per persone senza fissa dimora		172	148	163
Interventi per persone senza fissa dimora	1.528	1.596	1.533	1.104
Servizi di pronto intervento per persone senza fissa dimora	5.021	3.904	4.408	5.084
Trasferimenti in denaro	**76.324**	**120.863**	**121.974**	**117.292**
Contributi economici per alloggio	74.841	120.158	121.110	116.546
Contributi economici per persone senza fissa dimora	1.484	705	864	747
Strutture	**33.579**	**20.968**	**23.913**	**26.397**
Centri diurni per persone senza fissa dimora	654	1.236	1.545	2.813
Dormitori per persone senza fissa dimora	20.246	8.465	13.557	12.258
Strutture di accoglienza per persone senza fissa dimora	12.678	11.268	8.811	11.326
Totale per alloggio o per persone senza fissa dimora	**120.504**	**162.161**	**168.138**	**166.703**
Totale per persone senza fissa dimora	41.611	27.345	30.865	33.495
Totale per alloggio	78.892	134.816	137.273	133.207

Interventions et services
Services d'intermédiation finalisés l'affectation de logements
Services de résidence auprès du bureau de l'état civil en faveur des personnes SDF
Interventions en faveur des personnes SDF
Services de premier secours en faveur des personnes SDF

Transferts en argent
Contributions économiques pour le logement
Contributions économiques en faveur des personnes SDF

Structures
Centres diurnes en faveur des personnes SDF
Dortoirs en faveurs des personnes SDF
Structures d'accueil en faveur des personnes SDF

Total pour le logement ou en faveur des personnes SDF
Total en faveur des personnes SDF
Total pour le logement

Le tableau contient les résultats du recensement sur les interventions et les services sociaux mises en place par les Communes (Istat, « Recensement sur les interventions et les services sociaux mises en places par les communes individuellement ou en association – Années 2006, 2007, 2008 et 2009) afin de lutter contre la pauvreté et en faveur des adultes défavorisés et sans domicile fixe. Le recensement porte sur les usagers et sur les dépenses des communes

relativement aux services qu'ils affectent, individuellement et/ou en association. L'affectation des services se réalise à travers un modèle d'organisation variable non seulement d'une région à l'autre mais aussi dans la même région. Le tableau montre le dégagement de certains financements des interventions pour l'affectation du logement et en faveur des personnes sans domicile fixe aux interventions visant à prévenir la condition de personne sans-abri. En effet, soit les fonds pour les services d'intermédiation que les contributions économiques finalisées à l'affectation de logements aux personnes défavorisées et en condition de pauvreté ont augmenté, au contraire de ceux destinés aux personnes sans domicile fixe. Dans l'ensemble, les fonds engagés ont augmenté.

Dans le précédent rapport on avait indiqué qu'en 2008, en l'occasion du lancement d'une enquête sur les personnes vivant en condition de pauvreté extrême, un recensement sur les organisations et les services en faveur des personnes SDF[13], a été effectué. L'enquête a été menée par l'Istat, en collaboration avec le Ministère du Travail et des Politiques Sociales, la Fédération italienne des opérateurs du secteur (fio.PSD) ainsi que la Caritas.

Comme tout le monde le sait, il est difficile de quantifier le phénomène, peu enquêté, des personnes sans-abri car il rentre dans le contexte de marginalité sociale des Pays économiquement développés. Afin de combler ce manque d'information, l'enquête susmentionnée a été menée avec le but de fournir un cadre approfondi sur le phénomène de personnes sans domicile fixe ainsi qu'une cartographie des différents services offerts aux sans-abris, avec une attention toute particulière aux hébergements. En outre, l'enquête vise à obtenir un' exacte estimation du nombre des personnes fréquentant les hébergements.

A l'heure actuelle, on estime environ 50-60 mille personnes sans domicile fixe en Italie. La précédente estimation comptait environ 70-100 mille personnes.

Dans le complexe, la nouvelle enquête, encore en cours, a engagé 158 communes italiennes sélectionnées en fonction de leur taille démographique. Une fois terminé le relevé, on serait en gré de quantifier plus précisément le nombre des personnes sans-abri en Italie.

En 2010, 727 sociétés et organisations ont fourni des services aux personnes sans-abri dans les 158 communes italiens susmentionnés. Elles disposent de 1.187 sièges affectant, moyennement, 2,6 services chacune pour un total de 3.125 services.

Un tiers de ces services concerne les besoins primaires (nourriture, vêtements, hygiène corporelle), 17 % fournit un hébergement pour la nuit (hébergements, structures communautaires, dortoirs) ainsi que le restant 4 % offre un accueil diurne (structures communautaires, structures d'accueil en cycle diurne, cercles, laboratoires).

Les services de secrétariat social (services d'information, services d'orientation à l'utilisation des services mêmes et pour l'expédition d'affaires) ainsi que ceux concernant la prise en charge et l'accompagnement des usagers sont très répandus sur le territoire national (24 % et 21 % respectivement).

TABLEAU 1. Services et usagers en fonction du type de service
Année 2010 (valeurs absolues et en pourcentage)

	Services	Usagers	Services	Usagers
	Valeurs absolues		Valeurs en pourcentage	

[13] En se référant à la typologie ETHOS (European Typology on Homellessness and Housing Exclusion) on fait présent que selon la formulation élaborée par de l'Observatoire européen relativement à l'*homelessness* sont considérés comme personnes sans-abri toutes les personnes qui : vivent dans d'espaces publics (dans les rues, dans des cabanes, dans des voitures abandonnées, dans des roulottes et dans d'hangars) ; vivent dans des structures d'accueil pour la nuit et/ou qui sont forcés de passer les trois quart de leur temps dans d'espaces publics (en plein air) ; vivent dans des structures pour personnes sans-abri/ sans hébergement temporaire ; vivent dans d'hébergements destinés à des usagers spécifiques nécessitant des services sociaux (personnes sans domicile fixe célibataires, couplés ou en groupe). Les personnes vivant en condition de surpeuplement, ceux hébergées auprès des parents ou d'amis ou vivant dans des logements occupés ou dans des champs équipés des villes ne rentrent pas dans cette formulation.

PROSPETTO 1. Servizi e utenza del servizio per macrotipologia del servizio.
Anno 2010 (valori assoluti e composizioni percentuali)

	Servizi	Utenza	Servizi	Utenza
	Valori assoluti		*Composizioni percentuali*	
Supporto in risposta ai bisogni primari	1.061	1.305.236	34,0	49,9
Accoglienza notturna	520	76.657	16,6	2,9
Accoglienza diurna	128	47.202	4,1	1,8
Segretariato sociale	754	568.161	24,1	21,7
Presa in carico e accompagnamento	662	618.734	21,2	23,7
Totale	**3.125**	**2.615.990**	**100,0**	**100,0**

Services finalisés à l'accomplissement de besoins primaires
Structures d'accueil pour la nuit
Centres diurnes
Secrétariat social
Services de prise en charge et accompagnement des usagers
Total

En examinant le tableau ci-dessus, il ressort que les usagers des services finalisés à l'accomplissement des besoins primaires des personnes sans domicile fixe **sont plus élevés d'environ vingt fois par rapport à ceux des structures d'accueil pour la nuit et de presque deux fois par rapport aux usagers du secrétariat social et des services de prise en charge et d'accompagnement**. Tout cela considéré, il est évident que les personnes sans-abri demandent plus fréquemment l'accomplissement de leur besoins primaires (**nourriture**, **vêtements**, **hygiène corporelle**) qui leur est assuré, plutôt que des dortoirs.
En outre, il ressort de l'enquête que dans deux tiers des villes italiennes, ces services sont affectés directement soit par d'administrations publiques que par d'organisations privées. Dans les villes ou les administrations publiques n'affectent pas directement les services en question, des organisations privées financées avec des fonds publics sont cependant présentes.
La seconde partie de cette enquête sera complétée et publiée dans l'année. La dernière partie de l'enquête a pour but **d'analyser le phénomène des personnes sans domicile fixe sur le territoire italien ainsi que la façon dont elles utilisent les services formels et informels, publiques et privés**.
Afin de fournir un cadre plus approfondi, les aboutissements de cette enquête vous seront illustrés dans le prochain rapport.

Second and third grounds of non-conformity

635. The representative of Italy referred to her statement under Article 31§1.

636. The Committee referred to its decision under Article 31§1 (see under RESC 31§1 Italy in this document).

RESC 31§2 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 31§2 of the Charter on the ground that it has not been established that progress in reducing homelessness was achieved.

637. The representative of Lithuania provided the following information in writing:

In order to prevent homelessness, municipal executive authorities have established social housing rental terms and conditions and register people who need accommodation.
Families and individuals apply for the rent of social housing or the improvement of the conditions of housing to municipality where they declared place of residence or they actually live.

In the period of 2005-2011 about LTL 230 million had been invested into municipal social housing development fund. Municipal Fund was increased by 3000 dwellings. During this period about 6,800 families received public housing, including the newly acquired and vacated apartments (they represent about 24 percent of the current demand for social housing).
Public investment to social housing development has fallen sharply from LTL 70 million in 2008 to 14 million in 2009 due to consequences of global financial crisis. The demand for social housing for rent has increased from 20.4 thousand to 28.4 thousand in 2011.
In view of this situation, the draft with legislative amendment is under preparation, which provides for reimbursement of rent to persons entitled to social housing and renting in the private sector (now the rent of social house is possible only in public (municipality) sector).

RESC 31§2 NETHERLANDS (KINGDOM IN EUROPE)

The ECSR concludes that the situation in the Netherlands is not in conformity with Article 31§2 of the Charter on the ground that there is no legal requirement to provide shelter to children unlawfully present in the Netherlands for as long as they are in its jurisdiction.

638. The representative of the Netherlands made the following statement:

(…) Due to a national Dutch court decision in January 2011, the Netherlands have installed so-called family locations. Since July 2011, six “family locations” are operational where families with minor children receive shelter in an accommodation with restricted freedom of movement until their departure is successful.

Aliens have 28 days to leave the Netherlands of their own accord following the rejection of their asylum application. During this period aliens stay in reception centres. If the time limit for departure mentioned above is too short, there is the option of placing the alien in an accommodation with restricted freedom of movement for a further 12 weeks, where the preparations for departure continue. If this period is still too short to organise their departure, families with minor children are provided shelter in so-called “family locations”. This means that families, whose asylum application has been rejected, maintain accommodation until they actually leave the Netherlands. Often these families start a (regular) immigration procedure after their asylum procedure has failed, but this has no effect on the accommodation granted. They maintain their shelter facilities. It is their own responsibility if they choose to leave their accommodation on their own accord. This happens in some cases to put pressure on the Government.

A family whose residence permit is being revoked due to for example a change in a country specific asylum policy, will also be provided accommodation until they leave the Netherlands.

Furthermore, when a family with children is living on the streets in the Netherlands, the Dutch Repatriation and Return Service will be contacted by the local authorities to find a solution. This will usually include shelter.

To conclude, the Revised Charter (articles 17 and 31) is not applicable to persons unlawfully staying in the Netherlands. Nevertheless, the Netherlands offers special accommodation to prevent homelessness of families unlawfully present in their jurisdiction. (…) The Dutch policy and practice have been brought in compliance with the Charter since the beginning of 2011. There is no legislation which needs to be changed.

639. The Committee took note of the information provided and urged the Government of the Netherlands to bring its situation into conformity with the European Social Charter.

RESC 31§2 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 31§2 on the ground that the measures currently in place to reduce the number of homeless persons are inadequate in quantitative terms.

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

Adopted and planned measures for the prevention of homelessness

The homeless are a vulnerable group in Slovenia who receive special attention on the basis of various strategies, legislation and public social welfare programmes:

- the National Social Welfare Programme 2006-2010 envisaged a network of reception centres and shelters for homeless people with a total capacity of at least 250 places in all statistical regions and an additional 80 places for homeless drug users, which was also realised;
- the proposal of the National Social Welfare Programme 2012-2020 (adoption planned in 2012) envisages the public network of programmes for homeless people to be expanded and to include information and counselling programmes with field-work, programmes of coordination, support and the implementation of assistance and self-care, accommodation programmes and social activation programmes. By 2020, the number of day centres providing counselling services is planned to increase from the existing 7 centres to 20 day centres providing programmes of preventive and counselling work. In addition to the public network of programmes, help for the homeless people is also provided by voluntary organisations whose operation is financially supported by the Ministry of Labour, Family and Social Affairs;
- the National Housing Programme 2013-2021 is currently in preparation (Ministry of Infrastructure and Spatial Planning); its main objective is the improvement of housing accessibility for vulnerable groups, which means that it will indirectly affect the housing conditions of homeless people. The new NHP envisages the construction of a sufficient number of so-called temporary housing units within the framework of housing programmes of municipalities. The exact number of housing units will be determined after analyses in individual municipalities have been conducted.

Statistical data on the number of homeless people

One of the findings of the Estimated Extent of Visible and Hidden Homelessness in Slovenia study made in 2010 was that the exact number of homeless people in Slovenia cannot be determined, as we do not have an indicator for recording homelessness. Based on the data on the number of people whose place of residence is registered to be at social work centres, we estimate that there were approximately 1,300 homeless people in 2010. However, we need to consider that not all homeless people are registered at social work centres. Data provided by social work centres, which offer first social assistance, assistance in crisis situations or personal assistance, show that the number of homeless people is increasing, especially among young people, people with mental health disorders and drug users, whom we try to include in treatment and social activation programmes.

Shelter conditions

Homeless shelters are set up in cooperation between municipalities and non-governmental organisations. Their operation is primarily the concern of municipalities, while immediate work in shelters is carried out by employees of social welfare programmes that are mostly co-financed by the Ministry of Labour, Family and Social Affairs. In addition to these shelters, Karitas also operates reception centres for the homeless.

Voluntary organisations estimate the conditions in these shelters to be adequate with regard to accessibility of water, heating and lighting. The majority of shelters and reception centres offer not only overnight stays to the homeless, but also basic food and personal hygiene facilities (bathing, laundry washing, haircutting and similar). In some towns, there are also food distribution facilities. Within the framework of the Municipality of Ljubljana and the Municipality

of Maribor, outpatient clinics also provide healthcare services for homeless people regardless of their town of residence, as well as to other people without health insurance.

RESC 31§2 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 31§2 of the Charter on the ground that evictions of Roma have occurred without respecting the necessary procedural safeguards to guarantee full respect of every individual's human dignity.

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

1. L'expulsion des Romans de leurs maisons

Les droits au logement et à un environnement sain sont protégés par la Constitution dans ses articles 17, 56 et 57.

Nous ne pouvons être en accord avec la critique selon laquelle les citoyens turcs d'origine romane dans notre pays auraient été expulsés par la force de leurs maisons et que leurs dignités humaines ne seraient pas respectées.

Comme il est mentionné dans les explications faites dans le cadre du paragraphe 2 de cet article, les Roms bénéficient sur un pied d'égalité avec d'autres citoyens turcs de tous les services publics et ils ne sont exposés à aucun traitement discriminatoire sur le plan juridique et administratif.

Toutefois, il peut arriver quelquefois les violations de droit de logement en raison des projets et des travaux de transformation urbaine mise en place pour réaménager les zones urbaines anciens, les rendre de nouveau habitables et résoudre les problèmes sociaux, économiques et culturels de la ville. Mais ce problème ne concerne pas que les citoyens turcs d'origine rom, mais toutes les personnes qui habitent dans les zones de transformation urbaine. Il n'existe pas une discrimination propre aux Roms dans ce domaine.

Dans le cadre des projets de transformations urbaines mis en place pour résoudre les problèmes résultant d'une urbanisation désordonnée et sans plan, le réaménagement des zones d'habitations insalubres habitées majoritairement par les Romans et la transformation de ces zones les plus pires en nouveau terrain de logement collectif en les améliorant sont en cours dans les villes et les arrondissements ou les Romans vivent. Ces travaux visent à détruire les bâtiments à risque et de types de bidonvilles et créer des villes modernes et saines en améliorant notamment les zones d'habitation des Roms et d'autres zones de problèmes.

D'autre part, l'expression du Comité Européen des Droits sociaux selon laquelle « les Roms seraient confrontés avec les mauvaises conditions de vie et de santé suite à la démolition du quartier rom et à la distribution obligatoire partout dans notre pays » résulte d'une l'approche qui ignore la discrimination positive appliquée par notre Gouvernement à l'encontre des Roms. En outre, suite aux instructions du premier ministre, avec le soutien de la Direction générale de l'assistance sociale on a fait appels d'offres pour la construction de logements pour 5106 citoyens d'origine rom et cette construction se poursuit.

2. La démolition de Sulukule, le quartier historique d'Istanbul

Le quartier de Fatih situé dans la péninsule historique a été foyer de nombreuses civilisations à travers de l'histoire. Il constitue un patrimoine unique pour notre pays et pour le monde entier avec des échantillons de l'architecture civile et des œuvres monumentales d'art de l'architecture civile.

Le plus important de ces espaces, le plus bel endroit dans la ville, et le meilleurs emplacement topographie sont Fevzipaşa – les quartiers historiques de Haticesultan et de Neslisah (Sulukule) entre les boulevards de Vatan – adjacent aux remparts de terre historique. En plus des remparts historiques, la région abrite la Mosquée de Mihribah Sultan, la mosquée du sultan Neslişah et de nombreuses œuvres monumentales comme l'Église orthodoxe grecque

de Sarmaşık.
Toutefois, cette région historique et culturelle, en raison du manque d'intérêt et d'entretien qui a persisté pendant de nombreuses années, n'a pas pu achever son développement et son changement. Ces lieux dans le centre d'Istanbul sont désormais devenus des débris confrontés à l'extinction. La vie économique, sociale, culturelle et environnementale dans la région n'est plus possible depuis longtemps.
Cette agglomération ne constitue pas seulement des zones d'affaissement physique, mais aussi le lieu des problèmes socio-économiques. Dans une zone restreinte à forte concentration humaine qui ne cesse d'augmenter, l'accroissement du chômage et de la pauvreté, les violences et les problèmes de sécurité font qu'il est impossible de vivre en paix pour les habitants de ce quartier.
En outre, la non-résistance des bâtiments en débris à des séismes constitue un autre problème important. Cette région se trouve dans une zone de risque sismique de deuxième niveau. Il existe un risque de dommages même lors d'un tremblement de terre de magnitude moyenne.
En juillet 2005, la municipalité de Fatih a réalisé dans cette zone une étude sur le tissu social et la faisabilité. Dans ces études, tous les locataires et les propriétaires vivant dans l'agglomération ont été identifiés. Avec les diverses données démographiques, la population vivant dans chaque maison est enregistrée. Avec cette étude qui est terminée le mois de novembre 2005, il est déterminé le nombre de maisons dans chaque parcelle, les surfaces des bâtiments, la situation des maisons, le statut de leur reconstruction, les personnes y vivants et les informations semblables.
Les résultats de cette étude ont permis de déterminer qu'il y a 383 locataires et 620 résidences, ainsi que 45 lieux de travail et 3430 personnes qui y vivent. Certains propriétaires n'habitent pas dans leurs maisons, certains ne savent même pas qui vie dans leurs maisons. Selon ces enquêtes, 80 % de la population vivant dans la région étaient locataire.
L'avant-projet est élaboré en tenant compte de ces chiffres, on s'est efforcé de produire pour chaque résidence une résidence et pour chaque lieu de travail un lieu de travail. Le nombre actuel de résidences et des lieux de travail coïncident avec les chiffres figurant dans l'avant-projet.
À la suite de l'enquête réalisée par la municipalité de Fatih concernant les ménages dans la zone de projet, les données suivantes ont été rapportées :

- environ 17 % de la population est composée de citoyens d'origine rom. Le reste de la population a migré depuis diverses régions du pays. Ce sont en générale les gens à faible revenu et qui travaille dans le secteur de service peu qualifié. Cette situation montre qu'il n'existe pas un groupe de culture homogène dans cette zone ;
- en ce qui concerne le niveau de l'éducation, 31 % sont analphabètes, 34 % diplômé des écoles primaires, 5 % diplômé des écoles secondaires, 4 % diplômé du lycée. Dans les familles, 17 % n'ont pas d'emploi, 13 % des travailleurs sont des enfants, 8 % sont des femmes qui généralement mendient ;
- en ce qui concerne la situation de l'emploi, 77 % n'ont pas un emploi qui leurs apporte des revenue, 64 % ne sont pas couvert, 16 % bénéfice de l'assistance de santé, 51 % ne veulent pas recevoir une formation professionnelle et 37 % veulent bénéficier d'une formation professionnelle ;
- 91 % sont informés du projet, 9 % ne le savent pas, 65 % pense que leurs habitats vont être démolis pour être reconstruits, 15 % pense qu'ils vont devoir aller ailleurs. Toutefois, 74 % veulent vivre ici, 26 % veulent aller ailleurs. 79 % veulent des changements structurels dans leurs quartiers, 21 % ne veulent pas. 40 % de ces résidents sont propriétaires, 60 % sont des locataires et des occupants clandestins. Les problèmes dans la région se composent de 41 % de violence et d'insulte, 21 % de la pauvreté, 14 % de la drogue, 56 % voit leur quartier différent d'Istanbul, 44 % ne voit aucune différence.

Suite à ces études, d'une part les remparts historiques d'Istanbul, d'autre part, la surface de 91

mille mètres carrés dans le parti intérieur de la Bande de Protection des Remparts sont désignées comme zone de projet.
Dans cette zone du projet, il y a au total 46 échantillons d'architecture civile immatriculée. La restauration de 25 échantillons se fera dans le cadre du projet de restauration, et 18 échantillons seront restaurés par leurs propriétaires.
Le projet n'est pas élaboré selon un seul groupe, mais selon les attentes et habitudes des de tous les habitants du quartier. La zone de projet se compose d'environ 20 % des citoyens d'origine rom. Il est également en conformité avec les structures culturelles et les conditions de vie des citoyens d'origine rom. Les Roms qui sont propriétaires reçoivent aussi des terrains au sein du projet et restent dans la zone.
Conformément aux demandes et souhaits des habitants Roms, les maisons sont souvent sous forme de deux étages avec une cour interne. Les coûts des maisons ont été procurés par avance avec la valeur des terrains que possèdent les propriétaires et s'ils doivent des dettes restantes, le paiement est autorisé sur une durée de 180 mois soit 15 ans une fois installés dans leur nouvelle demeure. Si le propriétaire est créancier, la somme est payée en avance.
Pour le quartier, le projet protège les silhouettes des rues historiques et les habitudes de vie des habitants.
Lors de la conception du projet de transformation, les analyses sur la propriété et sur la situation socio-économique des habitants sont menées, les plans antérieurs appartenant sur la presque ile historique et son entourage et les caractéristiques des bâtiments dans le zone sont étudiés afin de les intégrer dans projet de rénovation. Le projet institue aussi des standards permettant d'améliorer la qualité de vie urbaine. Au lieu des espaces intérieurs étroits, les cours intérieures spacieuses facilitant les relations sociales et culturelles sont formées. Ces zones sont aussi des lieux de respiration dans la densité de la ville, de la lumière du jour et de l'espace. Les cours antérieurs ont été conçu non seulement pour les espaces des de rez de chaussez, mais pour toutes les espaces. En outre, les rues sont conçues pour être de 10-15 m au lieu de 3-5 m.
Les Roms de Fatih ont une vie sociale différente et ont un mode de vie particulier par rapport aux autres habitants du quartier. Dans le projet élaboré en prenant en compte ces facteurs, le mode de vie actuel est reflété dans l’espace. En fonction des espaces communs conçue (les portes avant, l'utilisation de cours intérieures, etc.) les cours, les portes, et des espaces à utilisation commune sont développés.
On a réalisé un projet conforme au droit de propriété, aux droits culturels, aux droits de l'homme et au droit de la ville. On a agi en sorte que personne ne soit victime et que personne ne soit exclu. Les options présentées aux propriétaires et aux locataires rendent l'aspect social de ce projet très puissant parmi tous les autres exemples réalisé dans le monde.
L’intérêt pour cette zone et ces habitants a commencé grâce à ce projet pour la première fois. C'est aussi avec ce projet qu’on a pris des mesures qui vont contribuer au développement physique, socio-économique et socioculturel du quartier et des habitants du quartier et améliorer et renforcer les espaces de vie, les conditions de vie.
Le projet lancé en 2006 concerne 673 logements (620 résidences, et 53 lieux de travail) et vise :

- la protection des structures historiques et culturelles (immatriculées) ;
- l’amélioration des conditions de vie des personnes vivant dans le quartier ;
- l’arrêt de la destruction physique et l’animation de la vie économique en assurant la durabilité de la structure historique et l'identité originale de la vile ;
- l’augmentation de la qualité de vie urbaine et la mise en route des dynamiques basées sur la e culture ;
- l’encouragement de la participation ;
- le soutient du développement socioculturel ;
- l’intégration de la population du quartier avec la ville et avec les citadins ;
- la création des espaces et des zones habitables modernes intégrées à l'histoire et la

culture du quartier.
En vertu de la loi No. 5366 du 16/06/2005 sur la rénovation des biens immobiliers culturel et historique détérioré et leur protection par la restauration, la déclaration de la zone de projet comme l'espace de rénovation a été acceptée par le conseil municipal de la mairie de Fatih et l'Assemblée municipale métropolitaine d'Istanbul. Elle est ensuite approuvée par le Conseil des ministres et le Président de la République. Elle est finalement acquit la force de loi par la publication dans Journal officiel du 24 avril 2006.
Un protocole sur le projet de rénovation urbaine et de ses applications du quartier de Fatih de 1er groupe de numéro 2 est signé 13/07/2006 entre l'Administration de logements collectifs (TOKI), la mairie métropolitaine d'Istanbul et la mairie de Fatih.
Le but de ce protocole est de limiter les problèmes et de trouver les solutions pour les ayants droit dans la zone de rénovation, qui est devenue une zone de dépression en raison des bidonvilles, de la construction non planifiée, des bâtiments de faible niveau de standards et de crée une espace urbaine possédant les standards contemporains en liquidant les zones d'habitation non planifiée.
Les projets d'application sont approuvés par le Conseil régional de la protection des biens culturel et historique des zones de rénovation d'Istanbul. Ces projets sont présentés à l'offre le 10.09.2009 par TOKİ et le contrat a signé avec la firme qui a emporté l'offre. Cette firme a obtenu le 22.12.2009 le permis de construction et a commencé les travaux de soubassement sous le contrôle de la Direction de l'archéologie et des musées d'Istanbul.
Une fois que les propriétaires avec lesquels on a fait un accord dans le cadre du projet ont évacué les maisons et ont demandé leurs destructions, et que la zone est devenue vide et les maisons ont été détruites. Tous les bâtiments détruits sont des bâtiments non immatriculés et non qualifiés.
90 % des bâtiments dans la région (y compris des bâtiments immatriculés) est sans qualité et composé de baraquements. Il a eu des interventions dans la plupart des bâtiments immatriculés, qui son devenu des bâtiments de ruines et d'épaves difficiles mêmes de tenir debout. Alors qu'il y avait 24 bâtiments immatriculés avant le projet, ce nombre s'élève à 46 avec le Projet.
Aucun locataire n'a pas été considéré comme ayant droit dans un aucun projet de renouvellement urbain (conversion des bidonvilles) réalisé jusqu'à ce jour. Mais dans le cadre du projet de Renouvellement urbain de Fatih de numéro 2, la définition de l'ayant droit a été élargie et on a reconnu le droit de bénéficier des logements sociaux réalisés par le projet de Taşoluk aux locataires vivant dans cette zone de renouvellement.
Dans ce contexte, on a offert la possibilité aux locataires aussi de devenir propriétaire de logement social à Istanbul Gaziosmanpaşsa Taşoluk sans tirage au sort avec la possibilité de versements à échéance raisonnables de 180 mois (15 ans). Les locataires qui ont accepté cette option ont tiré au sort en trois étapes pour identifier le numéro de porte de leur maison. Par conséquent, on a pris des mesures pour que nos citoyens qui vivent dans la zone de rénovation puissent acquérir un logement socioculturel à nouveau dans le même lieu. En outre, une aide au logement a été faite pendant l'application du projet pour les propriétaires et les locataires qui résident dans la zone (jusqu'à ce qu'il déménage dans leur nouvelle demeure), 400 TL par mois pour les propriétaires, 300 TL par mois pour les locataires. Cette allocation continue à être versée aux propriétaires seulement, parce que les locataires ont déménagé dans leurs nouveaux logements.
La totalité des projets d'application est discutée et acceptée par le Conseil régional des projets des espaces de rénovations d'Istanbul.
L'information que 95 % de la population installée Taşoluk est retournée à Sulukule n'est pas vraie. Cependant, une très petite partie (environ 10 %) de la population a vendu au comptant à un prix de 40 000 et 50000 TL leur logement acheté à une valeur de 50 000 à 60000 TL ou en crédit d'une échéance de 180 mois (15 ans). Et une partie a donné à location leur logement. Il s'agit de la volonté libre des intéressés. Ils peuvent habiter où ils veulent, comme ils le veulent.

En outre, conformément au Code civil turc le droit de propriété est sacré, et les personnes peuvent utiliser les biens immobiliers dont ils sont propriétaires comme ils le souhaitent.
Pour renforcer la dimension sociale du projet, il a mené de plusieurs travaux. Le premier de ces travaux est de donner des cours de couture à 45 jeunes femmes. Dans le travail mené en collaboration avec l'école des filles professionnelle de Sultan Selim, 45 jeunes femmes dont 13 mariés ont reçu un certificat à la fin des cours de couture de 160 heures. Des initiatives de placement dans l'emploi sont entreprises à la fin de ces cours. Pour que ces femmes continuent leur programme de cours, un soutien financier est assuré par le versement de 8-10 TL par jours par l'Agence nationale de l'emploi (İŞKUR).
En outre, 20 jeunes hommes vont recevoir des cours de maitrise de bois dans un atelier de la Municipalité métropolitaine d'Istanbul à Zeyrek. Pendant et après leur formation, ces jeunes travailleront dans les travaux de rénovation et de restauration des maisons en bois à Zeyrek et Süleymaniye.
Une troisième initiative est de donner des cours de formation aux volontaires de la région pour avoir une profession avec le soutien de l'union des exportateurs des vêtements prêts et de la confection d'İlstanbul (İHKİB).
Il n'y a eu aucun problème jusqu'à ce jour avec les propriétaires et les locataires dans la zone du projet. Malgré cela, le projet est reflété dans les médias avec des informations négatives. Ces informations négatives sont produites par les personnes occupant qui n'ont aucun droit de propriété dans la zone, mais qui veulent profiter d'une manière ou d'une autre de la situation et les personnes qui abusent les conditions de vie des habitants pour rester à l'ordre du jour.

RESC 31§2 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 31§2 of the Charter on the ground that the right to shelter is not guaranteed to persons unlawfully present in Ukraine, including children, for as long as they are in its jurisdiction.

642. The representative of Ukraine provided the following information in writing:

The Cabinet of Ministers of Ukraine approved by the Resolution on 17 July 2003 № 1110 (as amended № 70/2012 of 8 February) "Standard Provision for the Temporary Holding Facilities for Foreigners and Stateless Persons illegally staying in Ukraine".
According to this Resolution temporary residence facilities belong to the jurisdiction of the State Migration Service of Ukraine.
Children of foreigners and stateless persons are placed in shelter with their parents and in the absence of parents – close relatives.
Children of foreigners and stateless persons separated from their families cannot be placed in shelter and should be sent to the Service for Children.
One of the main tasks of the temporary holding facilities is to create appropriate conditions for the maintenance of foreigners and stateless persons, providing them with individual beds, bedding, food, everyday and medical service.
Updated information will be provided in the next report.

Article 31§3 – Affordable housing

RESC 31§3 FRANCE

The ECSR concludes that the situation in France is not in conformity with Article 31§3 of the Charter for the following reasons:

- *the shortage of social housing at an affordable price for the poorest people and low-income groups;*
- *the malfunctioning of the social housing allocation system and the related remedies;*
- *the deficient implementation of legislation on stopping places for Travellers.*

First ground of non-conformity

643. The representative of France said that, as at 1st January 2011, France had over 4.576 million rented social housing units, which housed approximately 10 million people. 124 028 dwellings had been funded in 2011 (116 128 in metropolitan France and 7 900 in the overseas départements). A further approximately 18 500 had been funded by the National Agency for Urban Renewal (ANRU) under a scheme to regenerate the stock.

In addition to meeting quantitative objectives, the Government paid particular attention to adapting new housing to social needs. Its aim was to refocus state aid on the most urgent needs and thereby ensure better geographical balance in the supply of social housing. In 2011, this had been reflected in further increases in funding in the regions with the greatest problems where access to housing remained difficult, in particular for poor and low-income households because of the difference in rent levels between the public and private housing sectors. The shortage of social housing mainly concerned the two regions of Ile-de-France (Greater Paris) and Provence-Alpes-Côte d'Azur.

In 2011, the number of dwellings for the poorest households (PLAI) had far outstripped the symbolic figure of 20 000 included in the law on an enforceable right to housing and reached a total of 23 483, which was above the target of 22 500.

The efforts made in recent years to help the most disadvantaged households would be kept up, in particular in order to support halfway solutions between furnished accommodation and individual dwellings. The PLAI target had been kept at 22 500 dwellings for 2012. However, the number of social housing loan (PLS) units was up slightly on 2011, at 42 500. The latter scheme remained a vital tool, as, in addition to providing new ordinary dwellings at rents well below market levels in areas with great shortages, it was used to fund housing for specific needs such as establishments for the elderly or people with disabilities and student accommodation. The overall target for 2012 would be 120 000 social housing units.

644. The Committee congratulated France on the efforts made to adapt the supply of social housing to needs and invited the French Government to provide any relevant information in its next report.

Second ground of non-conformity

645. The representative of France said that in order to improve the system for the allocation of social housing, the construction of social housing would be refocused in accordance with changes in French society, in particular in terms of the types of housing unit. There was a need for more large dwellings for large families and more small dwellings such as studios so that single people could be offered affordable housing. The introduction in 2012 of single registration numbers for social housing applications would give a clearer idea of the profile of applicants for social housing and thereby make it possible to bring supply more closely into line with demand.

With regard to the available remedies, Article L. 441-2-3 of the Building and Housing Code (CCH) provided that "II. Any person satisfying the regulatory requirements for access to rented social housing who does not receive a suitable response to his or her application for housing within the time limit set in accordance with Article L. 441-1-4 may appeal to the Mediation Board". The time limit was set by the prefect in each département in line with the actual timeframes within which applicants could be allocated housing. After the time limit, applications were deemed to have gone unanswered for an excessive length of time. The only legal effect which this had was to enable applicants who had not received suitable offers of social housing to appeal to the Mediation Board to have their right to

housing recognised. In addition to this remedy, the law on an enforceable right to housing made provision for a judicial remedy.

646. The Committee took note of the information and invited the French Government to indicate in its next report the outcomes of the new policies announced, in particular regarding the operation of the system of single registration numbers for social housing applications.

Third ground of non-conformity

647. The representative of France said that replies to the ECSR concerning this ground were set out in the explanations provided under Article 31§1 and 2 concerning stopping places for Travellers.

France believed that responses to the issue of the Roma communities had to be adopted at European level and required the involvement of the countries of origin in efforts to find lasting solutions. In this connection, an agreement had been signed by the French and Romanian authorities on 12 September 2012 for the purpose of establishing and following up 80 reintegration projects for people who had returned from France.

In addition, an interdepartmental delegate for accommodation and access to housing for homeless or poorly housed people and an interdepartmental steering committee comprising senior officials from each Government department concerned had been appointed, with a work programme focused on accommodation and access to housing, clarification of residence rights, access to health care, schooling, access to the labour market and co-ordinating the French strategy with European requirements.

648. The Committee took note of the information and invited the French Government to keep up its efforts and inform the ECSR in its next report about the legal and practical situation in this area.

RESC 31§3 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 31§3 of the Charter on the grounds that:

- *in some regions and municipalities nationals of other Parties to the Charter and to the 1961 Charter lawfully residing or regularly working in Italy are not entitled to equal treatment regarding eligibility for social housing and access to housing benefit;*
- *it has not been demonstrated that resources have been invested with the effect of improving in practice access of Roma and Sinti to social housing without discrimination.*

First ground of non-conformity

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

> Le Comité a remarqué que dans le système juridique national le droit au logement est sujet à discrimination au motif que les nationaux sont plus facilités dans l'accès aux logements sociaux que les ressortissants étrangers non communautaires.
> Par rapport à cette conclusion, on fait présent que le droit au logement et, en général, celui aux prestations sociales des ressortissants étrangers est, au contraire, garanti dans le système national par les dispositions contenues dans le T.U.I.M. 25 juillet 1998, n. 286 « Texte Unique des dispositions concernant la discipline de l'immigration et les normes sur la condition de l'étranger » et modifié par la loi n. 189/2002 (plus connue sous le nom « Bossi-Fini »).
> En particulier, l'alinéa 6 de l'article 40 prévoit que les ressortissants étrangers titulaires de carte de séjour (aujourd'hui permis de séjour CE pour les résidents de longue période) et les immigrés régulièrement séjournant qui sont en possession d'un permis de séjour biennal au moins et qui exercent une activité à but lucratif, soit subordonné soit indépendante, ont le droit d'accéder aux logements sociaux et aux services d'intermédiation des agences sociales à

conditions égales aux nationaux. En outre, les Régions ou les administrations locales peuvent prédisposer des agences sociales chargées de favoriser l'accès à la location et au crédit à un taux favorable finalisé à la rénovation, à l'achat et à la location de l'habitation principale. Enfin, le droit au logement des ressortissants étrangers est aussi garanti par la Constitution italienne même si d'une façon non pleine et directe. Toutefois, la Cour Constitutionnelle (comme on avait déjà souligné dans le précédent rapport) a reconnu le droit au logement comme « un droit social qu'on peut ranger parmi les droits inviolables de l'homme » (Cour Constitutionnelle, arrêt n. 404 du 7 avril 1988).

En considération du fait que le droit au logement concerne la dignité et la vie de chaque individu, l'exigence de disposer d'un logement pour soi-même et pour sa famille est protégée par le système juridique national même si le titulaire du droit soit un ressortissant étranger ou un apatride séjournant sur le territoire de l'Etat.

L'action civile contre la discrimination dont à l'article 44[14] du T.U.I., lu conjointement avec l'article 40 du texte cité, est le principal instrument auquel les immigrés peuvent recourir pour protéger leur revendications d'un logement contre les discriminations accomplies par des sujets publiques ou privés. Aux dispositions citées, on doit ajuter l'alinéa 2, lettre c, de l'article 43 qui dispose que « en tout cas, quiconque impose illégitimement des conditions plus désavantageuse ou refuse l'accès au logement et aux services sociaux et d'assistance aux étrangers qui résident régulièrement en Italie seulement en raison de leur condition d'étrangers ou en vertu de leur appartenance à une race, religion, ethnie ou nationalité commet un acte de discrimination ».

De suite, nous signalons des arrêts visant à démontrer que le droit à l'égalité de traitement entre les nationaux et les ressortissants étrangers non communautaires est effectivement protégé par le système juridique italien.

Au préalable, le premier cas d'une action antidiscriminatoire contre une mesure de l'administration produisant des effets défavorables envers la revendication d'un logement de la part d'un immigré extracommunautaire est celui de l'ordonnance[15] du Tribunal de Milan du 21 Mars 2002.

A la suite de cette ordonnance, des décisions plus récentes ont confirmé l'orientation inaugurée par l'arrêt de 2002, c'est-à-dire l'orientation envers l'importance d'une « ferme » tutelle du droit à l'égalité de traitement.

Parmi les arrêts les plus récents, on doit citer l'ordonnance 15 juillet 2010, n. 4175 du Tribunal de Bergame, section travail. Le tribunal avait jugé « discriminatoire » le règlement communal qui interdisait aux jeunes couples étrangères, en tant que dépourvus de la nationalité italienne, les facilitations prévues pour l'achat de l'habitation principale.

Avec l'ordonnance 16 novembre 2010, le Tribunal de Bolzano a reconnu le droit des certains ressortissants étrangers extracommunautaires au « subside pour l'habitation » contre une décision du Conseil provincial jugée discriminatoire. En particulier, la décision avait partagé l'affectation du subside pour le soutien à la location en réservant aux immigrés extracommunautaires des quotas désavantageux par rapport à ceux prévus pour les nationaux et pour les communautaires.

Non seulement l'ordonnance du Tribunal a vérifié la discrimination et en a ordonné la levée mais a directement attribué le subside aux demandeurs.

L'ordonnance 27 mai 2011, n.1684, du Tribunal de Vicence a reconnu l'existence d'une discrimination indirecte dans les décisions communales introduisant des nouveaux et plus restrictifs critères pour délivrer la certification « de logement convenable » aux ressortissants étrangers. Le cas échéant, « en comportant un' inégalité de traitement entre les ressortissants

[14] Art. 44:Quand le comportement d'un sujet privé ou de l'administration publique comporte une discrimination fondée sur la race, l'ethnie, la nationalité ou la religion, le juge, sur l'instance d'une partie, peut ordonner la cessation du comportement préjudiciable et prendre des mesures adéquates, selon les circonstances, à enlever les effets de la discrimination.

[15] L'ordonnance concerne l'attribution d'un nombre de points supplémentaire en raison de la nationalité italienne à compter pour les listes d'assignation des logements sociaux (Erp) prédisposées par la commune de Milan.

étrangers et les nationaux, les critères susmentionnés sont discriminatoires en tant qu'ils accroissent la difficulté à l'accès au logement des immigrés (extracommunautaires pour la plupart) bien que ce droit soit protégé par des normes constitutionnelles ».

Par ailleurs, on va bien d'indiquer l'ordonnance 28 juillet 2009, n. 550 du Tribunal de Milan concernant l'illicite discrimination envers des étudiants universitaires étrangers, dépourvus de la condition requise de la nationalité italienne, à l'occasion d'un avis pour l'assignation de logements à affecter aux étudiants. L'ordonnance confirme encore une fois que le droit à un' égale dignité et à ne pas être discriminé est un des droits inviolables de la personne humaine.

En outre, la Cour Constitutionnelle aussi s'est prononcée à plusieurs reprises sur la légitimité constitutionnelle de lois concernant l'affectation d'allocations sociales d'assistance. Les arrêts de la Cour ont établi des principes fondamentaux, parmi lesquels :

a) la jouissance des droits inviolables de la personne humaine sans limitations particulières suite à la reconnaissance du droit de séjour du ressortissant étranger ;

b) l'existence et la tutelle des droits inviolables de la personne humaine visés à la satisfaction des besoins primaires qui garantissent une égalité substantielle de traitement entre les nationaux et les ressortissants étrangers régulièrement séjournant sur le territoire de l'État.

Partant, la déviation de ces critères est en contradiction soit avec les principes fondamentaux de la Constitution, soit avec ceux énoncés à l'article 14 de la Convention pour la sauvegarde des droits de l'Homme et des libertés fondamentales et à l'article 1 du Protocole additionnel de la Convention même, signé à Paris le 20.3.1952 et auquel l'Italie doit se conformer. Pour ce qui est de la question spécifique soulevée par le Comité en ordre aux dispositions des certains Communs et Régions qui prévoyaient la condition requise de la résidence de longue période pour l'accès aux logements sociaux ou aux avantages liés à l'habitation, elle a été l'objet d'une attention particulière.

A l'égard, on doit signaler le rôle fondamental joué par l'UNAR[16]. Des cas de discrimination fondée sur la condition requise de la résidence de longue période sur le territoire national, régional ou communal en tant que fondement pour l'octroi d'allocations liées au droit au logement et pour l'accès aux logements sociaux, ont lui été soumis. Ils ont lui été communiqués soit individuellement soit par des associations (actives dans la lutte aux discriminations).

La réitération de cas semblables de discrimination au sujet de l'accès au logement a poussé le bureau à approfondir le problème en cherchant les solutions les plus homogènes possibles en gré de garantir le respect des droits. A la suite de cet approfondissement, l'UNAR est parvenu à la formulation d'une Recommandation qui, à la lumière des principes constitutionnels cités au-dessus, invitait les destinataires à ne pas insérer, parmi les conditions requises pour l'accès aux logements sociaux et à toute autre facilité liée à l'habitation, ni la condition de la nationalité italienne ni d'autres (comme celle de la résidence de longue période) et à respecter seulement les conditions prévues à l'article 40 du T.U.I. cité.

Outre la réglementation et l'orientation de la jurisprudence, la Recommandation est évidemment importante en tant qu'elle établit l'interdiction de la discrimination entre les nationaux et les ressortissants étrangers extracommunautaires en matière de droit à l'accès aux logements sociaux.

Second ground of non-conformity

[16] Bureau National anti discriminations raciales, auprès de la Présidence du Conseil des Ministres. Il a la tache de poursuivre, d'une façon autonome et équitable, la promotion de l'égalité et le contraste de toute forme de discrimination fondée sur la race et l'origine ethnique. Parmi les tâches confiées à l'UNAR, il y a aussi celle de formuler d'avis et des recommandations sur les questions concernant les discriminations fondées sur la race et l'origine ethnique. Selon les taches lui attribué par la loi, le Bureau signale les éventuels aspects de légalité des actes et des comportements que les personnes et les organismes publiques et privés peuvent adopter en violation des principes d'égalité de traitement dont aux cas de discrimination prévus à l'article 43 du T.U.I. 286/1998.

650. The representative of Italy said that replies to the ECSR concerning these grounds were set out in the explanations provided under Article 31§1 (see under RESC 31§1 Italy in the present document).

651. The Committee invited the Government to include any relevant information in its next report and agreed to await the next assessment by the ECSR.

RESC 31§3 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 31§3 of the Charter on the grounds that:

- *nationals of other Parties to the Charter and to the 1961 Charter lawfully residing or working regularly in Slovenia are not entitled to equal treatment regarding eligibility for non-profit housing;*
- *the supply of non-profit housing is inadequate and the remedies in case of excessive length of waiting period are not effective;*
- *the specific situation of tenants living in restituted denationalised flats is not sufficiently taken into account, thus hindering their effective access to affordable housing.*

First ground of non-conformity

652. The representative of Slovenia pointed out that the new National Housing Programme (see under RESC 31§1 Slovenia in this document) is also discussing housing provisions for aliens. One of the main goals of the NHP is to increase a number of public rental dwellings which have to be eligible for all legally residing and working people in Slovenia. In line with that, the condition of citizenship, when applying for publicly owned rental housing unit (current non-profit rental housing), will be eliminated. The NHP should be adopted in December 2012 and respective housing legislation will be amended in following year – 2013.

653. The Committee took note of the information provided and invited the Government of Slovenia to bring the situation into conformity with the European Social Charter.

Second ground of non-conformity

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

> The main obstacle to accessing non-profit apartments is the condition of citizenship, which means that foreign workers cannot rent a non-profit apartment. The condition of citizenship was introduced in the past due to the exceptionally weak offer of non-profit apartments, which resulted in waiting periods (in bigger cities) being as long as 4 years.
>
> We are aware that the current legislation and, therefore, practice is discriminatory and requires a more appropriate solution. For this reason, a working group for drafting a National Housing Programme was established which will also address this issue.
>
> The NHP, among other things, envisages an increased offer of public rental apartments and the suspension of the condition of citizenship. It is planned to submit the NHP to parliament by the end of this year and it is expected to be adopted in early 2013.

Third ground of non-conformity

655. The representative of Slovenia stated that the explanations given under Article 31§1 apply also to Article 31§3 (see under RESC 31§1 Slovenia in the present document).

656. The Committee took note of the information provided and invited the Government of Slovenia to bring the situation in conformity with the European Social Charter and include all relevant information in the next report.

APPENDIX I

LIST OF PARTICIPANTS

(1) 125th meeting, Strasbourg, 26-30 March 2012
(2) 126th meeting, Strasbourg, 8-12 October 2012

ALBANIA / ALBANIE
Ms Suzana ADILI, Director of Benefits Directorate, Social Insurance Institute (1)
Ms Mirela SELITA, Director of Legal Directorate, Social Insurance Institute (1)
Ms Elda KOZAJ, Specialist, Department of Social Services Policies, Ministry of Labour, Social Affairs and Equal Opportunities (1) (2)

ANDORRA / ANDORRE
Mr Ramon NICOLAU, Social Welfare Responsible, Ministry of Health and Welfare (1) (2)

ARMENIA / ARMÉNIE
Ms Anahit MARTIROSYAN, Head of International Relations Division, Ministry of Labour and Social Issues (1) (2)

AUSTRIA / AUTRICHE
Ms Elisabeth FLORUS, Official for EU-Labour Law and International Social Policy, Federal Ministry of Labour, Social Affairs and Consumer Protection (1) (2)
Ms Christine HOLZER, Official for Social Security, General Issues on Pensions and International Affairs, Federal Ministry of Labour, Social Affairs and Consumer Protection (1) (2)

AZERBAIJAN / AZERBAÏDJAN
Mr Khalig ILYASOV, Head of International Relations Department, Ministry of Labour and Social Protection of the Population (1)
Mr Zaur ALIYEV, Head of Division for Relations with Foreign Countries, International Relations Department, Ministry of Labour and Social Protection of the Population (2)

BELGIUM / BELGIQUE
M. Jacques DONIS, Conseiller, Direction générale Appui stratégique, Relations multilatérales, Service public fédéral de la Sécurité sociale (1)
M. François VANDAMME, Conseiller général, Travail et concertation sociale, Division des affaires internationales, Service public fédéral de l'Emploi (1) (2)

BOSNIA AND HERZEGOVINA / BOSNIE-HERZÉGOVINE
Mr Azra HADZIBEGIC, Expert Adviser, Department for Human Rights, Ministry for Human Rights and Refugees, (1) (2)

BULGARIA / BULGARIE
Ms Elitsa SLAVCHEVA, Head of International Organisations and International Legal Affairs Department, Ministry of Labour and Social Policy (1) (2)

CROATIA / CROATIE
Ms Gordana DRAGIČEVIĆ, Ministry of Labour and Pension System (1)
Apologised for absence / excusée (2)

CYPRUS / CHYPRE
Ms Eleni PAROUTI, Chief Administrative Officer, Ministry of Labour and Social Insurance (1) (2)

CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE
Ms Brigita VERNEROVÁ, International Cooperation Unit, Ministry of Labour and Social Affairs (1) (2)

DENMARK / DANEMARK
Ms Lis WITSØ-LUND, Special Adviser, International Labour Centre, Ministry of Employment (1) (2)
Mr Kim TAASBY, Special Adviser, Ministry of Employment (2)
Mr Anders ELBO, Head of Section, Benefits Division, Ministry of Social Affairs and Integration (2)

ESTONIA / ESTONIE
Ms Merle MALVET, Head of Social Security Department, Ministry of Social Affairs (1)
Ms Katerin PEÄRNBERG, Chief Specialist of Social Security, Department Ministry of Social Affairs (1)
Ms Seili SUDER, Head of Employment Relations, Working Life Development Department, Ministry of Social Affairs (1) (2)
Mr Martin SEPP, Adviser, Migration and Border Policy Department, Ministry of the Interior (2)

FINLAND / FINLANDE
Ms Riitta-Maija JOUTTIMÄKI, Ministerial Counsellor for Legal Affairs, Ministry of Social Affairs and Health (1)
Ms Liisa HEINONEN, Government Counsellor, Labour and Trade Department, Ministry of Employment and the Economy (1) (2)

FRANCE / FRANCE
Mme Jacqueline MARÉCHAL, Chargée de mission, Délégation aux affaires européennes et internationales, Ministère du Travail, de l'emploi et de la santé et Ministère des Solidarités et de la cohésion sociale (1) (2)

GEORGIA / GÉORGIE
Mr David OKROPIRIDZE, Head of Social Protection Department, Ministry of Labour, Health and Social Affairs (1)
Mr Amiran DATESHIDZE, Acting Head of the Department for Social Protection, Ministry of Labour, Health and Social Protection (2)

GERMANY / ALLEMAGNE
Mr Albrecht OTTING, Co-ordination of Social Security Schemes, Federal Ministry of Labour and Social Affairs (1)
Mr Jürgen THOMAS, Deputy Head of Division VI b 4, OECD, OSCE, Council of Europe, ESF-Certifying Authority, Federal Ministry of Labour and Social Affairs (1)
Mr Joachim HOLZENBERGER, Conseiller, Représentation permanente de la République fédérale d'Allemagne auprès du Conseil de l'Europe (2)

GREECE / GRÈCE
Ms Karolina KIRINCIC-ANDRITSOU, International Affairs Division, General Secretariat of Social Security, Ministry of Labour and Social Security (1)
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HUNGARY / HONGRIE
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ICELAND / ISLANDE
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IRELAND / IRLANDE
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ITALY / ITALIE
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M. Domenico MORELLI, Expert, Department of Civil Liberties and Immigration, Central Directorate of Civil Rights, Citizenship and Minorities, Ministry of the Interior (2)
Mme Maura CURCIO, Vice Prefect, Director of Unit V, Historical Minorities and New Minorities, Department of Civil Liberties and Immigration, Central Directorate of Civil Rights, Citizenship and Minorities, Ministry of the Interior (2)

LATVIA / LETTONIE
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LIECHTENSTEIN / LIECHTENSTEIN
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LITHUANIA / LITUANIE
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LUXEMBOURG / LUXEMBOURG
M. Claude EWEN, Direction du service juridique international, Ministère de la Sécurité sociale (1)
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MALTA / MALTE
Mr Edward BUTTIGIEG, Assistant Director Contributory Benefits, Department of Social Security (1) (2)
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REPUBLIC OF MOLDOVA / RÉPUBLIQUE DE MOLDOVA
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NETHERLANDS / PAYS-BAS
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NORWAY / NORVÈGE
Mr Erik DÆHLI, Senior Adviser, Pension Department, Ministry of Labour (1)
Ms Mona SANDERSEN, Senior Adviser, Working Environment and Safety Department, Ministry of Labour (1)
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POLAND / POLOGNE
Mme Joanna MACIEJEWSKA, Conseillère du Ministre, Département des analyses économiques et des prévisions, Ministère du Travail et de la politique sociale (1) (2)

PORTUGAL / PORTUGAL
Mme Maria da Conceição GUEDES DE SOUSA, Chef de Division, Division des Relations Internationales, Direction Générale de la Sécurité Sociale (1)
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Mme Elena VOKACH-BOLDYREVA, Chef adjointe de Division, Département de la Coopération internationale, Ministère de la Santé et du développement social (1)
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SLOVAK REPUBLIC / RÉPUBLIQUE SLOVAQUE
Mr Lukas BERINEC, Department of Foreign Relations and Protocol, Ministry of Labour, Social Affairs and Family (1) (2)

SLOVENIA / SLOVÉNIE
Ms Katja RIHAR BAJUK, Under-secretary, Directorate of Labour Relations and Labour Rights, Ministry of Labour, Family and Social Affairs (1) (2)
Ms Nataša SAX, Undersecretary, Directorate for Spatial Planning, Ministry of Infrastructure and Spatial Planning (2)

SPAIN / ESPAGNE
M. Patricio Augusto RODRÍGUEZ GARCÍA, Chef de Service, Sous-direction générale des Relations sociales internationales, Ministère de l'Emploi et de la sécurité sociale (1)
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SWEDEN / SUÈDE
Mr Leif WESTERLIND, Senior Advisor, Ministry of Health and Social Affairs (1)
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“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” / « L’EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE »
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APPENDIX II

TABLE OF SIGNATURES AND RATIFICATIONS

Situation at 1st December 2012

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	**31/01/02**	
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	06/01/2012	
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	**11** + 32 = 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

A. Conclusions of non-conformity for the first time

i) Written examination

RESC 7§2 ALBANIA
RESC 7§3 ALBANIA
RESC 7§6 ALBANIA
RESC 7§7 ALBANIA
RESC 8§1 ALBANIA
RESC 8§2 ALBANIA

RESC 17§1 ANDORRA

RESC 7§3 ARMENIA
RESC 7§7 ARMENIA
RESC 8§2 ARMENIA
RESC 8§4 ARMENIA
RESC 17§1 ARMENIA (2nd ground)
RESC 17§2 ARMENIA
RESC 19§10 ARMENIA
RESC 19§11 ARMENIA
RESC 19§12 ARMENIA
RESC 27§3 ARMENIA

RESC 7§5 AZERBAIJAN
RESC 8§1 AZERBAIJAN

RESC 7§6 BELGIUM
RESC 17§1 BELGIUM (2nd ground)

RESC 7§4 BOSNIA AND HERZEGOVINA
RESC 7§6 BOSNIA AND HERZEGOVINA
RESC 7§9 BOSNIA AND HERZEGOVINA
RESC 8§1 BOSNIA AND HERZEGOVINA
RESC 8§4 BOSNIA AND HERZEGOVINA
RESC 8§5 BOSNIA AND HERZEGOVINA
RESC 16 BOSNIA AND HERZEGOVINA
RESC 17§1 BOSNIA AND HERZEGOVINA
RESC 17§2 BOSNIA AND HERZEGOVINA

RESC 7§10 BULGARIA
RESC 8§2 BULGARIA
RESC 8§5 BULGARIA
RESC 17§2 BULGARIA (1st ground)
RESC 27§3 BULGARIA

RESC 7§3 CYPRUS (2nd ground)
RESC 19§1 CYPRUS
RESC 19§4 CYPRUS
RESC 19§6 CYPRUS
RESC 19§10 CYPRUS

RESC 7§3 ESTONIA
RESC 17§1 ESTONIA

RESC 8§3 FRANCE
RESC 19§4 FRANCE
RESC 19§6 FRANCE
RESC 19§8 FRANCE
RESC 19§10 FRANCE
RESC 19§12 FRANCE
RESC 31§1 FRANCE (1st ground)

RESC 17§1 GEORGIA
RESC 19§10 GEORGIA
RESC 19§12 GEORGIA

RESC 16 HUNGARY
RESC 17§1 HUNGARY (1st ground)
RESC 17§2 HUNGARY

RESC 8§1 IRELAND
RESC 8§2 IRELAND
RESC 17§1 IRELAND (1st and 2nd grounds)
RESC 19§6 IRELAND
RESC 19§12 IRELAND
RESC 27§1 IRELAND

RESC 7§2 ITALY
RESC 16 ITALY
RESC 19§1 ITALY
RESC 19§4 ITALY
RESC 19§6 ITALY
RESC 19§8 ITALY
RESC 19§10 ITALY
RESC 19§12 ITALY
RESC 31§2 ITALY (1st ground)
RESC 31§3 ITALY (1st ground)

RESC 7§3 LITHUANIA
RESC 7§5 LITHUANIA
RESC 31§1 LITHUANIA
RESC 31§2 LITHUANIA

RESC 7§5 MALTA
RESC 7§8 MALTA
RESC 7§10 MALTA
RESC 16 MALTA

RESC 7§2 REPUBLIC OF MOLDOVA
RESC 7§3 REPUBLIC OF MOLDOVA
RESC 7§4 REPUBLIC OF MOLDOVA
RESC 7§7 REPUBLIC OF MOLDOVA
RESC 7§8 REPUBLIC OF MOLDOVA
RESC 7§9 REPUBLIC OF MOLDOVA
RESC 16 REPUBLIC OF MOLDOVA
RESC 17§1 REPUBLIC OF MOLDOVA (2nd and 3rd grounds)
RESC 17§2 REPUBLIC OF MOLDOVA (2nd ground)
RESC 19§8 REPUBLIC OF MOLDOVA

RESC 7§9 NETHERLANDS (KINGDOM IN EUROPE)
RESC 17§1 NETHERLANDS (KINGDOM IN EUROPE) (2nd and 3rd grounds)
RESC 19§6 NETHERLANDS (KINGDOM IN EUROPE) (2nd ground)

RESC 7§3 NORWAY
RESC 7§8 NORWAY
RESC 17§1 NORWAY
RESC 19§4 NORWAY
RESC 19§10 NORWAY
RESC 19§11 NORWAY
RESC 31§1 NORWAY

RESC 7§3 PORTUGAL
RESC 19§8 PORTUGAL
RESC 19§10 PORTUGAL

RESC 7§1 ROMANIA (1st ground)

RESC 7§1 SLOVAK REPUBLIC
RESC 7§3 SLOVAK REPUBLIC
RESC 7§5 SLOVAK REPUBLIC
RESC 8§1 SLOVAK REPUBLIC
RESC 16 SLOVAK REPUBLIC (1st ground)
RESC 17§1 SLOVAK REPUBLIC (2nd ground)
RESC 17§2 SLOVAK REPUBLIC

RESC 7§5 SLOVENIA
RESC 8§3 SLOVENIA
RESC 19§1 SLOVENIA
RESC 19§3 SLOVENIA
RESC 19§4 SLOVENIA (1st and 2nd grounds)
RESC 19§11 SLOVENIA
RESC 31§1 SLOVENIA (1st and 2nd grounds)
RESC 31§2 SLOVENIA
RESC 31§3 SLOVENIA (2nd ground)
RESC 17§2 SWEDEN

RESC 7§2 TURKEY
RESC 7§10 TURKEY
RESC 8§1 TURKEY

RESC 8§2 TURKEY
RESC 8§5 TURKEY
RESC 16 TURKEY (1st ground)
RESC 17§1 TURKEY (2nd ground)
RESC 17§2 TURKEY
RESC 19§1 TURKEY
RESC 19§6 TURKEY
RESC 19§8 TURKEY
RESC 27§2 TURKEY
RESC 31§1 TURKEY
RESC 31§2 TURKEY

RESC 7§1 UKRAINE
RESC 16 UKRAINE
RESC 31§1 UKRAINE
RESC 31§2 UKRAINE

ii) Oral examination (decision of the Bureau)

RESC 7§1 ALBANIA
RESC 7§10 ALBANIA (1st and 3rd grounds)

RESC 7§1 ARMENIA

RESC 7§10 CYPRUS

RESC 7§1 REPUBLIC OF MOLDOVA
RESC 7§10 REPUBLIC OF MOLDOVA (2nd ground)

RESC 7§10 ROMANIA (1st ground)

RESC 7§1 TURKEY

RESC 7§10 UKRAINE

B. Renewed Conclusions of non-conformity

RESC 7§10 ALBANIA

RESC 17§1 ARMENIA (1st ground)

RESC 7§5 BELGIUM
RESC 7§8 BELGIUM
RESC 17§1 BELGIUM (1st ground)

RESC 7§5 BULGARIA
RESC 7§9 BULGARIA
RESC 16 BULGARIA
RESC 17§2 BULGARIA (2nd ground)

RESC 7§1 CYPRUS

RESC 7§3 CYPRUS (1st ground)
RESC 27§3 CYPRUS

RESC 7§9 ESTONIA
RESC 19§6 ESTONIA
RESC 19§10 ESTONIA

RESC 8§2 FINLAND
RESC 27§3 FINLAND

RESC 7§2 FRANCE
RESC 16 FRANCE
RESC 17§1 FRANCE
RESC 31§1 FRANCE (2nd to 5th ground)
RESC 31§2 FRANCE
RESC 31§3 FRANCE

RESC 17§1 HUNGARY (1st ground)

RESC 7§1 IRELAND
RESC 7§3 IRELAND
RESC 7§4 IRELAND
RESC 7§5 IRELAND
RESC 7§8 IRELAND
RESC 17§1 IRELAND (3rd ground)
RESC 19§8 IRELAND
RESC 19§10 IRELAND

RESC 7§1 ITALY
RESC 7§3 ITALY
RESC 7§4 ITALY
RESC 8§3 ITALY
RESC 17§2 ITALY
RESC 31§1 ITALY
RESC 31§2 ITALY (2nd and 3rd ground)
RESC 31§3 ITALY (2nd ground)

RESC 16 LITHUANIA
RESC 17§1 LITHUANIA

RESC 17§1 MALTA

RESC 7§10 REPUBLIC OF MOLDOVA (1st ground)
RESC 17§1 REPUBLIC OF MOLDOVA (1st ground)
RESC 17§2 REPUBLIC OF MOLDOVA (1st ground)

RESC 7§3 NETHERLANDS (KINGDOM IN EUROPE)
RESC 7§5 NETHERLANDS (KINGDOM IN EUROPE)
RESC 7§6 NETHERLANDS (KINGDOM IN EUROPE)
RESC 17§1 NETHERLANDS (KINGDOM IN EUROPE) (3rd ground)
RESC 19§6 NETHERLANDS (KINGDOM IN EUROPE) (1st ground)
RESC 19§8 NETHERLANDS (KINGDOM IN EUROPE)

RESC 19§10 NETHERLANDS (KINGDOM IN EUROPE)
RESC 31§2 NETHERLANDS (KINGDOM IN EUROPE)

RESC 7§5 NORWAY
RESC 7§6 NORWAY

RESC 31§1 PORTUGAL

RESC 7§1 ROMANIA (2nd ground)
RESC 7§3 ROMANIA
RESC 7§5 ROMANIA
RESC 7§6 ROMANIA
RESC 7§7 ROMANIA
RESC 7§10 ROMANIA (2nd ground)
RESC 16 ROMANIA

RESC 8§2 SLOVAK REPUBLIC
RESC 16 SLOVAK REPUBLIC (2nd ground)
RESC 17§1 SLOVAK REPUBLIC (1st ground)

RESC 16 SLOVENIA
RESC 17§1 SLOVENIA
RESC 19§4 SLOVENIA (3rd ground)
RESC 19§10 SLOVENIA
RESC 31§1 SLOVENIA (3rd ground)
RESC 31§3 SLOVENIA (1st and 3rd grounds)

RESC 7§9 SWEDEN
RESC 19§8 SWEDEN
RESC 19§10 SWEDEN

RESC 7§3 TURKEY
RESC 7§4 TURKEY
RESC 7§8 TURKEY
RESC 17§1 TURKEY (1st ground)
RESC 19§4 TURKEY
RESC 19§10 TURKEY

APPENDIX IV

LIST OF DEFERRED CONCLUSIONS

C. Conclusions deferred because of questions asked for the first time or additional questions (first reports and others)

ALBANIA	RESC 7§9; 8§5; 19§3, 19§4, 19§6, 19§8, 19§10, 19§12
ANDORRA	RESC 7§1; 7§3; 7§5, 7§9, 7§10, 19§1, 19§3, 31§1, 31§2
ARMENIA	RESC 7§2, 7§5, 7§9, 7§10, 19§1, 19§2, 19§3, 19§4, 19§5, 19§6, 19§7, 19§8, 27§1
AZERBAIJAN	RESC 7§1, 7§2, 7§3, 7§7, 7§9, 7§10, 8§5, 16, 27§1, 27§3
BELGIUM	RESC 7§7, 7§10, 19§1, 19§3, 19§4, 19§6, 19§10
BULGARIA	RESC 7§3, 7§4, 7§6, 7§7, 7§8, 8§1, 8§3
BOSNIA-HERZEGOVINA	RESC 7§1, 7§2, 7§3, 7§5, 7§7, 7§8, 7§10, 8§2
CYPRUS	RESC 8§1, 19§3, 19§8, 19§11
ESTONIA	RESC 7§10, 8§1, 8§2, 19§8, 27§3
FINLAND	RESC 17§1, 19§4, 19§9, 31§3
FRANCE	RESC 19§1
GEORGIA	RESC 7§1, 7§2, 7§3, 7§4, 7§5, 7§6, 7§7, 7§8, 7§9, 7§10, 8§5, 19§1, 19§2, 19§3, 19§4, 19§5, 19§6, 19§7, 19§8, 19§11, 27§1, 27§2, 27§3
IRELAND	RESC 7§2, 7§7, 19§4, 27§3
ITALY	RESC 7§5, 17§1, 27§1
LITHUANIA	RESC 8§1, 8§2, 17§2, 19§1, 19§3
REPUBLIC OF MOLDOVA	RESC 8§1
MALTA	RESC 7§2, 7§3, 7§4
NETHERLANDS (KINGDOM IN EUROPE)	RESC 8§4, 8§5, 17§2, 19§4, 27§3, 31§1, 31§3
NORWAY	RESC 8§3, 19§3, 19§6
PORTUGAL	RESC 7§1, 7§5, 7§10, 8§2, 16, 17§1, 19§2, 19§6, 19§12, 31§2, 31§3

ROMANIA	RESC 7§4, 7§8, 7§9, 8§2, 17§1, 19§8
SLOVAK REPUBLIC	RESC 7§2, 7§7, 7§10, 19§1, 19§4, 19§6, 27§1, 27§2
SLOVENIA	RESC 7§4, 7§6, 7§7, 7§9, 7§10, 8§1, 8§2, 19§2, 19§6, 19§8, 27§3
SWEDEN	RESC 19§1
TURKEY	RESC 7§5, 7§6, 7§7, 7§9, 19§5, 19§7, 19§12, 27§1, 27§3, 31§1
UKRAINE	RESC 7§2, 7§3, 7§5, 7§7, 8§1, 8§2, 8§5, 17§1, 17§2, 27§1, 27§3

APPENDIX V

WARNING(S) AND RECOMMENDATION(S)

Warning(s)[17]

Article 7§10 (Special protection against physical and moral dangers)

Ukraine (1st to 3rd grounds)

- *All children under 18 are not effectively protected against child prostitution;*
- *All children under 18 are not effectively protected against child pornography;*
- *Simple possession or production of child pornography is not a criminal offence.*

Article 8§3 (Time off for nursing mothers)

Italy
Domestic and home workers are not entitled to paid breaks for the purposes of breastfeeding their infants.

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

Turkey (2nd ground of non-conformity)
There is no general system of family benefits established.

Article 17§1 (Assistance, education and training)

Hungary
The maximum period of pre-trial detention for minors is considered excessive.

Recommendation(s)

–

Renewed Recommendation(s)

–

[17] 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.